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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

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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 1 OF 7

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County and Anderson County, Respondents.	)	Docket No 18-ALJ-17-0443-CC **ORDER ON MOTION TO INTERVENE**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on a request for contested case hearing filed by Colonial Pipeline Company (Petitioner) after the South Carolina Department of Revenue (Respondent or Department) denied Petitioner's ad valorem property tax exemption.

On March 20, 2019, Abbeville County and Anderson County (Movants) filed a Consolidated Motion to Intervene (Motion) pursuant to Rule 20 of the Rules of Procedure for the Administrative Law Court (SCALC Rules). SCALC Rule 20(A) sets forth that "[a] motion for leave to intervene shall . . . state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of the intervention on the proceedings." Furthermore, SCALC Rule 20(B) sets forth that a person may intervene in a contested case pending before the Administrative Law Court (ALC or Court) upon a showing that:

(1) the movant will be aggrieved or adversely affected by the final order;

(2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;

(3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

The Court finds Movants have presented sufficient reasons for their intervention and have shown they have standing to contest this case. There is also no allegation or evidence that Movants' intervention will unduly delay this case. In fact, Movants assert that they intend to comply with the existing scheduling order in this matter. Furthermore, neither Petitioner nor the Department has opposed the Motion.

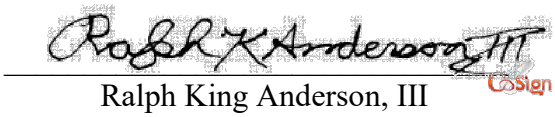
FILED

April 16, 2019

SC ADMIN. LAW COURT

IT IS THEREFORE ORDERED that the Consolidated Motion to Intervene for Abbeville County and Anderson County is **GRANTED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 16, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, and Greenville County, Respondents.	)	Docket No 18-ALJ-17-0443-CC **ORDER GRANTING MOTION TO INTERVENE**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on a request for a contested case hearing filed by Colonial Pipeline Company (Petitioner) after the South Carolina Department of Revenue (Department or Respondent) denied Petitioner's ad valorem property tax exemption.

On May 17, 2019, Greenville County (Movant) filed a Motion to Intervene (Motion) pursuant to Rule 20 of the Rules of Procedure for the Administrative Law Court (SCALC Rules). SCALC Rule 20(A) sets forth that "[a] motion for leave to intervene shall . . . state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of the intervention on the proceedings." Furthermore, SCALC Rule 20(B) sets forth that a person may intervene in a contested case pending before the Court upon a showing that:

(1) the movant will be aggrieved or adversely affected by the final order;

(2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;

(3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

The Court finds Movant has presented sufficient reasons for its intervention and has shown it has standing to contest this case. There is also no allegation or evidence that Movant's intervention will unduly delay this case. In fact, Movant asserts it intends to comply with the existing scheduling order in this matter. Furthermore, neither Petitioner nor Respondents have opposed the Motion.

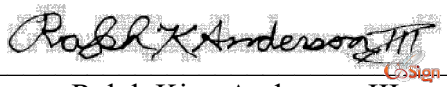
FILED

May 29, 2019

SC ADMIN. LAW COURT

IT IS THEREFORE ORDERED that the Greenville County's Motion to Intervene is **GRANTED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

May 29, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County and York County, Respondents.	)	Docket No 18-ALJ-17-0443-CC **ORDER GRANTING MOTION TO INTERVENE**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on a request for a contested case hearing filed by Colonial Pipeline Company (Petitioner) after the South Carolina Department of Revenue (Department or Respondent) denied Petitioner's ad valorem property tax exemption.

On May 28, 2019, two Motions to Intervene were filed in the above-captioned matter pursuant to Rule 20 of the Rules of Procedure for the Administrative Law Court (SCALC Rules): (1) York County's motion and (2) Aiken County and Laurens County's consolidated motion (Movants). SCALC Rule 20(A) sets forth that "[a] motion for leave to intervene shall . . . state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of the intervention on the proceedings." Furthermore, SCALC Rule 20(B) sets forth that a person may intervene in a contested case pending before the Court upon a showing that:

(1) the movant will be aggrieved or adversely affected by the final order;

(2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;

(3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

The Court finds Movants have presented sufficient reasons for their intervention and has shown that they have standing to contest this case. There is also no allegation or evidence that Movants' intervention will unduly delay this case. In fact, Movants assert that they intend to

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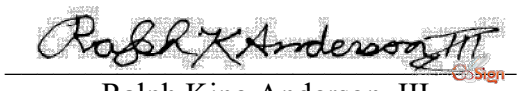
comply with the existing scheduling order in this matter. Furthermore, neither Petitioner nor other Respondents have opposed these Motions.

IT IS THEREFORE ORDERED that the York County's Motion to Intervene is **GRANTED**.

IT IS FURTHER ORDERED that the Consolidated Motion to Intervene filed by Aiken County and Laurens County is **GRANTED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

June 13, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Respondents.	)	Docket No. 18-ALJ-17-0443-CC **ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

STATEMENT OF THE CASE

This matter is before the Court pursuant to a request for contested case filed by Colonial Pipeline Company (Petitioner or Colonial) on December 5, 2018. Colonial contests the decision of the South Carolina Department of Revenue (Department or DOR) finding certain Colonial assets were not eligible for a property tax exemption for pollution control equipment pursuant to section 12-37-220(A)(8) of the South Carolina Code and Article 10, Section 3(h) of the South Carolina Constitution. Colonial challenges the Department decision for tax years 2017 and 2018.

On March 20, 2019, Abbeville County and Anderson County filed a Consolidated Motion to Intervene, which was granted on April 16, 2019. Greenville County filed a Motion to Intervene on May 17, 2019, which was granted on May 29, 2019. On May 28, 2019, Aiken County and Laurens County moved to intervene, and York County moved separately to intervene; the Court granted the motions on June 13, 2019. Collectively, the counties are referenced as the Counties,[1] and collectively with the Department, Respondents.

On December 11, 2019, the parties filed cross-motions for summary judgment. The next day, a deposition of Colonial was filed with the Court. The parties thereafter filed Responses and Replies to the cross-motions before a hearing on the cross-motions was held at this Court's headquarters in Columbia, SC, on January 6, 2020. The parties contend no material facts are at

[1] Although all the counties are intervenors, the counties are separately represented and have distinct positions and filed distinct motions for summary judgment. Aiken County and Laurens County are both represented by Parker Poe Adams & Bernstein LLP. Abbeville County, Anderson County, Greenville County, and York County are represented by Kozlarek Law LLC.

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SC ADMIN. LAW COURT

issue and the only issue before this Court is whether, as a matter of law, Petitioner's facilities constitute an "industrial plant" for purposes of the pollution control equipment exemption.

STIPULATIONS OF FACTS

The parties stipulated to the following facts at the hearing:

Assessment in Dispute[2]

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

1. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

2. Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina and does various inspections in this state.

3. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline, so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

4. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use.

5. Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline.

6. If the Taxpayer transported a single Refined Petroleum Product, then the Taxpayer would not create Transmix.

7. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product.

8. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's transportation services and is not charged to the customer.

[2] Colonial does not dispute the valuation of the property nor does it dispute the valuation method; rather, Colonial argues that the property in dispute is exempt from ad valorem taxation pursuant to § 12-37-220(A)(8).

9. The Taxpayer's activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline.

10. At least 90% of each Refined Petroleum Product transported by the Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

11. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

12. The Taxpayer does not own the Refined Petroleum Products it transports.

13. In addition to other counties, the property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Greenville, Laurens, and York (the "counties involved").

14. The Taxpayer has tank farms, delivery facilities, and booster stations in South Carolina. The Taxpayer has two tank farms in South Carolina—one in Belton and the other in Spartanburg. Those tank farms receive and store Refined Petroleum Products from the transmission pipeline and pump the product to individual truck terminals. The Taxpayer's delivery stations in South Carolina are located at the tank farms and deliver Refined Petroleum Products on a transmission line to a truck terminal. The Taxpayer has three booster stations in South Carolina—one in Anderson, one in Simpsonville, and another in Gaffney. The booster stations push Refined Petroleum Products through the pipeline.

15. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017. Exhibit A is a true and accurate copy of the protest that the Taxpayer submitted to the Department.

18. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

19. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental

Control ("DHEC") for investigation into whether the Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

20. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

21. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

22. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

23. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

24. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

25. The Government Services Division received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

26. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

27. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.[3]

[3] Although not part of the stipulation of facts, the DHEC letter stated, in part:

28. The Department issued its Determination in this matter on November 19, 2018.

29. The Taxpayer timely requested a contested case hearing on December 5, 2018.

30. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8) as to all claimed property. The Taxpayer claimed the same property as pollution control property for 2019 as it did for 2017 and 2018. On August 6, 2019, the Taxpayer timely protested the 2019 exemption denial.

31. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption.

32. Attached as Exhibit B is the Colonial Pipeline System Map. Attached as Exhibit C is a map of the Colonial Charlotte/South Carolina Operating Area. Attached as Exhibit D is Management's Discussion and Analysis of Financial Conditions and Results of Operations. Attached as Exhibit E is the DOR Proposed Assessment for the 2017 Tax year and 2018 Tax year as well as the Colonial Pipeline 2017 and 2018 Property Tax Returns.

33. Petitioner has environmental permits, including air, NPS, groundwater and solid waste disposal. A list of the environmental permits is attached as Exhibit F.

FINDINGS OF FACT

The Court further finds that the following pertinent facts are undisputed. Colonial is a pipeline company that transports refined petroleum products (e.g., refined petroleum, jet fuel, gasoline, diesel, heating oil, and kerosene). It receives products from approximately thirty refineries in the Gulf Coast region of the United States. In South Carolina, Colonial ships ultra-low sulfur diesel, heating oil, marine diesel, jet fuel, and kerosene. Ultra-low sulfur diesel and jet fuel are shipped as finished products.

Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

Colonial's operations in South Carolina are comprised of 515 miles of pipeline, two tank farms, three main line booster stations, and one delivery facility spanning eleven counties in the State. Colonial has two main pipelines in South Carolina, Line 1 and Line 2. Lines 1 and Line 2 run from Pasadena, Texas, to Greensboro, North Carolina. Line 1 transports gasoline and Line 2 transports distillate, which includes jet fuel and ultra-low sulfur diesel. In the geographical area at issue in this case (which covers small parts of Georgia and North Carolina, as well as South Carolina), Colonial employees 30-35 operators and technicians on a full-time basis (including an equal number of independent contractors) to oversee operations, run its facilities, make repairs, and respond to issues as needed.

The products Colonial receives are moved together "fungibly," meaning similar products are interchangeable and a customer may not receive the exact same petroleum it paid Colonial to transport. Further, Colonial transports multiple products back-to-back through the pipe, which results in some mixing of the products where they interface. When different products mix in the pipeline, the result is called transmix. Transmix does not meet the Refined Petroleum Product specifications that can be sold for use. However, Colonial is able to process transmix into a once-again saleable Refined Petroleum Product. This is a very controlled process by which Colonial isolates the product and then blends it into a sellable product. Although the mixing occurs in the pipeline, the reengineering of the transmix to produce a sellable product occurs primarily at tank farms, pump stations, and delivery facilities.

Colonial also has to manage the movement of product through its pipeline. To accomplish this task, Colonial adds Drag Resisting Agents (DRA) to the product as it is transported, which reduces the amount of friction loss. Colonial must also remove water that accumulates in and around the transported product through a process called "sting." Colonial filters and removes "sting water" at the Belton and Spartanburg facilities through the use of oil and water separators. Colonial also regrades fuel in this State. "Regrade" is a process by which Colonial "change[s] a label of the product, the product's grade." Examples include regrading regular or premium gasoline.

Every fifty-sixty miles along its mainlines, Colonial operates a booster station on the line that increases pressure in the pipeline system and allows for the movement of petroleum through the pipeline. To ensure safety and quality control, Colonial constantly measures gravity, pressure, and temperature of the products it transports. Equipment is also used to measure and detect leaks. Additionally, there are three pump stations in South Carolina on Lines 1 and 2, typically with four to five pumps per station, and there are pumps at the tank farms.

Colonial has two tank farms: one in Belton, South Carolina, and one in Spartanburg, South Carolina. Each tank farm has a complex system of pumps, motors, valves, manifolds, injection equipment, control systems, and other industrial infrastructure necessary to move product. The two tank farms receive petroleum products from Lines 1 and 2 "into tankage and then that product is delivered out from that tankage to multiple delivery lines to customers." Belton Junction is a 130-acre above ground breakout and delivery facility located in Anderson County. The tank farm is comprised of twenty tanks, twelve for gasoline, seven for distillate, and one for transmix. The facility is staffed by an Operator 24/7. Spartanburg Delivery is a 74-acre above ground breakout and delivery facility. It is comprised of twenty-two tanks, including thirteen gasoline tanks, six distillate tanks, and three tanks that are out of service. The facility is staffed as Operation's schedule dictates with a minimum of one operator on shift during all product receipts and delivery operations. All the tank farms have sting systems that remove water off the tank. These facilities also have utility tanks, which are used to drain product so that Colonial can work on the facility.

Colonial also provides petroleum storage services at its Belton and Spartanburg facilities for third parties. Additionally, truck terminals, which are owned by third parties, are strategically located close to the tank farm facilities in Belton and Spartanburg to ensure timely transmission.

Colonial was issued environmental permits from DHEC and Spartanburg Water & Sewer Authority that are designated for "industrial activities" like petroleum bulk stations and terminals. Some of these permits have expired or are no longer in place. Colonial's permits include an NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, SCR 000000 (September 1, 2016). Section 1.1.1 of the permit, Facilities Covered, states: "To be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity." The permit specifically references "industrial plant" as follows: "Storm Water Discharges Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant."

CONCLUSIONS OF LAW

Standard of Review

This Court has jurisdiction over this case pursuant to section 12-60-460 of the South Carolina Code (2014) and section 1-23-600 of the South Carolina Code (Supp. 2019).

The Rules of Procedure for the Administrative Law Court (SCALC Rules) provide that the South Carolina Rules of Civil Procedure (SCRCP) "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC

Rule 68. Rule 56(c), SCRCP, provides that summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri,* 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

In this case, the parties have filed cross-motions for summary judgment, and they have stipulated that certain material facts in this case are undisputed. In these instances, summary judgment is usually appropriate. *See Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011) ("Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law."). Importantly, the issue before the Court on summary judgment—whether Colonial's operations qualify as an "industrial plant"—is narrow. If Colonial's operations qualify as an industrial plant, then an issue of material fact remains as to whether Colonial's pipe coatings, cathodic protection, automatic shut-off valves, and other potentially qualifying property are pollution control equipment under the exemption.

Further, "[t]he standard of proof in an administrative hearing of a contested case is by a preponderance of the evidence." *Sierra Club v. S.C. Dep't of Health & Envtl. Control*, 426 S.C. 236, 257, 826 S.E.2d 595, 67 (2019). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Finally, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law and should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 575, 757 S.E.2d 399, 404 (2014) (internal quotation marks and citation omitted).

Construction of Tax Exemptions

South Carolina's tax exemption statutes are strictly construed against taxpayers. *See, e.g.*, *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that South Carolina courts have a long-standing policy of "strictly construing tax exemption statutes against the taxpayer"). In other words, the "statutory language will 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). "The deduction and benefit is allowed as a matter of legislative

grace." *S. Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 488, 167 S.E.2d 311, 313 (1969). Furthermore, although ambiguities in tax statutes are generally construed in favor of the taxpayer, this rule "does not apply in the construction of a statute authorizing deductions; rather, the ambiguity will be resolved against the taxpayer." *S. Soya Corp. of Cameron*, 252 S.C. at 489, 167 S.E.2d at 313 (citing 47 C.J.S. Internal Revenue 230). The burden is thus 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. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing *York Cty. Fair Assoc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)); *see also Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (stating that a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund).

Failure to Exhaust Administrative Remedies

The Counties make an unusual argument in this case. They argue that because Colonial failed to elicit a "department determination" from **DHEC** (as opposed to **DOR**), Colonial failed to exhaust its administrative remedies and this case is thus not properly before this Court. The Counties' argument is based upon the provisions of section 12-37-220(A)(8), which sets forth a procedure whereby the Department can seek the expertise of DHEC. It states, in relevant part:

> (A) 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[4] 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 the state or federal government and used in the conduct of their business.

S.C. Code Ann. § 12-37-220(A)(8) (2014). Moreover, it further provides:

> At the request of the Department of Revenue, the Department of Health and Environmental Control **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 Department of Health and Environmental Control **shall furnish** the Department of

[4] S.C. Code Ann. Regs. 117-1700.5 defines a facility as follows:

> [G]enerally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

> Revenue with a detailed listing of the property that qualifies as pollution control property.

Id. (emphasis added). The Counties contend that when the Department chose to seek DHEC's advice pursuant to section 12-37-220(A)(8) as to whether the property at issue was pollution control equipment, it relinquished to DHEC its authority to issue a determination about this particular factual issue. Further, the Counties argue that when DHEC responded to the Department's request disclaiming any authority to permit or review the property at issue, Colonial should have (1) challenged DHEC's determination that it lacked authority to make a determination and (2) forced DHEC to comply with their statutory duty to investigate and provide a detailed list of qualifying property. In effect, the Counties argue Colonial had to force DHEC to issue a department determination before it could successfully challenge the Department's decision denying it the exemption.

"The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Storm M.H. ex rel. McSwain v. Charleston Cty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). However, in this instance, it is important to recognize "[t]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Ward v. State*, 343 S.C. 14, 17, 538 S.E.2d 245, 246 (2000) (quoting *Vaught v. Waites,* 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989)). Furthermore, the exhaustion principle applies to the remedies available within the agency whose decision is challenged. *See Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) ("If this were an appeal from the denial of the permit through the administrative process in which DHEC was the appropriate fact finder, [Petitioner] would clearly be required to exhaust its administrative remedies prior to bringing suit. . . DHEC is not the appropriate fact finder to answer this question.").

Pursuant to the statute at issue, the Department can request that DHEC review "property of any manufacturer or company that is **eligible for the exemption**." § 12-37-220(A)(8) (emphasis added). In this case, the Department previously took the position that Colonial's property was eligible for this exemption (because it granted the exemption for some of Colonial's property). Although the Department is now arguing that Colonial's property is not eligible for the exemption, before it formally adopted this new position it requested DHEC to review the types of assets at issue in this case to determine if these assets are pollution control equipment. Nevertheless, when

Department asked DHEC its opinion, the Department did not transfer its fact-finding authority to DHEC.

Specifically, nothing in the statute indicates that the Department gives up its fact-finding authority with regard to the exemption because it requests advice on the issue from DHEC. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.").[5] In fact, section 12-4-710 of the South Carolina Code (2014), provides the Department "shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State." Thus, since the Department, not DHEC, has authority to grant or deny tax exemptions, the Department has discretion to accept or reject DHEC's advice after asking for its input. Indeed, in this case the Department disregarded DHEC's opinion that the property at issue could be considered pollution control equipment to find it was not. And, since DHEC rendered an opinion that was clearly favorable to the taxpayer, Colonial, as the taxpayer, had no need to challenge DHEC's decision; rather, it was the Department's adverse decision on the ultimate issue of the exemption that triggered Colonial's need for administrative review.

Overall, the Court finds Colonial did not have a remedy through DHEC and, therefore, Colonial was not required to exhaust its administrative remedies with DHEC before proceeding with the Department's internal administrative process.[6] *See Thomas Sand Co.*, 349 S.C. at 413, 563 S.E.2d at 115 (holding that the doctrine of administrative remedies must be invoked as to the appropriate fact-finder who can provide the remedy sought).

Next, DHEC's letter to the Department dated August 27, 2018 shows it sufficiently fulfilled its obligations under § 12-37-220(A)(8).[7] DHEC was required to investigate the claimed property. The Counties argue that the statute describes an **affirmative** duty to investigate by

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[5] The counties do not cite any statute that specifically requires DOR or Colonial to exhaust any remedy with DHEC before seeking a contested case hearing at the Administrative Law Court.

[6] Additionally, presumably the legislature allowed the Department to see the advice of DHEC because, generally, DHEC has more expertise in the area of pollution control than the Department because the areas it regulates. However, DHEC acknowledged in this particular case that it does not generally regulate pipelines that transport petroleum, etc.; its disclaimer suggested that its knowledge in this area was limited. Nevertheless, it still gave an opinion by referencing an area it does regulate that utilizes the same or similar property – underground storage tanks. DHEC's lack of specialized knowledge in pipeline regulation undermines its ability to provide a more educated decision than the Department regarding what property may qualify as pollution control equipment. And, indeed, the Department exercised its fact-finding discretion in this case to disregard DHEC's opinion to conclude the types of property at issue did not qualify as pollution control equipment.

[7] The Court notes DHEC did not initially fulfill its obligation because it failed to offer an opinion about the property at issue in its first letter responding to the Department's request dated December 18, 2017.

physically investigating the claimed property at the site. However, under the facts of this case it would be senseless to require DHEC to physically visit Colonial's property and, for example, dig up the pipeline at the point where a shut-off valve exists to investigate the valve. The nature of the property at issue in this case makes it appropriate to evaluate the property based on its type because there is no evidence to indicate that individual valve shut-off valves would have different and unique purposes other than their purpose as a type of property. Therefore, I find the Department's request to DHEC to investigate the three types of claimed property in this case was appropriate, and DHEC could sufficiently investigate the claimed property without viewing it *in situ* at Colonial's property.

The Counties further argue DHEC's determination is inadequate because it did not furnish a "detailed list" of the qualifying property as required under the statute.[8] § 12-37-220(A)(8). Specifically, the Counties' argument suggests DHEC should have, for example, listed each shut-off valve owned by Colonial in South Carolina and made individual determinations about whether each piece of eligible property qualified rather than making broader decisions about whether a certain type of property qualified. Again, I find an individual evaluation of each piece of property was not necessary and investigating the claimed property based upon its type was appropriate under the facts of this case. Moreover, in DHEC's letter to the Department, DHEC describes with sufficient detail the reasons why it would consider each type of claimed property to be pollution control equipment. For example, DHEC notes that "[s]hear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment." This is enough detail to support DHEC's opinion that automatic shut-off valves can be considered pollution control equipment.

In conclusion, I find Colonial had no duty to exhaust administrative remedies with DHEC because DHEC was not the appropriate fact-finder in this case and DHEC is not the party who can remedy Colonial's complaint in this case. Although DHEC's opinion on whether the property at issue qualified as pollution control equipment was qualified by its disclaimer of authority in this particular regulatory area, it nevertheless rendered an opinion that was clearly favorable to the taxpayer. Thus, even if Colonial had a remedy through DHEC, DHEC's determination foreclosed any need to require further examination of the issue. Finally, it is the Department's discretion to determine if DHEC has complied with this request and to seek a remedy if DHEC fails to comply with its statutory obligation.

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[8] Interestingly, the Counties argue it was Colonial's affirmative duty to seek review of DHEC's determination although it is the Counties who now challenge the adequacy of DHEC's determination.

Pollution Control Equipment Exemption

Colonial disputes the Department's determination that some of Colonial's assets are not entitled to the pollution control property tax exemption pursuant to section 12-37-220(A)(8) for tax years 2017 and 2018.[9] Specifically, Colonial contends the automatic shut-off valves, pipeline cathodic protection, and pipeline coatings it identified in its property tax refund claim are exempt from property tax as pollution control facilities or equipment of an "industrial plant."

Prior Department Determination

In its original determination in this case, the Department granted Colonial the Pollution Control Equipment Exemption for some of its property, but not for automatic shut-off valves, pipeline cathodic protection, and pipeline coatings. Then, in its amended pre-hearing statement, the Department changed its position and now argues that none of Colonial's property qualifies for the exemption. Since this is a de novo hearing, the Department is entitled to change its position if it believes its initial decision was not in accordance with the law. "A trial *de novo* is one in which the whole case is tried as if no trial whatsoever had been had in the first instance." *Blizzard v. Miller*, 306 S.C. 373, 375, 412 S.E.2d 406, 407 (1991) (internal quotation marks and citation omitted); *see Be Mi, Inc. v. S.C. Dep't of Revenue*, 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014) ("In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the de novo contested case proceeding." (citation omitted)); *see also Heyward v. S.C. Tax Comm'n*, 240 S.C. 347, 351, 126 S.E.2d 15, 17 (1962) ("[T]he doctrine of estoppel will not be applied to deprive the government of the due exercise of its police power, or to effect public revenues or property rights, or to frustrate the purpose of its laws or thwart its public policy."). Additionally, the Department is not entitled to deference in this case because it cannot show a long-standing administrative policy describing how it interprets "industrial plant." *See Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530-31 (2010) ("An agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute's plain language.").

[9] The Department initially found that some of Colonial's property qualified for the exemption. The Department contends that although its Government Services Division initially granted the exemption for some of Colonial's property, its analysis was limited to whether the property was used for pollution control, and it did not consider whether the property satisfied the first element of the exemption – whether the claimed property was a facility or equipment of an industrial plant. The Department now asserts that none of Colonial's property is eligible for the exemption because it is not property that is a facility or equipment of an industrial plant. *See* § 12-37-220(A)(8).

What is a Plant?

Colonial argues their operations constitute an "industrial plant" under section 12-37-220(A)(8) because their "complex and dynamic" operations involving tank farms, pipelines, boosters, motors, injection equipment, and the processing of transmix collectively qualify as a "plant." Colonial thus contends that the definition of "plant" should include the infrastructure or buildings necessary to carry on industrial operations.

The Department concedes that Colonial's business can be described as "industrial," but argues that none of its property qualifies as a "plant." The Department contends that a "plant" must have some form of production or output. To this end, the Department maintains Colonial is merely a transportation company that is treated differently under the tax code than manufacturing companies and other companies that produce a product. The Department asserts Colonial's business is transporting fuels from one point to another without engaging in any kind of production and, to the extent Colonial "processes" the products it transports, its processing is not required to make a new product[10] but rather to allow Colonial to continuously transport different products while retaining the integrity of the product at the destination.

Similar to the Department, the Counties argue the term "industrial plant" must mean the physical location where goods or materials are actually and substantially produced as opposed to a location where minor modifications to a product occur. The Counties further argue that based on the statutory and regulatory scheme as a whole, it is clear the exemption was intended for manufacturers and other companies who produce a product, not a transportation company like Colonial.

Section 3 of Article X of the South Carolina Constitution provides, in relevant part:

> There 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) (West) (2009) (emphasis added). Section 12-37-220(A)(8) governs ad valorem property tax exemptions and discusses the exemption in more detail. It provides, in part:

> (A) 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**[11] **or equipment of industrial plants** which are

[10] Notably, I do not find a requirement in the statutes that a business must be engaged in creating a "new product" to be a plant.

[11] S.C. Code Ann. Regs. 117-1700.5 defines a facility as follows:

> [G]enerally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a

> designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by the state or federal government and used in the conduct of their business.

(emphasis added). It also provides the following instructions for pollution control equipment that also have another function (dual-purpose equipment):

> 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. There are no statutes, regulations, or Department policy documents or rulings defining "industrial plant" under this statute.

Dictionary Definition

"Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *See Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002). In Merriam-Webster's Online Dictionary, "plant" is defined as:

> a: the land, buildings, 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 February 19, 2020). The definitions are broad, and only one constrains the definition of "plant" to manufacturing and production. Taken together, the definitions indicate a plant can mean the overall collection of property necessary to carry on an industrial business, manufacturing, or a service. Moreover, the definitions of "industrial" and "industry" are not limited to manufacturing. "Industrial" is defined as "of or relating to industry." *Industrial*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industrial (last visited February 19, 2020). "Industry" is defined as:

> a: manufacturing activity as a whole (the nation's industry);
>
> b: a distinct group of productive or profit-making enterprises (the banking

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separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

industry);

c: a department or branch of a craft, art, business, or manufacture (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 February 19, 2020).[12]

Thus, the dictionary definition of plant is broad enough to include the "land, buildings, machinery, apparatus, and fixtures" Colonial employs in carrying out its transportation business. Notably, the Court of Appeals of North Carolina relied on Merriam-Webster's broad definition of "plant" to find that a small, unincorporated business that manufactured pallets qualified as a manufacturing "plant." *Richards v. Jolley*, 208 N.C. App. 436, 441, 703 S.E.2d 467, 470 (2010) (citing the definition of "plant" in Merriam–Webster's Collegiate Dictionary 948 (11th ed.2005)). Like in this case, the statute at issue in *Jolley* did not define "plant." *See id.* Further, the dictionary definition of "plant" does not exclude companies that are not manufacturers from owning and operating plants. Nor does the definition restrict the definition of plant to those companies that produce some kind of "output."

Even considering the Department's narrow construction that a plant must be engaged in some form of production or output, the undisputed facts show that Colonial processes the products it transports to create an output, even if that output just recreates the original product that entered its transportation system. Its processing may be incidental to its primary business, which is transporting refined petroleum products, but these processes ensure that a saleable product is delivered and distinguishes it from a pure transporter.[13] Specifically, it is undisputed that Colonial processes transmix into a sellable product, treats the petroleum products with DRA, and removes sting that occurs as a result of transportation. Colonial activities clearly meets the dictionary definition of a plant.

State Statutory and Regulatory Scheme

Regardless of the dictionary definition, the Department and Counties argue the overall statutory and regulatory scheme shows the legislature intended the exemption to be limited to

[12] The American Heritage Dictionary (1993) contains similar definitions of "plant," "industrial," and "industry."

[13] The Counties contend that Colonial cannot argue it processes or produces anything because any processing that occurs is its own fault for choosing a transportation method that creates transmix. The Court does not find this argument persuasive. There is no restriction in the exemption that would prohibit Colonial from receiving it just because it chooses to transport products in a certain way.

manufacturers and companies that produce something. For example, the Counties cite to article X, section 1 of the South Carolina Constitution and section 12-43-220 of the South Carolina Code, which generally treat manufacturers and utilities similarly for property tax assessment purposes while distinguishing them from transportation companies like Colonial. Specifically, article X, section 1(1) and section 12-43-220(a) provide an assessment ratio for manufacturers of 10.5%, while article 10, section 1(2) and section 12-43-220(g) provide an assessment ratio for transportation companies of 9.5%.[14] Based on these constitutional and statutory sections, The Counties argue transportation companies and manufacturing/utility companies treated differently for tax assessment purposes.[15]

While it is true that the legislature assesses manufacturers and transporters at different percentage rates for property tax purposes, this does not signify that Colonial is excluded from the pollution control equipment exemption merely because it is a transporter. As demonstrated by this case, simply because a company engages in transportation does not necessarily mean that it is also not engaged in an industrial function. Moreover, if a taxpayer's company is distinct from other transportation companies, would it not be entitled to be treated differently? Furthermore, looking at disparate assessment ratios does not capture the legislative purpose of the pollution exemption, which presumably is to financially reward those who install equipment that prevents or minimizes pollution. *See State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1967) ("The true guide to statutory construction is not the phraseology of an isolated section or

[14] S.C. Const. Art. X, § 1(1) (2009) ("All real and personal property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility or mining operation, in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property."); S.C. Const. Art. X, § 1(2) (2009) ("All real and personal property owned by or leased to companies primarily engaged in transportation for hire of persons or property and used by the company in the conduct of such business shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property."); S.C. Code Ann. § 12-43-220(a)(1) ("All real and personal property owned by or leased to manufacturers and utilities and used by the manufacturer or utility in the conduct of the business must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property."); S.C. Code Ann. § 12-43-220(g) ("All real and personal property owned by or leased to companies primarily engaged in the transportation for hire of persons or property and used by such companies in the conduct of such business and required by law to be assessed by the department shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.").

[15] The Department appraises the property of pipelines similarly to utilities, but this is for valuation purposes only. As authorized by section 12-4-540 of the South Carolina Code (2014), the Department uses unit valuation for certain companies including pipelines, railroads, and utilities to consider a taxpayer's operations as a whole.

provision, but the language of the statute as a whole considered in the light of its manifest purpose.").

And, indeed, when we look at the language of the exemption itself, it indicates the exemption is not limited to manufactures. In relevant part, the exemption statute instructs DHEC to investigate "the property of any manufacturer **or company**." § 12-37-220(A)(8) (emphasis added). In construing a statute, we presume that no word is superfluous or without meaning. *Sweat*, 379 S.C. at 377, 665 S.E.2d at 651 ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . ." (citation omitted)). Therefore, the words "or company" must refer to a company that is separate and distinct from a "manufacturer" or the terms would be redundant.[16] If the General Assembly had wished to limit the pollution control exemption to manufacturers, then it certainly knows how to do so—i.e., it could have used narrower, more specific terminology than "company" similar to the language it has used in other tax statutes. *See* S.C. Code Ann. § 12-43-220(a)(1) (classifying and assessing ad valorem property taxation of "[a]ll real and personal property owned by or leased to **manufacturers** and utilities and used by the **manufacturer** or utility in the conduct of the business" at ten and one-half percent of the fair market value of the property); S.C. Code Ann. § 12-36-2120(9) (2014 & Supp. 2019) (exempting, for example, the gross proceeds of sales, or sales price of "coal, or coke or other fuel sold to manufacturers, electric power companies, and transportation companies" for certain enumerated uses).

Moreover, the Court disagrees with Respondent's contention that "company" refers to utilities. If the legislature intended "company" to refer only to utilities, it would have said so. *See, e.g.,* S.C. Code Ann. § 12-43-220(a)(1) ("All real and personal property owned by or leased to manufacturers and utilities and used by the manufacturer or utility in the conduct of the business must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property."). It is thus reasonable to conclude the breadth of the word "company" is meant to capture those operations that may not fall within the definition of manufacturer to incentivize as many industrial polluters as possible to acquire pollution control equipment and thereby limit the possibility of environmental contamination.

In defense of its position that a plant can include operations like its own, Colonial further cites to Chapter 28 of Title 12, which imposes user fees on gasoline and diesel fuel, including fuel at a "bulk plant." Section 12-28-110(7) defines "bulk plant" as "a motor fuel **storage and**

[16] Colonial also argues that reading a manufacturing requirement into the definition of "plant" would render the term manufacturing plant redundant and meaningless.

distribution facility that is not a terminal and from which motor fuel may be removed at a rack." (emphasis added). In the context of these user fees, it appears the legislature labeled a storage and distribution facility without a manufacturing component a "plant."

Nevertheless, the Counties argue that to broaden the application of the exemption to all "companies" that might transport environmentally harmful products would extend the application of the exemption beyond what the legislature intended. They contend that, functionally, and for tax purposes, Colonial is no different than a railroad company, a trucking company, or a shipping company. Each of these transporters can transport petroleum products—just like Colonial. Each of these transporters use equipment that keeps petroleum products contained and prevents accidental leakage into the environment—just like Colonial. Therefore, the Counties argue that if the Court were to interpret the exemption as applying to Colonial, then there would be no reason that railroads, trucking companies, and shipping companies could not seek the exemption on their trucks, tankers, cars, and ships as well. However, simply because the construction of the statute may allow other parties to utilize the pollution control exemption is not a reason to deny its use. Additionally, there is no evidence that these other transportation companies process the products they transport like Colonial. Moreover, since the purpose of the pollution control exemption provision is to encourage the installation of equipment designed to prevent pollution, extension of the exemption to instances that fulfill that purpose would not be beyond what the legislature intended in establishing the exemption. Consequently, the statutory scheme does not demonstrate a legislative intent to restrict interpretation of "companies" as narrowly as the Counties suggest.

The Counties further point to the language in the exemption that discusses dual-purpose property to suggest that it is only property used for "production" for which the exemption is intended. Specifically, the exemption provides that "[f]or equipment that serves a dual purpose of **production** and pollution control," then value of the exemption is reduced based upon a formula. § 12-37-220. This narrow portion of the statute suggests that the property of an industrial plant is used to produce something. However, "[a] court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Enos v. Doe*, 380 S.C. 295, 305, 669 S.E.2d 619, 623 (Ct. App. 2008). Following this principle, the purpose of the statute, especially in light of the broad meaning of "company," reflects that this provision should not be read as narrowly as the Counties propose.

Respondents next contend the definitions in regulation 117-1700 of the South Carolina Code of Regulations (2012), which is associated with property taxes, suggest plants are creatures of manufactures and pipelines companies are not manufactures. For instance, regulation 117-

1700.4 defines "transportation companies" to include "(1) Railroad companies; (2) **Pipeline companies**; and (3) Express companies." S.C. Regs. Ann. 117-1700.4 (2012) (emphasis added). However, the Court must consider the purpose for this definition. The need to define "transportation companies" is certainly needed in determining the application of section 12-43-220(g) (2014) which provides that "[t]he department shall apply an equalization factor to real and personal property owned by or leased to **transportation companies** for hire as mandated by federal legislation." (emphasis added). Yet, in this instance Respondents seek to distinguish Colonial from the umbrella of "other companies" by inferring the existence of a statutory directive that transportation companies cannot be "other companies" because they are specifically defined in regulation 117-1700.4. This reasoning violates the principle of Occam's Razor. The simpler explanation of the purpose of the regulation 117-1700.4 definition is its application to section 12-43-220(g) rather than a convoluted application to section 12-37-220(A)(8).

Respondents next point to regulation 117-1700.7, which defines a "plant site" as:

> A plant site shall consist of all land contiguous to a plant which is related to the overall manufacturing operation. It shall include all land on which personal property is located including but not limited to the following: parking lots, manufacturing areas, buildings, landscaping, piping, railroad siding, docking, water sheds, ditching, pollution control facilities, pumping stations, wells, roads, water tanks, areas for ingress and egress, water storage facilities, and all other lands directly related to manufacturing. When possible, a plant site will be one contiguous parcel using legal and or natural boundaries.

S.C. Code Ann. Regs. 117-1700.7 (2012). This regulation suggests plant sites are limited to manufacturing sites and are further limited to a contiguous piece of property. But, similar to regulation 117-1700.4, this regulation does not suggest that transportation companies cannot be engaged in both transportation and other business activities, such as processing or manufacturing. Moreover, returning to dictionary definitions, manufacture (verb) is defined as "to make a product suitable for use." *Manufacture*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/manufacture (last visited February 26, 2020). In this instance, Colonial processes transmix to make it suitable for sale is in keeping with this definition.

Next, Colonial argues it would qualify for industrial revenue bonds to suggest it is an industrial plant. Under section 4-29-10(3) of the South Carolina Code (Supp. 2019), a "Project" eligible for industrial revenue bonds includes

> any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other

> machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:
>
> (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;
>
> (b) **any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry**, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

(emphasis added). Colonial would qualify for industrial bonds because it engages in the "commercial enterprise" of "storing, warehousing, distributing [and] transporting" refined petroleum, which is the product of industry. However, this statute does not define industrial plant and does not limit the distribution of industrial bonds to industrial plants. Therefore, while the statute may be suggestive with its breadth of application, it is not dispositive and was not considered as part of this Court's reasoning.

Department Rulings and Procedure

Colonial argues the Department's Revenue Ruling #91-8 and Revenue Procedure #05-1 show the Colonial should qualify for the exemption. Revenue Ruling #91-8 discusses the sales tax exemption in section 12-36-2120(17) of the South Carolina Code, which is for "machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale." Section 12-36-2120(17) further describes exempt machines to include those required for pollution control. However, this section does not discuss or condition the exemption on the existence of an industrial plant. Revenue Ruling #05-1 also discusses section 12-36-2120(17) and similarly does not discuss industrial plants. The Court does not find these Department documents to be relevant to whether Colonial's property constitutes an industrial plant.

Federal Statutory and Regulatory Scheme

Colonial cites to federal law in support of its claim that it is an industrial plant. First, Colonial notes that 42 U.S.C.A. § 6326(5) (West) provides that "industrial plant" means "any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output." This section falls within Title 42, governing health and safety, and in particular, a part of the code dealing with State Energy Conservation Plans. It thus does not relate to South Carolina's tax scheme.

Colonial also cites to the code of federal regulations (CFR) in support of its claim that it is an industrial plant. Specifically, Colonial points to 29 C.F.R. § 1910.106, which sets forth that industrial plants, for the purpose of this regulation, include areas where "[t]he use of flammable liquids is incidental to the principal business" and "where flammable liquids are handled or used only in unit physical operations such as mixing, drying, evaporating, filtering, distillation, and similar operations which do not involve chemical reaction." *See* 29 C.F.R. § 1910.106 (West). Although the definition would seem to imply certain facilities that handle flammable liquids like petroleum are industrial plants, in reality this regulation is singling out a certain type of industrial plant for the purpose of labor regulations (not tax regulations) and does not give us a general definition of industrial plant. Moreover, clearly the industrial plants described in this regulation engage in more than the processing of flammable liquids and would not necessarily be defined as an industrial plant solely based upon the "incidental" activities discussed in the regulation. *See id*.

Additionally, Colonial cites to its permits, in particular its NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, SCR 000000 (September 1, 2016). Section 1.1.1 of this permit, Facilities Covered, states: "[t]o be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity." The permit specifically references "industrial plant" as follows: "Storm Water Discharges Associated with Industrial Activity—the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." The primary focus of the permit in this case appears to be regulating environmental pollution; however, the issue here is rather the definition and application of the meaning of a "industrial plant" for the purpose of South Carolina's tax scheme.

Conclusion

Colonial's operations, tank farms, and various other equipment fit within the broad dictionary definition of plant, which includes "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." *Plant*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/plant (last visited February 19, 2020). And, although Colonial operates within the transportation industry, it also clearly operates an industrial business that engages in industrial processing. As part of its business model, Colonial processes the fuels it transports by adding certain additives to ensure continued movement of the products it transports through its pipes, eliminating water from the products, and turning

transmix back into a sellable product. Therefore, Colonial arguably also operates within the petroleum/fuel industry and engages in industrial processing similar to a manufacturer.

In sum, I find at least part of Colonial's operations meet the broad dictionary definition of "plant." For example, the tank farms, which are the site of some of Colonial's processing, appear to constitute a plant. However, long stretches of unattended pipeline that do nothing but carry product may not qualify under the common conception of a plant. The Court finds that further inquiry into the facts is necessary to determine how much of Colonial's property in South Carolina can be deemed a "plant" for the purpose of the exemption. Likewise, further inquiry would be helpful to determine whether the equipment for which Colonial seeks the exemption is pollution control equipment and the extent of its dual use. Therefore, the Court finds it is inappropriate to grant summary judgement and denies the parties' motions.

ORDER

IT IS THEREFORE ORDERED that Petitioner's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that the Department's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that the Counties' Motions for Summary Judgment are DENIED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

March 6, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Respondents.	Docket No. 18-ALJ-17-0443-CC **ORDER DENYING MOTION TO AMEND PREHEARING STATEMENT**

STATEMENT OF THE CASE

This matter is before the Court pursuant to a request for contested case filed by Colonial Pipeline Company (Petitioner or Colonial) on December 5, 2018. Colonial contests the decision of the South Carolina Department of Revenue (Department or DOR) finding certain Colonial assets were not eligible for a property tax exemption for pollution control equipment pursuant to section 12-37-220(A)(8) of the South Carolina Code and Article 10, Section 3(h) of the South Carolina Constitution. Colonial challenges the Department decision for tax years 2017 and 2018. Abbeville County, Aiken County, Anderson County, Greenville County, and York County intervened (collectively, the Counties, and collectively with the Department, Respondents).[1] On December 11, 2019, the parties filed cross-motions for summary judgment, which the Court denied.

The Department initially sought to amend its Prehearing Statement by copying the Court with an amended Prehearing Statement. Upon Petitioner's objection to that request, the Department filed this Motion to Amend Respondent's Prehearing Statement (Motion) almost seven months later on April 20, 2020. The Department seeks to amend its prehearing statement to reverse its previous position that some of Petitioner's equipment qualified for the pollution control

[1] Although all the counties are intervenors, the counties are separately represented and have distinct positions and filed distinct motions for summary judgment. Aiken County and Laurens County are both represented by Parker Poe Adams & Bernstein LLP. Abbeville County, Anderson County, Greenville County, and York County are represented by Kozlarek Law LLC.

FILED
May 20, 2020
SC ADMIN. LAW COURT

tax exemption.[2] Petitioner filed a Motion in Opposition to Respondent's Motion (Response). Petitioner also filed a Reply.

STIPULATIONS OF FACTS

The parties stipulated to the following facts at the hearing:

Assessment in Dispute[3]

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

1. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

2. Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina, and does various inspections in this state.

3. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline, so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

4. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use.

5. Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline.

6. If the Taxpayer transported a single Refined Petroleum Product, then the Taxpayer would not create Transmix.

7. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product.

8. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's transportation services and is not charged to the customer.

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[2] Specifically, the Department now asks the Court to "affirm the Department's Determination that the Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8) for any of its claimed property – including the property that was initially exempted by the Department's Government Services Division." Motion, Exhibit A.

[3] Colonial does not dispute the valuation of the property nor does it dispute the valuation method; rather, Colonial argues that the property in dispute is exempt from ad valorem taxation pursuant to § 12-37-220(A)(8).

9. The Taxpayer's activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline.

10. At least 90% of each Refined Petroleum Product transported by the Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

11. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

12. The Taxpayer does not own the Refined Petroleum Products it transports.

13. In addition to other counties, the property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Greenville, Laurens, and York (the "counties involved").

14. The Taxpayer has tank farms, delivery facilities, and booster stations in South Carolina. The Taxpayer has two tank farms in South Carolina—one in Belton and the other in Spartanburg. Those tank farms receive and store Refined Petroleum Products from the transmission pipeline and pump the product to individual truck terminals. The Taxpayer's delivery stations in South Carolina are located at the tank farms and deliver Refined Petroleum Products on a transmission line to a truck terminal. The Taxpayer has three booster stations in South Carolina—one in Anderson, one in Simpsonville, and another in Gaffney. The booster stations push Refined Petroleum Products through the pipeline.

15. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017. Exhibit A is a true and accurate copy of the protest that the Taxpayer submitted to the Department.

18. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

19. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

20. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

21. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

22. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

23. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

24. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

25. The Government Services Division received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

26. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

27. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control

equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations[4].

28. The Department issued its Determination in this matter on November 19, 2018.

29. The Taxpayer timely requested a contested case hearing on December 5, 2018.

30. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8) as to all claimed property. The Taxpayer claimed the same property as pollution control property for 2019 as it did for 2017 and 2018. On August 6, 2019, the Taxpayer timely protested the 2019 exemption denial.

31. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption.

32. Attached as Exhibit B is the Colonial Pipeline System Map. Attached as Exhibit C is a map of the Colonial Charlotte/South Carolina Operating Area. Attached as Exhibit D is Management's Discussion and Analysis of Financial Conditions and Results of Operations. Attached as Exhibit E is the DOR Proposed Assessment for the 2017 Tax year and 2018 Tax year as well as the Colonial Pipeline 2017 and 2018 Property Tax Returns.

33. Petitioner has environmental permits, including air, NPS, groundwater and solid waste disposal. A list of the environmental permits is attached as Exhibit F.

DISCUSSION

A request to amend a Prehearing Statement is governed by Rule 18 of the Rules of Procedure for the Administrative Law Court (SCALC Rules). Rule 18 provides as follows:

> Amendment of Documents. Any document filed with the Court may be amended at any time upon motion and for good cause shown, unless the amendment would prejudice any other party in the presentation of its case.

[4] Although not part of the stipulation of facts, the DHEC letter stated, in part:

> Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

Here, the Department filed its Amended Prehearing Statement (Amendment) on September 4, 2019;[5] however, this filing was not accompanied by a motion at that time. According to the Department, its purpose in filing the Amendment was to "clarify" its position that Petitioner does not qualify for the tax exemption for *any* of its claimed property—including property for which the Department previously granted an exemption in 2017 and 2018. Specifically, the Department now takes the position that Petitioner's business does not qualify as an "industrial plant" and therefore cannot qualify for the exemption.

However, the Department's new position conflicts with its prior decision to grant the exemption to Petitioner for some of its property in tax years 2017 and 2018. In particular, the Department previously granted Petitioner the exemption for its wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs. Petitioner, obviously, did not seek review the Department's decision to grant the exemption for these four property items in its request for a contested case hearing. Moreover, the Department determination that is before this Court does not address the four items the Department is now trying to include in the lawsuit through the Amendment.[6] Nevertheless, the Department argues the Amendment is not prejudicial because it is merely a clarification of its position that Petitioner cannot qualify for the exemption at all.

Respondent argues the Department's Amendment is prejudicial because it does not clarify the Department's position, but rather adds four new categories of equipment that it had previously reviewed and determined to be exempt from property tax. Petitioner argues the Amendment results in an improper expansion of the Department's Proposed Assessments and thus violates SCALC Rule 18 and the Revenue Procedures Act. *See* S.C. Code Ann. § 12-60-10 *et. seq.* (2014 & Supp. 2019).

Initially, even before reaching Respondent's allegation of prejudice, the Court finds it necessary to consider the substantive implications of the Amendment. The Amendment does not simply introduce a new argument relating to a factual issue before the Court —it introduces a new

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[5] Technically, this was the Department's Second Amended Prehearing Statement; it had previously amended its Prehearing Statement on June 19, 2019.

[6] The Department determination broadly states the "Matter in Dispute" as whether "Colonial Pipeline Company (Taxpayer) [is] entitled to an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014)." However, the Department determination only mentions Petitioner's property that was determined to be non-exempt, to include pipe coatings, cathodic protection, and automatic shut-off valves. There is no mention of the four pieces of property the Department now seeks to include in this case.

Later, in tax year 2019, the Department denied the exemption for all of Petitioner's claimed property items and Petitioner protested; however, that tax year is not at issue in this case.

cause of action relating to different facts that were not brought before this Court in the Petitioner's request for contested case review. As the Department correctly notes, this Court has allowed parties in the past to amend their prehearing statements to add arguments that may not have been previously raised. However, those arguments must fall within the scope of the case brought before the Court. Here, the Department essentially tries to re-open a prior, un-protested decision because it involves the same company and the same tax exemption, yet, crucially, applies to different property.

This situation is similar to the situation in *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 141, 796 S.E.2d 165, 174 (Ct. App. 2016). In that case, the Court of Appeals held the ALC erred when it extended its decision beyond the particular tax year at issue in the lawsuit. *Id.* Specifically, the Court of Appeals held:

> "In general, this court may only consider cases where a justiciable controversy exists. 'A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.' " *Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) (citation omitted) (quoting *Pee Dee Elec. Coop., Inc. v. Carolina Power Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983)). **The ALC should not have decided Mead's status for years after 2011 because the challenge was only to the 2011 year and no evidence was presented regarding the following years.**

Id. (emphasis added). Here, the Department wishes to extend this lawsuit to other items of property instead of other tax years, but the principle is the same. The property items the Department wishes to add to this controversy were already granted an exemption in 2017 and 2018 and were not protested. In fact, the Department determination from which the current litigation stems does not discuss these exempt items and thus there is no Department determination before this Court regarding those issues. Accordingly, unless the Department can demonstrate a legal method by which it can introduce its decision to exempt those items, the prior decision to exempt the items of Petitioner's property is not a case or controversy before this Court.

As this Court stated in its Order Denying Summary Judgment in this case, the Department has a right to change its mind as to its interpretation of the law, but that does not mean it can drag a taxpayer into court years later for a prior tax exemption that was not contested just because the Department has changed its mind as to the application of the law.[7] There are methods by which the Department can revoke tax exempt status. In particular, section 12-4-750 provides:

[7] Indeed, this brings to mind the prohibition against ex post facto laws even though this is not a criminal matter. A similar principle of justice is at work.

> (A) The department may revoke tax-exempt status if the property does not qualify or continue to qualify for tax-exempt status under the provisions of the Constitution and the general laws of the State.
>
> (B) If the department finds **within three years from the date that taxes would have been due** on property that has been granted an exemption that the exemption was for any reason improperly granted **due to incomplete, misleading, or fraudulent information furnished by the applicant or its agents**, the department shall notify the appropriate county official, and the county auditor shall enter on the duplicate the taxes that would have been due for those years that the property escaped taxation, with an added ten percent penalty.

S.C. Code Ann. § 12-4-750 (2014) (emphasis added). In this case, there is no Department decision before this Court that the Department previously determined Petitioner did not qualify for the exemption because the taxpayer gave incomplete or misleading information to the Department.

Indeed, because these previously exempted items of property were not involved in a protest, there has been no Department decision from which Petitioner could exhaust its administrative remedies for these items. "The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Storm M.H. ex rel. McSwain v. Charleston Cty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). In this case, the doctrine of exhaustion of administrative remedies is codified in section 12-60-2130 of the Revenue Procedures Act. S.C. Code Ann. § 12-60-2130 (2014). This section deals with exemption decisions and provides, in relevant part:

> A property taxpayer or the local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department's determination. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. **If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest, the administrative law judge shall dismiss the action without prejudice.** If the taxpayer failed to provide the department with the facts, law, and other authority supporting his position, he shall provide the department with the facts, law, and other authority he failed to present to the department earlier. The administrative law judge shall then remand the case to the department for reconsideration in light of the new facts or issues unless the department elects to forego the remand.

§ 12-60-2130 (emphasis added); *see also* S.C. Code Ann. § 12-60-510 (2014). The purpose of the Revenue Procedure Act is to "provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes." S.C. Code Ann. § 12-60-20 (2014). Further, the Revenue Procedures Act "must be interpreted and construed in accordance with, and in furtherance of, that intent." *Id*. Again, to allow the Department to drag a taxpayer into Court on the back of a separate lawsuit two-three years after a

non-protested decision granting certain items of property an exemption would eviscerate the purpose of the Revenue Procedures Act. *See id.*

Furthermore, I find that to allow the Department to amend its prehearing statement to, ostensibly, re-open a previously decided matter that was resolved without controversy would be highly prejudicial under SCALC Rule 18 for the reasons already explained. As this Court's decision in *International Paper Company, Inc. v. South Carolina State Energy Office* demonstrates, Rule 18 cannot be manipulated to achieve procedurally inappropriate substantive changes to a lawsuit. Docket No. 12-ALJ-30-0086-CC (filed December 19, 2012). In *International Paper*, the Court determined the petitioner had improperly filed for a contested case rather than an appeal. *Id.* The petitioner nonetheless argued that SCALCR Rule 18(C)[8] would allow the Court to convert its request for a contested case into a notice of appeal. The Court held that "to apply Rule 18(C), SCALCR would go beyond a mere amendment of a pleading, paper, or document, and would instead allow substitution of an entirely different document and implicate entirely different procedural rules." *Id.* Here, to allow the Department to re-open a previous decision that was not ripened, much less a controversy, would be to go well-beyond the purpose of a prehearing statement and would, indeed, invoke entirely different procedural rules. *See id.*

ORDER

IT IS THEREFORE ORDERED that the Department's Motion to Amend Respondent's Prehearing Statement is DENIED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

May 20, 2020
Columbia, South Carolina

[8] Rule 18(C), SCALCR, is substantially similar to SCALC Rule 18 and provides that "[a]ny pleading, paper or document can be amended at any time upon motion and for good cause shown, unless the amendment would substantially prejudice any other party in the presentation of its case."

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Respondents.	Docket No. 18-ALJ-17-0443-CC **ORDER DENYING MOTION TO ALTER OR AMEND ORDER DENYING MOTION TO AMEND PREHEARING STATEMENT**

This matter was previously before the Court pursuant to the South Carolina Department of Health and Environmental Control's (Department's) Motion to Amend Respondent's Prehearing Statement (Motion). The Department sought to amend its prehearing statement to reverse its previous position that some of Colonial Pipeline Company's (Petitioner's) equipment qualified for the pollution control tax exemption.[1] The Court denied the Department's Motion in an Order dated May 20, 2020 (Order).

Thereafter, on May 27, 2020, the Counties[2] filed a Joint Motion to Alter or Amend Order of May 20, 2020 (Joint Motion) pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). The Counties request this Court amend its Order to clarify they are not prohibited from "challenging 100% of any exemption claimed by Petitioner regardless of whether the department of Revenue previously granted some or all of Petitioner's initial exemption request."

On June 1, 2020, the Department filed a Motion to Alter or Amend Order of May 20, 2020 (Motion to Alter or Amend). The Department contends it is not improperly expanding the basis of this contested and has always argued that **all property** for which Petitioner received an exemption was intended to be included in this contested case from the beginning.

[1] The property tax exemption for pollution control equipment is codified in section 12-37-220(A)(8) of the South Carolina Code and Article 10, Section 3(h) of the South Carolina Constitution.

[2] Although all Respondent counties are intervenors, the counties are separately represented and have distinct positions. Aiken County and Laurens County are both represented by Parker Poe Adams & Bernstein LLP. Abbeville County, Anderson County, Greenville County, and York County are represented by Kozlarek Law LLC.

FILED
June 22, 2020
SC ADMIN. LAW COURT

Petitioner filed a Response in Opposition to the Joint Motion on June 4, 2020. The Counties filed a Joint Reply to Petitioner's Response on June 5, 2020.

After due consideration of all the parties' filings, I deny the Counties' Joint Motion to Alter and Amend and deny the Department's Motion to Alter and Amend for the following reasons.

DISCUSSION

In this Court's Order dated May 20, 2020, the Court determined the four property items the Department wishes to add to this controversy were already granted an exemption in 2017 and 2018 and were not protested. Therefore, these items of property had not gone through the internal administrative process with the Department and no administrative remedies had been exhausted as to these items of property. Accordingly, the Court determined it was procedurally improper and prejudicial pursuant to SCALC Rule 18 to add these items of property to this litigation.

Initially, I note that the Counties' Joint Motion and the Department's Motion to Alter and Amend are procedurally inappropriate. Motions to Alter or Amend pursuant to Rule 59(e), SCRCP, while permissible, are appropriate after a **final** decision in a case is issued by an administrative law judge. SCALC Rule 68; SCALC Rule 29(D). This Court's Order was an unappealable interlocutory order pursuant to section 1-23-380 of the South Carolina Code (Supp. 2019). *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (2013). For this procedural reason alone, it would be proper to deny the Counties' Joint Motion and the Department's Motion to Alter or Amend.

However, the Court is concerned the parties misunderstand the Court's Order. Therefore, although the Court finds no reason to alter or amend its Order, it will address Respondents' concerns in this order to clarify its position.

The Counties' Joint Motion to Alter and Amend

The Counties argue it has always been their understanding that the issue before the Court was whether Petitioner qualified for the property tax exemption for any/all property that might qualify for the exemption, not merely the three items of property that were specifically noted as contested when this case was brought before this Court. The Counties cite to the Department Determination that was attached to the Request for Contested Case to support their argument that the scope of this litigation broadly covers all property that was claimed to be exempt, whether the exemption was granted or not.

The Counties correctly note that the "Matter in Dispute" referenced in the Determination is broadly stated to be: "Is Colonial Pipeline Company (Taxpayer) entitled to an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014)?" The resulting "Determination" is likewise broadly stated as: "The Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8)." However, these brief summary statements alone do not accurately represent the case brought before this Court. The Department Determination, when read as a whole, clearly limits the decision to only three items of property.

Specifically, the Department Determination references the property at issue to be pipe coating, cathodic protection, and automatic shut-off valves. There is no mention of the other four pieces of property[3] the Department now seeks to add to this litigation and which the Counties also wish to contest in this litigation. Moreover, the amount of tax in dispute in the Department Determination is specifically limited to "the portion of the property tax assessment that is in dispute." Further, the factual history of the dispute in the Department Determination only recounts the Department's denial of the exemption for the three items listed and provides no procedural history of the four items for which it granted the exemption. If the four items for which the Department granted the exemption were truly included in this Department Determination, then the Court would expect the Department Determination to note that it initially granted the exemption for these items and to note the Department's decision to thereafter change its conclusion and amend its decision.[4] It is very clear, when the Department Determination is read as a whole, that only three items of property were in dispute and thus the declaration of the "Matter in Dispute" and "Determination," applied only to those three items.

The Counties also argue Petitioner did not object to the Counties' broadly stated nature and scope of the contested case in their motions to intervene. Specifically, the Counties refer to the following statement in their motions: "As the Taxing Entities understand the situation, Colonial requested an exemption from the Department regarding 100% of its 'pipeline' property." The

[3] The other four items of property for which the Department previously granted Petitioner the exemption include wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

[4] To be precisely clear, the Court understands a portion of the procedural and factual history for all seven items would overlap, but it is significant the procedural path of four of the seven items of property diverged when the Department decided to grant the exemption for those items, and the Department Determination fails to discuss these four items at all. Therefore, the Department cannot argue the procedural background and facts in its Department determination covered all seven items of property.

Counties also note that nothing in this Court's order granting the interventions limited the scope of the Counties' understanding of the case.[5] At the outset, the Counties' cannot expand the Court's jurisdiction by their assertions as to why they should be granted intervention. Furthermore, the implications of the Counties use of the phrase "100% of its 'pipeline' property'" is not as clear as they propound. For example, even when all seven items of property claimed for the exemption are considered, this does not represent 100% of Petitioner's pipeline property. Yet the basic interpretation of the phrase "100% of its pipeline' property" would suggest that every last piece of Petitioner's property was being claimed exempt. This is obviously not the case. Therefore, the Counties' purported meaning of the phrase does not dovetail with the issue before the Court. Rather, in keeping with both the law and the facts, the Counties' motions to intervene clearly reference and tie their interventions to the Department Determination issued on November 19, 2018. As previously discussed, this Department Determination was limited to the three items of property at issue in it.

The Counties nevertheless argue that section 12-60-2130 of the South Carolina Code (2014) gives them carte blanche to, in the Counties' words, challenge, "as the Counties deem appropriate, ***any*** property tax exemption Petitioner has received for the two (2017/2018) tax years in question." (emphasis original). The Counties further argue that "regardless of what the Department of Revenue's Department Determination suggests about the scope of the exemption, each County would have been entitled to challenge some or all of Petitioner's exemption either as the petitioner of the County's own contested case or as an intervenor in the existing contested case." Thus, the Counties appear to suggest they can challenge any property tax exemption granted to Petitioner regardless of whether that exemption was at issue in the Department Determination and regardless of whether it was the same type of property tax exemption.

The Counties' interpretation of section 12-60-2130 is incorrect. Section 12-60-2130 provides that a "local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department's determination." S.C. Code Ann. § 12-60-2130 (2014). Therefore, the breadth of the Counties' rights under section 12-60-2130 is dependent upon their request of a contested case hearing. Even in these instances, the Counties' request is reactive to

[5] The Court saw no need to limit the Counties because it was clear to the Court from the parties' filing that only three pieces of property were involved in the litigation.

the Department's Determination. In other words, section 12-60-2130 makes it clear that the Counties' authority to bring a contested case before this Court rests upon the issuance of a Department Determination and the Department Determination controls of the scope of the issue at bar. The Counties, like the Department, thus have no authority to expand the scope of this litigation beyond what was properly brought before this Court. And, since there is no Department Determination for the four pieces of property that were initially granted the exemption, that issue is not before this Court.

Moreover, the Counties' attempt to expand their rights under section 12-60-2130 beyond the Department Determination is nonsensical. The Counties seek this right through the auspices of a request to intervene and thus without even filing a request for a Contested Case hearing. As explained above, the scope of the Counties' intervention is limited to the subject matter of this case. Moreover, the fallacy of the County's argument can be seen by its implications. Were this Court to ignore the scope of the Department Determination, it would render the internal administrative process within the agency, which is codified in our statues, superfluous and impotent.[6] In fact, the Counties would not be constrained by any of the determinations of the Department and could bring a challenge to a tax imposed for any issue and for any lawful time frame. Clearly, the Counties do not have an independent right under section 12-60-2130 to bring a contested case to the extent they suggest.

The Department's Motion to Alter and Amend

The Department, like the Counties, argues its Department Determination clearly outlines the scope of the litigation based upon the description of the "Matter in Dispute" and "Determination." The Court agrees with the Department's underlying premise but rejects the inference that it proposes as discussed above. Interestingly, in its Motion to Alter or Amend, the Department admits its 30(B)(6) deposition of Petitioner on August 6, 2019, may have been confusing as to the scope of the litigation and so it contacted all parties afterwards and indicated its desire to amend its Department Determination to clarify that none of Petitioner's property qualified for the exemption (including those initially exempted). In its Motion to Alter and Amend,

[6] The Counties also argue it is appropriate to add the uncontested pieces of property to this action because this is a *de novo* hearing. While it is true that at *de novo* hearing is a trial anew and this Court is free to make its own decision when it sits in such capacity without reference to any decision below, the Court is still constrained to hear the matter brought before it.

the Department further recounts that it represented the amendment to be a clarification, not a new position. The Department further relates that Petitioner's counsel "only expressed a procedural concern" that if the Department issued an amended Determination, Petitioner would have to appeal the amended Determination by requesting a second contested case hearing.

Petitioner's counsel recognized, as this Court recognizes, that no Department Determination was issued for the four uncontested pieces of property. And, indeed, it appears that no amended Department Determination was ever issued because the Department chose, instead, to move to amend its prehearing statement. However, issuing an amended Department Determination and filing a motion to amend a prehearing statement are not interchangeable or equivalent actions. The Court understands the Department was trying to avoid starting the administrative process over again when the same exemption would be at issue for all seven pieces of property, but the fact remains that the Department Determination before this Court only includes three pieces of property.[7] As the Court discussed in its Order, to allow the Department to amend its prehearing statement to, ostensibly, re-open a previously decided matter that was resolved without controversy would be highly prejudicial under SCALC Rule 18 for the reasons stated in that Order.

Nevertheless, the Department cannot ignore the legal implications of its prior determinations. In the Department Determination, the Department concluded Petitioner's property did not qualify as "facilities or equipment of industrial plants" which is a threshold requirement to qualify for the exemption at issue. However, the Department had previously granted the exemption for the other four items of property, and in granting the exemption the Department implicitly determined Petitioner's property **was** facilities or equipment of industrial plants. Therefore, the Department Determination reflected a change in the Department's previous

[7] The Department also argues that its previous prehearing statements contained the same content as its amended prehearing statement and that all of its prehearing statements were broad enough to put Petitioner on notice that all property claimed as exempt was at issue. However, the Court has reviewed the Department's previous prehearing statements and finds the prehearing statements are not as broad as the Department suggests. The Department's initial prehearing statement, filed January 4, 2019, is broadly stated, but then explicitly refers to the discussion of the issues in its Department Determination (which is limited to the three items of property) and only lists the factual and procedural history for the three items of property discussed in the Department Determination. Likewise, this Court's review of the Department's first amended prehearing statement filed on June 19, 2019, contains the same reference to the Department Determination and references the same property and factual and procedural background. The Court finds the prehearing statements were not broad enough give notice that all seven pieces of property were included in the action. And, even if they were, as addressed in this decision, a prehearing statement cannot invoke jurisdiction that does not exist.

position. And, if as a result of that change in position, the Department wished to "walk-back" its prior decision granting the exemption as to those four items of property, it was incumbent upon the Department to formally make the decision. In fact, in this Court's previous Order, the Court noted the Department can revoke tax exempt status pursuant to section 12-4-750 of the South Carolina Code (2014). Whether the Department has the authority to retroactively revoke an exemption that was already granted and uncontested **based upon the Department's own change in position** is unclear, but certainly it can change its mind and revoke the tax-exempt status for subsequent years. § 12-4-750. But the undisputed facts show that, regarding the four pieces of property the Department seeks to add to this litigation, the Department determined they were exempt in an uncontested division decision. *See* S.C. Code Ann. § 12-60-450 (2104) ("A taxpayer can appeal a division decision or a proposed assessment by filing a written protest with the department within ninety days of the date of the division decision or the proposed assessment."); S.C. Code Ann. § 12-60-2110 (2014). Therefore, this is not an issue of whether the Department has the authority to change its mind after it issues a division decision (it does); this is an issue of a Department Determination having never been issued for the four pieces of property which the Department seeks to add to this action.[8]

The Department nonetheless argues that this Court's previous decisions in other cases make it clear that "an argument" not raised in the Department Determination and Prehearing Statement is not waived if the Prehearing Statement is amended prior to the conclusion of the case. Although the Court recognizes the underlying truth to its assertion, what the Department fails to understand is this is not merely a change in its **argument**; it is seeking to add additional, uncontested property to this litigation. The Department is seeking to use the implications from its Department Determination as to three pieces of Petitioner's property to bootstrap another four pieces of property to this action when those four pieces of property were never contested. That is improper and is distinguishable from this Court's decision regarding the amendment of Prehearing Statement to add addition arguments or legal theories.

[8] Under the Department's theory, it could retroactively issue a Department Determination for any prior uncontested division decision if it thereafter changed its mind about the division decision. Such authority would seem to be unlimited and allow the Department to change its mind ten years later and suddenly issue a Department Determination requesting payment for an improperly granted exemption for the last ten years. The Court is unaware of a statute giving the Department this kind of authority.

Finally, the Department argues this Court should have interpreted *Mead v. Beaufort County Assessor* to hold that additional actions for other tax years (or in this case, additional actions for other property) can properly come before the Court without prejudice as long as the parties have the ability to present evidence for those new actions. 419 S.C. 125, 141, 796 S.E.2d 165, 174 (Ct. App. 2016). Essentially, the Department argues that because this will be a *de novo* hearing, no party will be prejudiced because all parties will be able to present evidence regarding these four new items at the hearing. The Department further argues that, unlike the facts for each tax year in *Meade*, there is no opportunity for the facts to change because whether Petitioner qualifies as "facilities and equipment of industrial plants" is static.

However, in *Mead*, the Court of Appeals did not issue a legal determination that the Department can retrospectively amend its determination to challenge any prior tax year determination as long as the evidentiary facts relating to its prior determinations are similar. *See id.* Rather, the Court of Appeals held the ALC could not prospectively issue an order addressing future years because there was no "justiciable controversy" regarding that issue. Moreover, simply because the Court of Appeal's determination that there was no "justiciable controversy" was premised upon the lack of evidence does not mean the potential to produce evidence creates a "justiciable controversy" when the case is not properly before this Court. Furthermore, the Department's contention regarding the static nature of the controversy is also flawed. If the Court ultimately determines Petitioner qualifies as "facilities and equipment of industrial plants," then it will be extremely important to factually investigate each type property claimed to be exempt.

ORDER

IT IS THEREFORE ORDERED that the Counties' Joint Motion to Alter and Amend this Court's Order dated May 20, 2020, and the Department's Motion to Alter and Amend this Court's Order dated May 20, 2020, are DENIED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

June 22, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Respondents.	)	Docket No. 18-ALJ-17-0443-CC **FINAL ORDER**

APPEARANCES:

For Petitioner:	Burnet R. Maybank, III, Esq. and Jim Rourke, Esq.
For Respondent DOR:	Marcus D. Antley, III, Esq.
For Respondents Aiken County et al.:	Walter H. Cartin, Esq.
For Respondents Abbeville County et al.:	Kimila L. Wooten, Esq.

STATEMENT OF THE CASE

This matter is before the Court pursuant to a request for contested case filed by Colonial Pipeline Company (Petitioner or Colonial) on December 5, 2018. Colonial contests the decision of the South Carolina Department of Revenue (Department or DOR) finding certain Colonial assets were not eligible for a property tax exemption for pollution control equipment pursuant to section 12-37-220(A)(8) of the South Carolina Code (2014) and Article 10, Section 3(h) of the South Carolina Constitution (West 2020). Colonial challenges the Department decision for tax years 2017 and 2018.

From March through May 2019, several counties moved to intervene. Aiken County and Laurens County (Aiken) moved to intervene and are represented together. Abbeville County, Anderson County, Greenville County, and York County (Other Counties) separately moved to intervene and are represented together. The Court granted all the counties' motions to intervene.[1]

[1] Although all the counties are intervenors, the counties are separately represented and have distinct positions and filed distinct motions for summary judgment. Aiken County and Laurens County are both represented by Parker Poe Adams & Bernstein LLP. Abbeville County, Anderson County, Greenville County, and York County are represented by Kozlarek Law LLC.

FILED
December 1, 2020
SC ADMIN. LAW COURT

Collectively, the counties are referred to as "the Counties," and with the Department, "Respondents."

On December 11, 2019, the parties filed cross-motions for summary judgment, which the Court denied after a hearing. On August 9-10, 2020, the Court held at hearing on the merits at its offices in Columbia, South Carolina. After reviewing the parties' filings, testimony, and arguments, I conclude Colonial qualifies for the pollution control equipment exemption, but it is not entitled to the exemption for all the disputed assets.

STIPULATIONS OF FACTS

The parties have stipulated to the following facts:

Assessment in Dispute[2]

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

1. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

2. Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina and does various inspections in this state.

3. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline, so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

4. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use.

5. Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline.

6. If the Taxpayer transported a single Refined Petroleum Product, then the Taxpayer would not create Transmix.

[2] Colonial does not dispute the valuation of the property nor does it dispute the valuation method; rather, Colonial argues that the property in dispute is exempt from ad valorem taxation pursuant to § 12-37-220(A)(8).

7. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product.

8. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's transportation services and is not charged to the customer.

9. The Taxpayer's activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline.

10. At least 90% of each Refined Petroleum Product transported by the Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

11. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

12. The Taxpayer does not own the Refined Petroleum Products it transports.

13. In addition to other counties, the property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Greenville, Laurens, and York (the "counties involved").

14. The Taxpayer has tank farms, delivery facilities, and booster stations in South Carolina. The Taxpayer has two tank farms in South Carolina—one in Belton and the other in Spartanburg. Those tank farms receive and store Refined Petroleum Products from the transmission pipeline and pump the product to individual truck terminals. The Taxpayer's delivery stations in South Carolina are located at the tank farms and deliver Refined Petroleum Products on a transmission line to a truck terminal. The Taxpayer has three booster stations in South Carolina—one in Anderson, one in Simpsonville, and another in Gaffney. The booster stations push Refined Petroleum Products through the pipeline.

15. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017. Exhibit A is a true and accurate copy of the protest that the Taxpayer submitted to the Department.

18. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

19. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental

Control ("DHEC") for investigation into whether the Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

20. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

21. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

22. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

23. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

24. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

25. The Government Services Division received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

26. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

27. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off

valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.[3]

28. The Department issued its Determination in this matter on November 19, 2018.

29. The Taxpayer timely requested a contested case hearing on December 5, 2018.

30. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8) as to all claimed property. The Taxpayer claimed the same property as pollution control property for 2019 as it did for 2017 and 2018. On August 6, 2019, the Taxpayer timely protested the 2019 exemption denial.

31. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption.

32. Petitioner has environmental permits, including air, NPS, groundwater and solid waste disposal.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence.

The Nature of Colonial's Business

Colonial is a company that pumps refined petroleum products (e.g., refined petroleum, jet fuel, gasoline, diesel, heating oil, and kerosene) through its pipeline. Colonial represents itself to be a transportation company. Colonial has approximately 250 customers that ship products through its lines. Colonial receives these products from approximately thirty refineries in the Gulf

[3] Although not part of the stipulation of facts, the DHEC letter stated, in part:

> Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

Coast region of the United States and transports them to different parts of the country through its pipeline.

Colonial's operations in South Carolina are comprised of 515 miles of pipeline, two tank farms, three main line booster stations, and one delivery facility spanning eleven counties in the State. All of Colonial's pipelines are buried between four and five feet below the ground. Colonial has two main pipelines in South Carolina, Line 1 and Line 2. Line 1 and Line 2 run from Pasadena, Texas, to Greensboro, North Carolina. Line 1 transports gasoline and Line 2 transports distillate, which includes jet fuel and ultra-low sulfur diesel. Colonial also has another, smaller line in South Carolina, Line 29. Line 29 carries all of the refined petroleum products, with the exception of heating oil. Colonial transports between 180,000 to 185,000 barrels of refined petroleum products each day through the South Carolina portion of its pipeline.

The products Colonial transports are moved together "fungibly," meaning similar products are interchangeable and a customer may not receive the exact same petroleum it paid Colonial to transport. Further, Colonial transports multiple products back-to-back through the pipe, which results in some mixing of the products where they interface. When two incompatible products mix the result is called Transmix.

Transmix does not meet the Refined Petroleum Product specifications and cannot be sold for use. Transmix occurs from products interfacing in both pipelines in South Carolina and from general operation of the tank farm, for instance when Colonial is displacing manifolds and piping. At any given time, Line 1 will generate/contain approximately 15,000 barrels of Transmix. Line 2 will contain approximately 12,000 to 16,000 barrels of Transmix. Because Transmix is not a saleable product, Colonial must isolate it to keep it from contaminating the saleable products.

Using a complex, controlled process, Transmix is isolated using optical interface detectors. Colonial then has three methods it uses to deal with Transmix. First, if the Transmix is the result of, for example, premium gasoline interfacing with regular gasoline then Colonial can re-sell the Transmix to a customer who purchased regular gasoline but is willing to accept gasoline with a higher octane rating (a product more akin to premium). Second, Transmix can be injected back into the line as long as it is injected in sufficiently small quantities that it does not impermissibly adulterate the product in the line by causing it to deviate from customer specifications. Finally, if neither one of these processes can be accomplished, Transmix can be either sold to an independent processor to be separated into saleable products.

Colonial also has to manage the movement of product through its pipeline. To accomplish this task, Colonial adds Drag Resisting Agents (DRA) to the product as it is transported. DRA

reduces the amount of friction loss and thus allows higher flow rates through the pipeline. Colonial introduces DRA at its booster facilities and pump stations, as well as at tank farms and stub lines.

Colonial must also remove water that accumulates in and around the transported product through a process called "sting." Colonial filters and drains "sting water" at the Belton and Spartanburg facilities through the use of oil and water separators. Colonial also regrades fuel in South Carolina. "Regrade" is a process by which Colonial must analyze the product change the label of the product based upon its current grade. For example, Colonial might regrade premium gasoline to regular gasoline.

Every fifty to sixty miles along its mainlines, Colonial operates a booster station on the line that increases pressure in the pipeline system and allows for the movement of petroleum through the pipeline. There are three pump stations in South Carolina on Lines 1 and 2, typically with four to five pumps per station, and there are pumps at the tank farms. To ensure safety and quality control, Colonial constantly measures gravity, pressure, and temperature of the products it transports.

In the geographical area at issue in this case (which covers small parts of Georgia and North Carolina, as well as South Carolina), Colonial employees 30-35 operators and technicians on a full-time basis (including an equal number of independent contractors) to oversee operations, run its facilities, make repairs, and respond to issues as needed. These employees assist, in part, with managing Colonial's two tank farms in South Carolina: one in Belton and one in Spartanburg. Each tank farm has a complex system of pumps, motors, valves, manifolds, injection equipment, control systems, and other industrial infrastructure necessary to move and store product. The two tank farms receive petroleum products from Lines 1 and 2 "into tankage and then that product is delivered out from that tankage to multiple delivery lines to customers."

Belton Junction is a 130-acre above ground breakout and delivery facility located in Anderson County. The tank farm is comprised of twenty tanks, twelve for gasoline, seven for distillate, and one for Transmix. The facility is staffed by an Operator 24/7. Spartanburg Delivery is a 74-acre above ground breakout and delivery facility. It is comprised of twenty-two tanks, including thirteen gasoline tanks, six distillate tanks, and three tanks that are out of service. The facility is staffed as operation's schedule dictates with a minimum of one operator on shift during all product receipts and delivery operations. All the tank farms have sting systems that remove water off the tanks. These facilities also have utility tanks, which are used to drain product so that Colonial can work on the facility. Colonial also provides petroleum storage services at its Belton and Spartanburg facilities for third parties. Additionally, truck terminals, which are owned by

third parties, are strategically located close to the tank farm facilities in Belton and Spartanburg to ensure timely transmission.

Components of the Pipeline and Property at Issue

The pipes Colonial uses are steel, which tend to corrode in an electro-chemical reaction when exposed to air, water, or the ground. Corrosion can result in small holes in the pipe, or a loss of pressure carrying capacity. Thus, corrosion can damage Colonial's pipes and result in the loss of product that would also be a discharge of pollution into the environment. Colonial uses two primary methods for controlling corrosion on its underground pipelines—pipe coatings and cathodic protection systems. Pipe coatings, which function to prevent exposure of the pipes to the elements that cause the electro-chemical reactions resulting in corrosion, were the original way pipelines companies tried to mitigate corrosion. Today, pipe coatings are applied by the pipe manufacturer. Modern pipelines are coated with a number of different substances, including asphalt-based enamel, coal tar coating, extruded polyethylene or fusion bonded epoxy. The coating is installed when Colonial buys the pipe.

Current pipe coatings have an average twenty-five-year life span, so it must be replaced and repaired periodically. However, combining pipe coating with cathodic protection proved more protective from corrosion. Cathodic protection systems help prevent corrosion from occurring on the exterior of pipes by substituting a new source of electrons to interrupt the electro-chemical reaction of the metal pipe with its environment. These systems operate by imparting a direct current onto the buried pipeline using devices call rectifiers. As long as the current is sufficient, corrosion is prevented, or at least mitigated. To facilitate that process, pipeline coatings have a "high dielectric strength," which prevents the flow of electrons to the pipe's surroundings, thus working in tandem with the cathodic protection system to prevent electro-chemical reactions between the pipe and its surrounding environment. In addition, by preventing corrosion, cathodic protection systems prevent the discharge of pollution into the environment. Additionally, cathodic protection systems can detect when a pipe becomes dis-bonded (the coating comes off) so that repairs can be made. Colonial has installed a cathodic protection system alongside its pipelines throughout the entire pipeline corridor. Performance of the cathodic protection system is monitored regularly.

Colonial also has one automatic shutoff valve, which it installed in Gaffney in 2011. When a breach occurs, the valve shuts off the flow of product to impacted portions of the pipeline. The purpose of the valve is to minimize the release of product if the pipeline is compromised or breached. Colonial's valve is controlled remotely from Colonial's offices in Alpharetta, Georgia.

Colonial uses the shutoff valve for maintenance work if they needed to isolate a station or they would use it if they had a release upstream from Gaffney to prevent the product from draining toward the release point. Whether Colonial would have installed the automatic shut-off valve if it was not required by federal law was unclear from the testimony.

The coatings, cathodic protection, and automatic shutoff valve are currently all required under federal law to prevent water and/or air pollution. The undisputed testimony also showed this equipment is used in the conduct of Colonial's business, although it was unclear the extent to which Colonial would employ this equipment if it was not federally required. Specifically, Colonial used asphalt enamel pipe coating before it was required federally because they had an interest in protecting their assets and it made good financial sense. However, it was in a limited capacity. Indeed, most of Colonial's maintenance right now is on the asphalt enamel pipeline installed in 1962 before federal requirements were put in place.

Colonial calculated the book value for its pipeline coating to be $10.9 million. Colonial estimated the book value of the cathodic protection is about $5 million. The book value of the automatic shutoff valve was estimated to be approximately $500,000. These values represent the net book value of the asset taking into account the age of the asset. Colonial claimed the exemption in this case not for new pipes with coating but for the repairs to the pipe where coating needed to be replaced.

Oversight of the Pipeline

Colonial engages in many oversight activities to monitor its pipeline. The pipeline is monitored, at various intervals, both visually and mechanically. Mechanically, Colonial's control room monitors the pipeline from its Alpharetta office twenty-four hours a day. Every two weeks, Colonial conducts an aerial inspection of the pipeline corridor by flying over the corridor in a plane. Once a year, Colonial mows the pipeline right of way and clears debris from the right of way. Right of way inspectors inspect the corridor periodically to ensure there are no encroachments on the pipeline, as well as conducting flooding and erosion monitoring to ensure the pipeline has not become exposed. Every five years, Colonial conducts a "close interval survey." During this survey, Colonial inserts an electrode into the ground every 2.5 feet to take a polarization reading. The electrode checks voltage levels to ensure the cathodic protection is still working.

Colonial also uses devices called "smart PIGS" to identify cracks and compromises in the pipeline. These are essentially small machines that are inserted into the pipeline. The PIGS flow along with the product in the pipe and gather data through a variety of means, which is then

transmitted back to Colonial. The PIGS are inserted at pump stations, using a long pipe called a launcher. Every 200 miles or so, the PIGS are extracted using a "PIG trap."

Rectifiers also form a part of the cathodic protection system. They are checked at least six times a year and physically inspected twice a year. Rectifiers are also remotely monitored to make sure they are functioning. When Colonial detects that a rectifier is not functioning, Colonial sends out a crew to fix the rectifier.

Regarding the pipeline coating, Colonial has to replace periodically the coating on older sections of the pipeline. Colonial estimates they dig up and replace "thousands of feet a year of pipeline" per year.

Environmental Permits

Colonial was issued environmental permits from DHEC and Spartanburg Water & Sewer Authority that are designated for "industrial activities" like petroleum bulk stations and terminals. Some of these permits have expired or are no longer in place. Colonial's permits include an NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, SCR 000000 (September 1, 2016). Section 1.1.1 of the permit, Facilities Covered, states: "To be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity." The permit specifically references "industrial plant" as follows: "Storm Water Discharges Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant."

CONCLUSIONS OF LAW

Standard of Review

This Court has jurisdiction over this case pursuant to section 12-60-460 of the South Carolina Code (2014) and section 1-23-600(A) of the South Carolina Code (Supp. 2019). This is a contested case, and it is heard *de novo. Be Mi, Inc. v. S.C. Dep't of Revenue,* 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014) ("In reaching a decision in a contested violation matter, the ALC serves as the sole finder of face in the de novo contested case proceeding."); *Brown v. S.C. Dep't of Health & Envtl. Control,* 348 S.C. 507, 512, 560 S.E. 2d 410, 413 (2002) (explaining that a contested case before ALC is "in the nature of a de novo hearing with the presentation of evidence and testimony"). The standard of proof is by a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2019); *see also Sierra Club v. S.C. Dep't of Health & Envtl. Control*, 426 S.C. 236, 257, 826 S.E.2d 595, 67 (2019). Generally, the complaining party bears the burden of proof. *Leventis v. Dep't of Health and Envtl. Control,* 340 S.C. 118, 132-33, 530 S.E. 2d 643, 651

(Ct. App. 2000). Therefore, Colonial has the burden to show by a preponderance of the evidence that the Department's decision was incorrect.

Construction of Tax Exemptions

South Carolina's tax exemption statutes are strictly construed against taxpayers. *See, e.g.*, *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that South Carolina courts have a long-standing policy of "strictly construing tax exemption statutes against the taxpayer"). The burden is thus 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. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing *York Cty. Fair Assoc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)); *see also Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (stating that a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund). However, it is notable that rule of strict construction "simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor" and "[i]t does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction." *CFRE*, 395 S.C. at 74–75, 716 S.E.2d at 881.

Failure to Exhaust Administrative Remedies

The Counties make an unusual argument in this case. They argue that because Colonial failed to elicit a "department determination" from **DHEC** (as opposed to **DOR**), Colonial failed to exhaust its administrative remedies and this case is thus not properly before this Court. The Counties' argument is based upon the provisions of section 12-37-220(A)(8), which sets forth a procedure whereby the Department can seek the expertise of DHEC. It states, in relevant part:

> (A) 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[4] or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of

[4] S.C. Code Ann. Regs. 117-1700.5 defines a facility as follows:

> [G]enerally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

> water, air, or noise pollution, both internal and external, required by the state or federal government and used in the conduct of their business.

S.C. Code Ann. § 12-37-220(A)(8) (2014). Moreover, it further provides:

> At the request of the Department of Revenue, the Department of Health and Environmental Control **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 Department of Health and Environmental Control **shall furnish** the Department of Revenue with a detailed listing of the property that qualifies as pollution control property.

Id. (emphasis added). The Counties contend that when the Department chose to seek DHEC's advice pursuant to § 12-37-220(A)(8) as to whether the property at issue was pollution control equipment, it relinquished to DHEC its authority to issue a determination about this particular factual issue. Further, the Counties argue that when DHEC responded to the Department's request disclaiming any authority to permit or review the property at issue, Colonial should have (1) challenged DHEC's determination that it lacked authority to make a determination and (2) forced DHEC to comply with their statutory duty to investigate and provide a detailed list of qualifying property. In effect, the Counties argue Colonial had to force DHEC to issue a department determination before it could successfully challenge the Department's decision denying it the exemption.

"The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Storm M.H. ex rel. McSwain v. Charleston Cty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). However, in this instance, it is important to recognize "[t]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Ward v. State*, 343 S.C. 14, 17, 538 S.E.2d 245, 246 (2000) (quoting *Vaught v. Waites,* 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989)). Furthermore, the exhaustion principle applies to the remedies available within the agency whose decision is challenged. *See Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) ("If this were an appeal from the denial of the permit through the administrative process in which DHEC was the appropriate fact finder, [Petitioner] would clearly be required to exhaust its administrative remedies prior to bringing suit. . . DHEC is not the appropriate fact finder to answer this question.").

Pursuant to the statute at issue, the Department can request that DHEC review "property of any manufacturer or company that is **eligible for the exemption**." § 12-37-220(A)(8) (emphasis

added). In this case, the Department previously took the position that Colonial's property was eligible for this exemption (because it granted the exemption for some of Colonial's property). Although the Department is now arguing Colonial's property is not eligible for the exemption, before it formally adopted this new position it requested DHEC to review the types of assets at issue in this case to determine if these assets are pollution control equipment. Nevertheless, simply asking DHEC's opinion of the nature of this equipment did not convey the Department's fact-finding authority to DHEC.

Specifically, nothing in § 12-37-220(A)(8) indicates that the Department gives up its fact-finding authority with regard to the exemption because it requests advice on the issue from DHEC. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.").[5] In fact, section 12-4-710 of the South Carolina Code (2014) provides the Department "shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State." Thus, since the Department, not DHEC, has authority to grant or deny tax exemptions, the Department has discretion to accept or reject DHEC's advice after asking for its input. *See id.* And, since DHEC rendered an opinion that was clearly favorable to the taxpayer, Colonial, as the taxpayer, had no need to challenge DHEC's decision; rather, it was the Department's adverse decision on the ultimate issue of the exemption that triggered Colonial's need for administrative review.

Overall, the Court finds Colonial did not have a remedy through DHEC and, therefore, Colonial was not required to exhaust its administrative remedies with DHEC before proceeding with the Department's internal administrative process.[6] *See Thomas Sand Co.*, 349 S.C. at 413, 563 S.E.2d at 115 (holding that the doctrine of administrative remedies must be invoked as to the appropriate fact-finder who can provide the remedy sought).

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[5] The Counties do not cite any statute that specifically requires DOR or Colonial to exhaust any remedy with DHEC before seeking a contested case hearing at the Administrative Law Court.

[6] Additionally, presumably the legislature allowed the Department to see the advice of DHEC because, generally, DHEC has more expertise in the area of pollution control than the Department because the areas it regulates. However, DHEC acknowledged in this particular case that it does not generally regulate pipelines that transport petroleum, etc.; its disclaimer suggested that its knowledge in this area was limited. Nevertheless, it still gave an opinion by referencing an area it does regulate that utilizes the same or similar property – underground storage tanks. DHEC's lack of specialized knowledge in pipeline regulation undermines its ability to provide a more educated decision than the Department regarding what property may qualify as pollution control equipment. And, indeed, the Department exercised its fact-finding discretion in this case to disregard DHEC's opinion to conclude the types of property at issue did not qualify as pollution control equipment.

Next, DHEC's letter to the Department dated August 27, 2018, shows it sufficiently fulfilled its obligations under § 12-37-220(A)(8).[7] DHEC was required to investigate the claimed property. The Counties argue that the statute describes an **affirmative** duty to investigate by physically investigating the claimed property at the site. However, under the facts of this case it would be senseless to require DHEC to physically visit Colonial's property and, for example, dig up the pipeline at the point where a shut-off valve exists to investigate the valve. The nature of the property at issue in this case makes it appropriate to evaluate the property based on its type because there is no evidence to indicate that individual valve shut-off valves would have different and unique purposes other than their purpose as a type of property. Therefore, I find the Department's request to DHEC to investigate the three types of claimed property in this case was appropriate, and DHEC could sufficiently investigate the claimed property without viewing it *in situ* at Colonial's property.

In conclusion, I find Colonial had no duty to exhaust administrative remedies with DHEC because DHEC was not the appropriate fact-finder in this case and DHEC is not the party who can remedy Colonial's complaint in this case. Although DHEC's opinion on whether the property at issue qualified as pollution control equipment was qualified by its disclaimer of authority in this particular regulatory area, it nevertheless rendered an opinion that was clearly favorable to the taxpayer. Thus, even if Colonial had a remedy through DHEC, DHEC's determination foreclosed any need to require further examination of the issue. Finally, it is the Department's discretion to determine if DHEC has complied with this request and to seek a remedy if DHEC fails to comply with its statutory obligation.

Pollution Control Equipment Exemption

Colonial disputes the Department's determination that some of Colonial's assets are not entitled to the pollution control property tax exemption pursuant to § 12-37-220(A)(8) for tax years 2017 and 2018.[8] Specifically, Colonial contends its automatic shut-off valve, cathodic protection, and pipeline coatings are exempt from property tax as facilities or equipment of an "industrial plant" that are designed for pollution control.

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[7] The Court notes DHEC did not initially fulfill its obligation because it failed to offer an opinion about the property at issue in its first letter responding to the Department's request dated December 18, 2017.

[8] The Department initially found that some of Colonial's property qualified for the exemption. The Department contends that although its Government Services Division initially granted the exemption for some of Colonial's property, its analysis was limited to whether the property was used for pollution control, and it did not consider whether the property satisfied the first element of the exemption – whether the claimed property was a facility or equipment of an industrial plant. The Department now asserts that none of Colonial's property is eligible for the exemption because it is not property that is a facility or equipment of an industrial plant. *See* § 12-37-220(A)(8).

The pollution control exemption exempts the following: "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 the state or federal government and used in the conduct of their business." § 12-37-220(A)(8).[9] The exemption can be split into four requirements. The first requirement is that the property for which the exemption is sought constitutes "facilities or equipment of industrial plants." *Id.* The second requirement is that the facilities or equipment are designed for the "elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external." *Id.* The third requirement is that the facilities or equipment be required by state or federal law and, finally, the fourth requirement is that he facilities or equipment be used in the conduct of the business. *Id.* The Court will address each requirement in turn.

Facilities or Equipment of Industrial Plants

The exemption is for "facilities[10] or equipment of industrial plants." § 12-37-220(A)(8). Colonial argues their operations constitute an "industrial plant" under section 12-37-220(A)(8) because their "complex and dynamic" operations involving tank farms, pipelines, boosters, motors, injection equipment, and the processing of Transmix are industrial activities that collectively qualify as a "plant." Colonial thus contends that the definition of "plant" includes its, infrastructure, buildings, and the 515 miles of pipe that are necessary to carry on its industrial operations.

The Department concedes that Colonial's business can be described as "industrial" but argues none of Colonials' property qualifies as a "plant." The Department contends that a "plant" must have some form of production or output. The Department asserts Colonial's business is

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[9] Section 3 of Article X of the South Carolina Constitution likewise provides, in relevant part: "There 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) (West 2020).

[10] Although the parties do not contest whether the property at issue is "facilities or equipment," it is still worth noting that Regulation 117-1700.5 defines a "facility" as follows:

> [G]enerally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

S.C. Code Regs. Ann. § 117-1700.5 (2012).

transporting fuels from one point to another without engaging in any kind of production and, to the extent Colonial "processes" the products it transports, the Department argues its processing is *de minimus* and incidental to allowing Colonial to continuously transport different products while retaining the integrity of the product at the destination. The Department maintains Colonial is a transportation company, which is treated differently under the tax code than manufacturing companies and other companies that produce a product.[11]

Aiken and the Other Counties argue the term "industrial plant" must mean the physical location where goods or materials are actually and substantially produced (as opposed to a location where minor modifications to a product occur). They further argue that the exemption was intended for companies engaged in industrial production, not a transportation company like Colonial. Aiken and the Other Counties also argue, in the alternative, that the meaning of industry is ambiguous, and that ambiguity must be construed against Colonial. The Counties urge the Court to adopt a moderate construction of the term industrial plant, which circumscribes the threat that the exemption could apply to, essentially, any commercial enterprise.

Industrial

There are no statutes, regulations, or Department policy documents defining "industrial plant" pursuant to § 12-37-220(A)(8). "Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *See Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002). In Merriam-Webster's Online Dictionary, "Industrial" is defined as "of or relating to industry." *Industrial*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industrial (last visited November 10, 2020). "Industry" is defined as:

> a: manufacturing activity as a whole (the nation's industry);
>
> b: a distinct group of productive or profit-making enterprises (the banking industry);

[11] At the summary judgement hearing, this Court determined the Department's interpretation is not entitled to deference because its position has changed during the course of this case. In its original determination in this case, the Department granted Colonial the Pollution Control Equipment Exemption for some of its property, but not for automatic shut-off valves, pipeline cathodic protection, and pipeline coatings. In other words, the Department initially determined Colonial's property was "facilities or equipment of industrial plants" or it could not have granted the exemption for any of Colonial's property. Then, in its amended pre-hearing statement, the Department changed its position and now argues that none of Colonial's property qualifies for the exemption because it is not facilities or equipment of industrial plant. Therefore, the Department's interpretation of "industrial plant" is not entitled to deference in this case because it cannot show its interpretation is a long-standing administrative policy. *See Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530-31 (2010) ("An agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute's plain language.").

c: a department or branch of a craft, art, business, or manufacture (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 November 10, 2020).[12]

Colonial's operations clearly fit within the definitions (b) and (d). With regard to definition (b), Colonial is part of the oil and gas industry, which is "a distinct group of productive or profit-making enterprises." Colonial's handling of Transmix allows it to, in some cases, return an unsaleable product to a saleable product; thus, it could be classified as a "productive enterprise." Furthermore, even if Colonial business was regarded as not being "productive," the use of "or" in the definition also includes other groups, like Colonial, who engage in a profit-making enterprise.[13] In the context of the term "industrial," Colonial would also clearly qualify as of, or relating to, the petroleum industry.

Moving to definition (d), Colonial also meets this definition because it engages in systematic labor for a useful purpose—the useful purpose of transporting petroleum products where they are needed. This is especially true given this nation's dependency upon the petroleum products Colonial's infrastructure delivers. Like definition (b), definition (d) utilizes the word "or," which shows Colonial does not have to engage in the "creation of something of value" to meet this definition. Overall, I find the word "industry," and therefore "industrial," is not ambiguous because the dictionary definitions clearly include the type of operations engaged in by Colonial. *See Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012) ("Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute.").

The Department acknowledges Colonial's business may be described as "industrial" in the sense it is related to the petroleum industry, just like a bank building may be described as "industrial" because it is related to the banking industry. However, the Department also notes that almost all the definitions of "industry" contain a manufacturing or production component. Aiken similarly acknowledges the definitions of "industry" and "industrial" are not limited to manufacturers but nevertheless argues the majority of definitions include an element of production

[12] The American Heritage Dictionary (1993) contains similar definitions of "plant," "industrial," and "industry."

[13] Definition (c) of industry includes a department or branch of manufacturing but also a department or branch of a business. In this instance, since Colonial is a business, its departments would also meet this definition. *Industry*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited November 10, 2020).

or manufacturing such that some sort of production should be required.

While it is true that the definitions of industry incorporate some reference to production or manufacturing, the definitions do not exclusively require some kind of production. To use the principle of strict construction, as proposed by the Counties, to ignore or override the parts of the definitions that Colonial meets would be an improper application. At the outset, Courts do not engage in strict construction of a statute unless its meaning is ambiguous. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 76, 716 S.E.2d 877, 882 (2011) ("Even under the principles of strict construction, we cannot ignore the plain language of [a statute] that contains no restrictions on its applicability."). Here, the definition of an industry as it relates to this case is not ambiguous. Indeed, in addition to the perspicuity of the above definitions, it is notable that the North American Industry Classification System (NAICS) includes pipelines as an industry.[14] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2017). Moreover, the Counties disregard of portions of the definition to achieve their desired interpretation is troubling. Under the Counties' interpretation, a court could simply read out any portion of a definition to reach a result in the Department's favor which is contrary to the principle of statutory construction.[15] *See Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 140, 796 S.E.2d 165, 173 (Ct. App. 2016) (holding applying strict construction "does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction").

Based upon all of the above, I find that Colonial in engaged in industry and its operations are "industrial." Therefore, the only remaining question is whether Colonial's operations and pipeline infrastructure meet the definition of a "plant" to qualify for the pollution control exemption.

Plant

In Merriam-Webster's Online Dictionary, "plant" is defined as:

> a: the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business;

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[14] The Other Counties referenced the North American Industry Classification System (NAICS) as the standard used by Federal statistical agencies in classifying business establishments. Other states have also used that classification system in analyzing businesses. *See Thoma v. Slinger*, 373 Wis. 2d 766, 895 N.W.2d 854, *aff'd sub nom. Thoma v. Vill. of Slinger*, 381 Wis. 2d 311, 912 N.W.2d 56 (2018); *von Erdmannsdorff v. Indiana Dep't of State Revenue*, 82 N.E.3d 952 (Ind. T.C. 2017); *Opinion of the Justices*, 69 So.3d 847 (Ala. 2011); *Horn v. Tandem Health Care of Fla., Inc.*, 862 So.2d 938, 940 (Fla. Dist. Ct. App. 2004). In fact, in determining the nature of a taxpayer's business, the North Carolina Supreme Court has consulted NAICS. *Midrex Techs., Inc. v. N.C. Dep't of Revenue*, 369 N.C. 250, 253, 794 S.E.2d 785, 789 (2016).

[15] Again, it is notable that the Department is not seeking such a misconstruction.

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 November 10, 2020). Respondents contend these definitions support their assertion that Colonial's business is not an industrial plant. Definition (b) defines a "plant" as a facility that manufactures a particular product, a definition which Colonial would not necessarily meet for its entire infrastructure.[16] However, the other definition Aiken relies upon, definition (c), clearly supports finding Colonial's infrastructure to be a "plant." While definition (c) uses the term "production" as part of its definition, it also clearly defines a plant as the total facilities available for "service." Thus, the total facilities providing a pipeline or transportation service would be included within definition (c). Nevertheless, the most relevant definition to this case is definition (a), which defines a "plant" to include the "land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." This definition is broad enough to include the "land, buildings, machinery, apparatus, and fixtures" Colonial employs in carrying out its transportation business.[17] Further, the dictionary definition of "plant" does not exclude companies that are not manufacturers from owning and operating plants. Nor does the definition restrict the definition of plant to those companies that produce some kind of "output."[18]

Even considering the Department's narrow construction that a plant must be engaged in some form of production or output, the undisputed facts show that Colonial engages in several processes to address the creation of Transmix depending upon the situation. This "processing" may be incidental to its primary business of transporting refined petroleum products, but it ensures

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[16] Nevertheless, the legislature did not use the term "factory" or "manufacturing plant" in defining when a taxpayer may seek the exemption for pollution control equipment but rather used the more generic term "industrial plant." Here, the Court has already determined that Colonial is an industrial business and, since an industrial business is not required to be engaged in manufacturing, the term "plant" would have to clearly set forth a production mandate to interpret "industrial plant" as requiring manufacturing.

[17] Notably, the Court of Appeals of North Carolina relied on Merriam-Webster's broad definition (a) of "plant" to find that a small, unincorporated business that manufactured pallets qualified as a manufacturing "plant." *Richards v. Jolley*, 208 N.C. App. 436, 441, 703 S.E.2d 467, 470 (2010) (citing the definition of "plant" in Merriam–Webster's Collegiate Dictionary 948 (11th ed.2005)). Like in this case, the statute at issue in the North Carolina case did not define "plant." *See id.*

[18] Significantly, Chapter 28 of Title 12, which imposes user fees on gasoline and diesel fuel, including fuel at a "bulk plant." Section 12-28-110(7) defines "bulk plant" as "a motor fuel **storage and distribution facility** that is not a terminal and from which motor fuel may be removed at a rack." S.C. Code Ann. § 12-28-110(7) (Supp. 2019) (emphasis added). In the context of these user fees, it appears the legislature labeled a storage and distribution facility without a manufacturing component a "plant." *See id.*

that most of the product Colonial transports is delivered as a saleable product and distinguishes it from a pure transporter.[19] Specifically, it is undisputed that Colonial isolates the Transmix and blends part of it back into the pipelines as part of a sellable product, injects DRA into the products to reduce friction, and removes sting that builds up during the transportation process. Colonial's facilities and operations clearly meet the dictionary definition of a plant.

State Statutory and Regulatory Scheme

Regardless of the dictionary definition, Respondents argue the overall statutory and regulatory scheme shows the legislature intended the exemption to be limited to manufacturers and companies that produce something. Respondents focus on the fact that Colonial is classified as a transportation company rather than a manufacturer, utility, or other kind of producer. Indeed, article X, section 1 of the South Carolina Constitution (West 2020) and section 12-43-220 of the South Carolina Code (2014), distinguish, for property tax assessment purposes, transportation companies like Colonial from manufacturers and utilities companies. Specifically, they provide an assessment ratio for transportation companies of 9.5% compared to an assessment ratio of 10.5% for manufacturers.[20] Based on these provisions, Respondents argue transportation companies and manufacturing/utility companies are treated differently for property tax assessment purposes.[21]

Similarly, Respondents point to regulation 117-1700 of the South Carolina Code of Regulations (2012), which regulates property taxes, to support their conclusion that transportation companies are (1) treated differently than manufacturers and (2) cannot operate a "plant."

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[19] The Counties contend that Colonial cannot argue it processes or produces anything because any processing that occurs is its own fault for choosing a transportation method that creates Transmix. The Court does not find this argument persuasive. There is no restriction in the exemption that would prohibit Colonial from receiving it because it chooses to transport products in a certain way.

[20] S.C. Const. Art. X, § 1(1) (West 2020) ("All real and personal property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility or mining operation, in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property."); S.C. Const. Art. X, § 1(2) (West 2020) ("All real and personal property owned by or leased to companies primarily engaged in transportation for hire of persons or property and used by the company in the conduct of such business shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property."); S.C. Code Ann. § 12-43-220(a)(1) (2014) ("All real and personal property owned by or leased to manufacturers and utilities and used by the manufacturer or utility in the conduct of the business must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property."); S.C. Code Ann. § 12-43-220(g) (2014) ("All real and personal property owned by or leased to companies primarily engaged in the transportation for hire of persons or property and used by such companies in the conduct of such business and required by law to be assessed by the department shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.").

[21] The Department appraises the property of pipelines similarly to utilities, but this is for valuation purposes only. As authorized by section 12-4-540 of the South Carolina Code (2014), the Department uses unit valuation for certain companies including pipelines, railroads, and utilities to consider a taxpayer's operations as a whole.

Regulation 117-1700.4 defines "transportation companies" to include "(1) Railroad companies; (2) **Pipeline companies**; and (3) Express companies." S.C. Regs. Ann. 117-1700.4 (2012) (emphasis added). A later subsection of the same regulation, subsection 117-1700.7, defines a "plant site" as:

> A plant site shall consist of all land contiguous to a plant which is related to the overall manufacturing operation. It shall include all land on which personal property is located including but not limited to the following: parking lots, manufacturing areas, buildings, landscaping, piping, railroad siding, docking, water sheds, ditching, pollution control facilities, pumping stations, wells, roads, water tanks, areas for ingress and egress, water storage facilities, and all other lands directly related to manufacturing. When possible, a plant site will be one contiguous parcel using legal and or natural boundaries.

S.C. Code Ann. Regs. 117-1700.7 (2012). Respondents argue that, read together, these subsections suggest that a "plant site" is limited to manufacturing site; moreover, a transportation company like Colonial, who is not a manufacturer and is treated differently from manufacturers for property tax assessment purposes, therefore cannot operate a "plant site." Respondents further note that Reg. 117-1700.7 suggests plant sites constrained to contiguous piece of property and Colonial's pipelines cannot meet this definition.

First, neither Reg. 117-1700.4 nor Reg. 117-1700.7 expressly provide that transportation companies cannot be engaged in both transportation and other business activities, such as processing or manufacturing. Indeed, the Department, as well as our courts, have clearly set forth that energy producing utilities may be classified as utilities yet recognized as manufacturers within the tax code. *See*, *e.g.*, S.C. Code Ann. § 12-43-220(a)(1) (2014) (classifying and assessing ad valorem property taxation of "[a]ll real and personal property owned by or leased to **manufacturers** and **utilities** and used by the manufacturer or utility in the conduct of the business" at ten and one-half percent of the fair market value of the property" (emphasis added)). And, in this case, the Court is not addressing the assessment ratio but rather a specific exemption for a business's use of pollution control equipment. Moreover, the dictionary definition of "manufacture" (verb) is "to make a product suitable for use." *Manufacture*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/manufacture (last visited November 10, 2020). In this instance, Colonial processes some of its Transmix to make it suitable for sale, which is in keeping with this definition. Even though this is a limited part of their operations, it relates to the overall operation of Colonial's business.

Second, while it is true that the legislature assesses manufacturers and transporters at different percentage rates for property tax purposes, this does not signify that Colonial is excluded from the pollution control equipment exemption merely because it is a transportation company.

Looking at disparate assessment ratios does not capture the legislative purpose of the pollution control exemption, which presumably is to compensates those who are required to install equipment to prevent or minimize pollution. *See State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1967) ("The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose."). The classification of Colonial's business as a transportation company should not preclude it from receiving the exemption if it meets the statutory requisites.

And, indeed, when we look at the language of the exemption itself, it indicates the exemption is not limited to manufactures. In relevant part, § 12-37-220(A)(8) instructs DHEC to investigate "the property of any manufacturer **or company**." (emphasis added). In construing a statute, we presume that no word is superfluous or without meaning. *Sweat*, 379 S.C. at 377, 665 S.E.2d at 651 ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . ." (citation omitted)). Therefore, the words "or company" must refer to a company that is separate and distinct from a "manufacturer" or the terms would be redundant.[22] If the General Assembly had wished to limit the pollution control exemption to manufacturers, it could have used narrower language. *See*, *e.g.*, § 12-43-220(a)(1) (classifying and assessing ad valorem property taxation of "[a]ll real and personal property owned by or leased to **manufacturers** and utilities and used by the **manufacturer** or utility in the conduct of the business" at ten and one-half percent of the fair market value of the property" (emphasis added)). In fact, the word "company" encompasses a wide array of businesses and fits within the definition of industry. Moreover, the Court disagrees with Respondent's contention that "company" refers to utilities. If the legislature intended "company" to refer only to utilities, it would have said so. *See id*. It is reasonable to conclude the breadth of the word "company" is meant to compensates as many companies as possible for their adherence to environmental laws the prevent pollution, and perhaps encourage even greater efforts.

Respondents further contend that the use of the word "production" in the language of § 12-37-220(A)(8) discussing dual purpose property reflects an intention by the legislature that the entire exemption is limited to property used for production. Section 12-37-220(A)(8) provides

[22] Colonial also argues that reading a manufacturing requirement into the definition of "plant" would render the term manufacturing plant redundant and meaningless.

that "[f]or equipment that serves a dual purpose of **production** and pollution control," then value of the exemption is reduced based upon a formula. (emphasis added). This portion of the statute suggests that property that qualifies for the exemption is used for production but may also be used for pollution control. Nevertheless, "[a] court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Enos v. Doe*, 380 S.C. 295, 305, 669 S.E.2d 619, 623 (Ct. App. 2008). Reading the § 12-37-220(A)(8) as a whole, it is clear the exemption is applicable to industries or companies that may not be producers. It would be unreasonable to conclude the legislature would limit the exemption to producers in the last few sentences of the statute while wording the rest of the statute more broadly. Accordingly, viewing § 12-37-220(A)(8) as a whole, the word "production" does not act as a limiting term. Indeed, Respondent's interpretation would basically require the Court to fixate on the word "production" under the dual-purpose limitation and ignore the use of the word "company" in the same statutory provision.

Respondents also argue that applying the exemption to all companies that are involved in "industry" would extend the application of the exemption beyond what the legislature intended. In particular, they argue Colonial is functionally no different than a railroad company, a trucking company, or a shipping company. Each of these companies transport petroleum products like Colonial and, also like Colonial, they have facilities and use equipment to contain the products they transport to protect their assets, prevent loss of product, and prevent environmental pollution.[23] Based upon these similarities, Respondents argue that approval of the exemption in this case would open the door for railroads, trucking companies, and shipping companies to claim an exemption. However, simply because the construction of the statute may allow other parties to utilize the pollution control exemption is not a reason to deny its use. In fact, it would be troubling for this Court to misconstrue this provision in order to protect the government from the tax consequences of allowing businesses to lawfully utilize this exemption. Rather, the interpretation of § 12-37-220(A)(8) must be made based upon the language of the statute and not Respondents' concerns as to who may take advantage of its provisions. Moreover, since the purpose of the pollution control exemption is to reward the use of pollution control equipment that is required by law, it is reasonable for the exemption to be broadly applicable since petroleum is highly regulated.

[23] I note Respondent's argument while also recognizing they offered no evidence to support this contention.

Consequently, the statutory scheme does not demonstrate a legislative intent to restrict interpretation of "companies" as narrowly as the Counties suggest.[24]

Finally, Colonial argues that because it would qualify for industrial revenue bonds under South Carolina's Code of Laws, it should qualify as an industrial plant. Under section 4-29-10(3) of the South Carolina Code (Supp. 2019), a "Project" eligible for industrial revenue bonds includes

> any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:
>
> (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;
>
> (b) **any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry**, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

(emphasis added). Colonial would qualify for industrial bonds because it engages in the "commercial enterprise" of "storing, warehousing, distributing [and] transporting" refined petroleum, which is the product of industry. However, this statute does not define industrial plant and does not limit the distribution of industrial bonds to industrial plants. Therefore, while the statute may be suggestive with its breadth of application, it is not dispositive and was not considered as part of this Court's reasoning.

Department Rulings and Procedure

Colonial argues the Department's Revenue Ruling #91-8 and Revenue Procedure #05-1 show the Colonial should qualify for the pollution control exemption. Revenue Ruling #91-8 discusses the sales tax exemption in section 12-36-2120(17) of the South Carolina Code (Supp. 2019), which is a sales tax exemption for "machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale." Section 12-36-2120(17) further describes exempt machines to include those required for

[24] Furthermore, who may take advantage of the exemption is limited by § 12-37-220(A)(8)'s requirement that no businesses may take this exemption unless the equipment is required by state or federal law and the further requirement that the equipment must be used in the conduct of the business (and then only to the extent it exceeds the dual use of the property). Moreover, trucks or barges would certainly not function as an interconnected unit and thus cannot qualify as a plant. Indeed, even if there was a physical plant from which a truck or barge operated out of, once the truck or barge left that facility it would be operating independently.

pollution control. However, this section does not discuss or condition the exemption on the existence of an industrial plant. Revenue Ruling #05-1 also discusses section 12-36-2120(17) and similarly does not discuss industrial plants. The Court does not find these Department documents to be relevant as to whether Colonial's property constitutes an industrial plant.

Federal Statutory and Regulatory Scheme

Colonial cites to federal law in support of its claim that it is an industrial plant. First, Colonial notes that 42 U.S.C.A. § 6326(5) (West 2020) provides that "industrial plant" means "any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output." This section falls within Title 42, governing health, and safety, and in particular, a part of the code dealing with State Energy Conservation Plans. It thus does not relate to South Carolina's tax scheme.

Colonial also cites to the code of federal regulations (C.F.R.) in support of its claim that it is an industrial plant. Specifically, Colonial points to 29 C.F.R. § 1910.106, which sets forth that industrial plants, for the purpose of this regulation, include areas where "[t]he use of flammable liquids is incidental to the principal business" and "where flammable liquids are handled or used only in unit physical operations such as mixing, drying, evaporating, filtering, distillation, and similar operations which do not involve chemical reaction." *See* 29 C.F.R. § 1910.106 (West 2020). Although the definition would seem to imply certain facilities that handle flammable liquids like petroleum are industrial plants, in reality, this regulation is singling out a certain type of industrial plant for the purpose of labor regulations (not tax regulations) and does not give a general definition of industrial plant. Moreover, clearly the industrial plants described in this regulation engage in more than the processing of flammable liquids and would not necessarily be defined as an industrial plant solely based upon the "incidental" activities discussed in the regulation. *See id*.

Lastly, Colonial cites to its permits in support of classifying itself as an industrial plant, in particular its NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, SCR 000000 (September 1, 2016). Section 1.1.1 of this permit, Facilities Covered, states: "[t]o be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity." The permit specifically references "industrial plant" as follows: "Storm Water Discharges Associated with Industrial Activity—the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." The primary focus of the permit in this case appears to be regulating

environmental pollution; however, the issue here is rather the definition and application of the meaning of a "industrial plant" for the purpose of South Carolina's tax scheme. I do not find the permit particularly persuasive.

Conclusion

In this Court's previous summary judgement order, the Court concluded that at least part of Colonial's operations (for example, its tank farms) met the broad dictionary definition of "industrial plant," but reserved judgment as to whether long stretches of pipeline would also qualify as a plant. When considering summary judgment in this case, the Court questioned whether an industrial plant was constrained to one contiguous piece of land or whether a plant could extend beyond those confines. In other words, can an industrial plant have tentacles that extend beyond its primary facilities? This approach suggested that Colonial's property could be split up into discrete parts.

However, in viewing the evidence presented at the hearing, the Court finds Colonial's property—tank farms and pipelines and pump stations—work together as an integrated whole and thus, the better question is whether Colonial's operations, as a whole, constitute an industrial plant. This approach is consistent with the Department's position that the Court should look at the pipeline as a whole instead of zooming in on certain portions of it. This approach also fits in smoothly with the Department's unit valuation method for pipeline companies, which values the business as a whole rather than considering individual pieces.

Respondents nevertheless assert that the definition of "plant" must include a facility where goods or materials are actually and substantially produced. However, the reasoning is simply not sound. As set forth above, to be a business engaged in "industry," it is not necessary that the business produce goods or materials. Furthermore, since the dictionary definition of a "plant" includes the "machinery, apparatus, and fixtures" used in carrying on an industrial business, the definition of an "industrial plant" would include machinery and fixtures, such as pump stations and pipelines, that are used to carry out Colonial's business. Moreover, the dictionary definition of "plant" also includes "the total facilities available" to provide a service. Colonial provides transportation services, and its pipelines would be included in the "total facilities" available to provide that service. Accordingly, simply because Colonial's infrastructure spans many miles does not exclude the totality of its infrastructure from meeting the definition of "industrial plant." If Colonial's facility includes machinery and fixtures that operate as integrated unit, then it can be considered an "industrial plant." Ultimately, the determination of whether Colonial's pipeline is

part of an "industrial plant" involves not just the meaning of the words "industrial" and "plant," but the application of the facts in this case.

Turning to Colonial's specific operations, I find the pipeline is part of an integrated infrastructure needed to carry on Colonial's industrial business. Of great significance to this Court is the evidence reflecting the complexity and interconnectivity of Colonial's pipeline operations. For example, Colonial operates pumps, motors, valves, manifolds, injection equipment, control systems, and other infrastructure all work together as an integrated unit to transport product through the pipes and to the tank farms. Generally, every fifty to sixty miles along its pipeline (but in a few instances, as far as seventy-five miles apart), Colonial operates a "booster station" that increases pressure in the pipeline and allows for the continued movement of petroleum through the pipeline. Colonial also has three pump stations on Lines 1 and 2, typically with four to five pumps per station, and there are pumps at the tank farms. Colonial also introduces DRA at its booster facilities, pump stations, tank farms, and stub lines to facilitate smoother and quicker transport. The design and expertise needed to properly inject DRA throughout the pipelines reflects the integrated aspect of Colonial's facilities and, thus, its operation as a plant.

Moreover, as with the operation of many plants, Colonial's control room monitors the pipeline twenty-four hours a day. Every two weeks, Colonial also conducts an aerial inspection of the pipeline corridor by flying over the corridor in a plane. To ensure the product is safely transported, Colonial constantly measures gravity, pressure, and temperature of the products it transports. Equipment is also used to measure and detect leaks. Additionally, devices called "smart PIGS" are used to identify cracks and compromises in the pipeline.

Finally, Colonial addresses mixing of the products in its pipeline by using optical interface detectors to isolate the Transmix. It then either sells the Transmix as a different grade, precisely injects it back into the pipeline, or, upon determining that it cannot use those processes to salvage the fuel, sells the products to an independent processor.

Thus, even though Colonial's pipeline covers 515 miles, the pipeline is part of an interconnected operation whose fixtures are necessary components of its business. And, although spread out for a considerable distance, the pipelines are all contiguous to Colonial's tank farms and other industrial components. Furthermore, the operation of Colonial's pipelines are the *sine quo non* of its business and without them, its industrial business would not function. I therefore find that the pipelines are part of an overall infrastructure that is needed to carry on Colonial's industrial business. Accordingly, the Court concludes Colonial's operations, as a whole, fit within

the broad dictionary definition of "industrial plant." Therefore, the Court moves on to the next requirement to qualify for the exemption.

Designed for Pollution Control

For the facilities or equipment to qualify for the exemption, they must be "designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external." § 12-37-220(A)(8). The exemption further provides that, "[a]t the request of the Department of Revenue, the Department of Health and Environmental Control 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." *Id.* Further, [u]pon investigation of the property, the Department of Health and Environmental Control shall furnish the Department of Revenue with a detailed listing of the property that qualifies as pollution control property." *Id*. The exemption also envisions that facilities or equipment may have a dual use for both production and pollution control. *Id.* In these situations, "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." *Id.*

In this case, as provided by § 12-37-220(A)(8), the Department sought DHEC's input regarding whether pipelines coatings, cathodic protection, and automatic shutoff valves qualified as "pollution control property." In response, DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel disclaiming any authority to regulate the items described, but opining that the pipe coatings, cathodic protection, and automatic shut-off valves could be fairly described as pollution control equipment. Specifically, the Department advised:

> Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

As the Court discussed earlier, the Department had the authority to make the ultimate decision about whether the property at issue qualified as pollution control equipment; therefore, the Department had discretion to consider DHEC's opinion and give it whatever weight it saw fit. Nevertheless, although DHEC does not have regulatory authority over the property at issue, DHEC's staff presumably possesses expertise to evaluate whether the equipment serves a pollution control purpose. Indeed, this presumption is substantiated by the statute's explicit provision for DHEC's input. Therefore, DHEC's finding that the disputed property "can be fairly described as pollution control equipment" reflects that the property is designed for pollution control. Moreover, DHEC's finding was introduced into evidence and Respondents offered no evidence to dispute it. Furthermore, the fact the disputed property is required by federal law also suggests it serves a pollution control function.

Thus, DHEC's finding, along with the uncontroverted testimony from several of Colonial's witnesses, established that pipeline coatings, cathodic protection devices, and the automatic shutoff valve were designed, at least in part, for the elimination, mitigation, prevention, abatement or control of water and air pollution. The extent to which these items of property may have a dual function will be discussed further below.

Required by State or Federal Law

Next, to qualify for the exemption the facilities or equipment must be "required by the state or federal government." § 12-37-220(A)(8). Colonial's witnesses testified that all of the disputed property is required by federal regulation. And, indeed, the disputed items are required by federal law for pipeline facilities that transport hazardous liquids (petroleum) as follows:

Colonial Installations	**Pipeline Integrity Statutory Requirement**
Pipeline Coatings	49 C.F.R. § 195.557(a)
Cathodic Protection	49 C.F.R. § 195.563(a)
Automatic Shut-Off Valves	49 C.F.R .§ 195.260(a)

In general, 49 C.F.R. § 195 deals with regulating pipelines that transport hazardous liquids, which is defined to mean "petroleum, petroleum products, anhydrous ammonia, and ethanol or other non-petroleum fuel, including biofuel, which is flammable, toxic, or would be harmful to the environment if released in significant quantities." 49 C.F.R. § 195.2; *see also* 49 C.F.R. § 195.1. Pipeline coatings are required by federal law for submerged pipeline to prevent corrosion of the pipeline. 49 C.F.R. § 195.557(a). Corrosion can lead to large or small leaks in the pipes which

allows the discharge of petroleum products into the air or water. The automatic shutoff valve allows Colonial to shut off or "control" a line in the event of leakage. Based on the above, I conclude the disputed property meets this requirement of the exemption.

Used in the Conduct of Business

Finally, to qualify for the exemption the facilities or equipment must be "used in the conduct of their business." § 12-37-220(A)(8). Colonial's witnesses testified at length regarding how the pipeline coatings, cathodic protection devices, and automatic shut-off value at issue support Colonial's business operations. This testimony was uncontroverted. Therefore, I find the property at issue is used in the conduct of Colonial's business. I further conclude that Colonial meets all four requirements to qualify for the exemption. Accordingly, the only issue left for the Court to consider is whether the disputed property has a dual use and, if it does, how its value for the purpose of the exemption should be calculated.

Dual Use

Section 12-37-220(A)(8) provides that "[f]or 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." Therefore, once the right to the exemption is established, this Court must look to the dual use provision to determine if the exemption should be limited. If the equipment serves a function apart from pollution control, the utility of that function must be recognized before allowing the property tax exemption.

The testimony of Colonial's witnesses demonstrated the disputed property functions in three ways: (1) it prevents air, water and soil pollution; (2) it protects the product Colonial is paid to transport from leaving the pipelines; and (3) it protects Colonial's investment in its infrastructure. Colonial purchased pipes coated with asphalt enamel when its initial pipe was installed in 1962, and it does not appear that pipe coating was required by federal regulation before 1970. 49 C.F.R. § 195.401(c).

The Other Counties argue that Colonial primarily uses the disputed property to transport refined petroleum products and any benefits of pollution control are incidental to its business purposes. Citing 84 C.J.S. *Taxation* § 278, they contend the prevailing rule is "in the absence of an exclusivity requirement, it is the primary, as distinguished from an incidental, use of the property that determines the question whether it is exempt from taxation." The Other Counties would thus have this Court conclude that even if the disputed property is facilities or equipment

of an industrial plant, because Colonial's primary use of the property is not for pollution control, Colonial cannot qualify for the exemption.

I disagree with the Other Counties' characterization of the property. The fact that federal regulations, on their own, require the disputed property for pollution control purposes defeats this argument on its own. *See* 49 C.F.R. § 195. Clearly, the pollution control uses for this property are more than incidental.

Next, Aiken argues that the disputed property has an ancillary benefit of preventing pollution, but the disputed equipment is also so integral to the functional operation of a pipeline that practically no pipeline could exist without these disputed items regardless of their impact on pollution. Aiken thus contends the difference in value for the purpose of the dual use provision is essentially $0. In other words, because a pipeline cannot properly function without coatings, cathodic protection, or an automatic shutoff valve, there is no way to compare the value of property with or without the equipment. Aiken argues this is yet another reason the exemption could not have been intended for an entity like Colonial because, if the statute is intended to provide an incentive to eligible taxpayers to encourage them to protect against pollution, then Colonial needed no such incentive because it cannot operate a functional pipeline without the disputed equipment.

To an extent, I find that Aiken's argument is true. Colonial's purchase of pipes coated with asphalt enamel before it was required by federal regulation reflects that purchasing pipe with the coating served a business purpose unrelated to pollution control. Furthermore, it appears that Colonial cannot realistically purchase pipes for its business that are not already coated. Therefore, there is no cost differential between what the pipe would cost with or without the coating. For these reasons, I find that 100% of the cost associated with purchasing the pipes is a business cost, particularly since Colonial presented no evidence of how to break down the cost otherwise.

In contrast, the evidence reflected the cathodic protection system helps Colonial identify leaks and thus prevent product loss and pollution. However, there was no evidence showing Colonial would construct its pipeline with this equipment if the cathodic protection system was not required by federal law. Therefore, while cathodic protection likely benefits Colonial by working with the pipe coatings to prevent corrosion and extend the life of Colonial's pipes, it is unclear whether the benefit (and savings) related to the extended life of the pipe outweighs the cost of the cathodic protection system and its maintenance. The Court was thus left to speculate as to the extent to which the equipment serves a business purpose. Indeed, it is possible that periodically replacing pipes would cost less than the installation and constant monitoring and maintenance of the cathodic protection system. Because neither the Department nor the Counties

provided evidence that cathodic protection serves a function other than pollution control, other than the unsubstantiated conclusory statement that a pipeline cannot function without cathodic protection, the Court must rely on the evidence before it, which indicates the sole purpose of the cathodic protection is to prevent pollution.

Similarly, it is difficult to calculate the value of the automatic shutoff valve. Although Colonial uses it when it conducts maintenance on certain portions of the pipe, the utility of that business purpose was unclear. For example, Colonial may take advantage of the automatic shutoff valve to conduct maintenance simply because it is there, but that does not mean Colonial would have installed it for a business purpose (like making maintenance easier) if the valve had not been required by federal law. The Court was again left to speculate about the value of the automatic shutoff valve for pollution control purposes compared to business purposes. Overall, the preponderance of the evidence did not show the automatic shutoff valve is used for a purpose other than pollution control.

CONCLUSION

I conclude Colonial's disputed cathodic protection equipment, pipeline coatings, and automatic shut-off valve are (1) facilities and equipment of an industrial plant; (2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; (3) required by state or federal government; and (4) used in the conduct of Colonial's business. § 12-37-220(A)(8). Therefore, these disputed items meet the initial qualifications to receive the pollution control equipment exemption. *See id.* However, applying the dual use provision of the exemption, I conclude the exemption is not justified for the pipeline coatings because the coatings serve a dual business use without a calculable value differential. *Id.* In contrast, I conclude the preponderance of the evidence did not show the cathodic protection and automatic shutoff valve have a use other than pollution control and the full value of this equipment qualifies for the exemption. *Id.*

ORDER

IT IS THEREFORE ORDERED that Petitioner's application for the pollution control exemption for pipeline coatings is DENIED for the 2017 and 2018 tax years.

IT IS FURTHER ORDERED that Petitioner's application for the pollution control exemption for cathodic protection is GRANTED for the 2017 and 2018 tax years.

IT IS FURTHER ORDERED that Petitioner's application for the pollution control exemption for the automatic shut-off valve is GRANTED for the 2017 and 2018 tax years.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

December 1, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson, County, Greenville County, York County and Laurens County, Respondents.	)	Docket No 18-ALJ-17-0443-CC **ORDER**

A hearing was held in this matter from August 4-5, 2020, at the Administrative Law Court (ALC or Court). Afterwards, this Court issued a Final Order on December 1, 2020. On December 11, 2020, Aiken County and Laurens County (Aiken) filed a Motion for Reconsideration. Additionally, Colonial Pipeline Company (Colonial) filed a Motion for Reconsideration on the same date. Given the length of the Parties' Motions for Reconsideration and the need to review both motions and the expected responses,

IT IS HEREBY ORDERED that the Final Order is hereby rescinded pending a decision upon the parties' pleadings.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

January 4, 2021
Columbia, South Carolina

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January 4, 2021
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Respondents.	)	Docket No. 18-ALJ-17-0443-CC **AMENDED FINAL ORDER**

APPEARANCES:

For Petitioner:	Burnet R. Maybank, III, Esq. and Jim Rourke, Esq.
For Respondent DOR:	Marcus D. Antley, III, Esq.
For Respondents Aiken County et al.:	Walter H. Cartin, Esq.
For Respondents Abbeville County et al.:	Kimila L. Wooten, Esq.

STATEMENT OF THE CASE

This matter is before the Court pursuant to a request for contested case filed by Colonial Pipeline Company (Petitioner or Colonial) on December 5, 2018. Colonial contests the decision of the South Carolina Department of Revenue (Department or DOR) finding certain Colonial assets were not eligible for a property tax exemption for pollution control equipment pursuant to section 12-37-220(A)(8) of the South Carolina Code (2014) and Article 10, Section 3(h) of the South Carolina Constitution (West 2020). Colonial challenges the Department decision for tax years 2017 and 2018.

From March through May 2019, several counties moved to intervene, and the Court granted the motions. Aiken County and Laurens County (Aiken) moved to intervene and are represented together. Abbeville County, Anderson County, Greenville County, and York County (Other Counties) separately moved to intervene and are represented together. Collectively, the counties are referred to as "the Counties," and with the Department, "Respondents."

On December 11, 2019, the parties filed cross-motions for summary judgment, which the Court denied after a hearing. A hearing on the merits was held on August 4-5, 2020, and a Final Order was issued on December 1, 2020, in which the Court concluded that Colonial qualified for

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the pollution control equipment exemption, but it was not entitled to the exemption for all the disputed assets. Following that decision, Colonial, Aiken, and Other Counties timely filed Motions for Reconsideration (Motions). In response to the issues raised in the Motions, the Court issues this Amended Final Order.

STIPULATIONS OF FACT

The parties have stipulated to the following facts:

Assessment in Dispute[1]

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

1. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

2. Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina and does various inspections in this state.

3. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline, so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

4. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use.

5. Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline.

6. If the Taxpayer transported a single Refined Petroleum Product, then the Taxpayer would not create Transmix.

7. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product.

8. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's

[1] Colonial does not dispute the valuation of the property nor does it dispute the valuation method; rather, Colonial argues that the property in dispute is exempt from ad valorem taxation pursuant to section 12-37-220(A)(8).

transportation services and is not charged to the customer.

9. The Taxpayer's activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline.

10. At least 90% of each Refined Petroleum Product transported by the Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

11. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

12. The Taxpayer does not own the Refined Petroleum Products it transports.

13. In addition to other counties, the property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Greenville, Laurens, and York (the "counties involved").

14. The Taxpayer has tank farms, delivery facilities, and booster stations in South Carolina. The Taxpayer has two tank farms in South Carolina—one in Belton and the other in Spartanburg. Those tank farms receive and store Refined Petroleum Products from the transmission pipeline and pump the product to individual truck terminals. The Taxpayer's delivery stations in South Carolina are located at the tank farms and deliver Refined Petroleum Products on a transmission line to a truck terminal. The Taxpayer has three booster stations in South Carolina—one in Anderson, one in Simpsonville, and another in Gaffney. The booster stations push Refined Petroleum Products through the pipeline.

15. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017. Exhibit A is a true and accurate copy of the protest that the Taxpayer submitted to the Department.

18. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

19. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental

Control ("DHEC") for investigation into whether the Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

20. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

21. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

22. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

23. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

24. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

25. The Government Services Division received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

26. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

27. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control

equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.[2]

28. The Department issued its Determination in this matter on November 19, 2018.

29. The Taxpayer timely requested a contested case hearing on December 5, 2018.

30. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8) as to all claimed property. The Taxpayer claimed the same property as pollution control property for 2019 as it did for 2017 and 2018. On August 6, 2019, the Taxpayer timely protested the 2019 exemption denial.

31. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption.

32. Petitioner has environmental permits, including air, NPS, groundwater and solid waste disposal.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence.

The Nature of Colonial's Business

Colonial is a transportation company that pumps refined petroleum products (e.g., refined petroleum, jet fuel, gasoline, diesel, heating oil, and kerosene) through its pipeline. Colonial processes portions of the products it ships but does not manufacture or produce products. Colonial has approximately 250 customers that ship products through its lines. Colonial receives these

[2] Although not part of the stipulation of facts, the DHEC letter stated, in part:

> Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

products from approximately thirty refineries in the Gulf Coast region of the United States and transports them to different parts of the country through its pipeline. Colonial is regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Office of Pipeline Safety, which are divisions of the U.S. Department of Transportation (USDOT).

Colonial's operations in South Carolina span eleven counties. Their operations are comprised of 515 miles of pipeline, two tank farms, three booster stations, and one delivery facility. All of Colonial's pipelines are buried between four and five feet below the ground. Colonial has two main pipelines in South Carolina, Line 1 and Line 2. These lines run from Pasadena, Texas, to Greensboro, North Carolina. Line 1 transports gasoline and Line 2 transports distillate, which includes jet fuel and ultra-low sulfur diesel. Colonial also has another, smaller line in South Carolina, Line 29. Line 29 carries all of the refined petroleum products except heating oil. Colonial transports between 180,000 to 185,000 barrels of refined petroleum products each day through South Carolina.

The products Colonial transports are moved together "fungibly." This means similar products are interchangeable and a customer may not receive the exact same petroleum it paid Colonial to transport. Further, Colonial transports multiple products back-to-back through the pipelines, which results in some mixing of the products where they interface. When two incompatible products mix the result is called Transmix.

Transmix does not meet the Refined Petroleum Product specifications and cannot be sold for use. Transmix not only occurs from products interfacing in the pipelines, but also from general operation of the tank farms. For example, Transmix can form when Colonial is displacing manifolds and piping. At any given time, Line 1 will generate/contain approximately 15,000 barrels of Transmix, and Line 2 will generate/contain approximately 12,000 to 16,000 barrels of Transmix. Because Transmix is not a saleable product, Colonial must isolate it from the saleable products.

Transmix is isolated using optical interface detectors in a complex, controlled process. Colonial deals with Transmix in one of three ways. First, if the Transmix is the result of, for example, premium gasoline interfacing with regular gasoline, then Colonial can re-sell the Transmix to a customer who purchased regular gasoline but is willing to accept gasoline with a higher octane rating (a product more akin to premium). Second, Transmix can be injected back into the pipeline if it is injected in sufficiently small quantities to not adulterate the product in the line causing it to deviate from customer specifications. Third, if Transmix cannot be dealt with in the above two ways, it can be sold to an independent processor.

Colonial manages the products in its pipelines in several ways. To facilitate movement, Colonial adds Drag Resisting Agents (DRA) to products as they are transported. DRA reduces the amount of friction loss and thus allows higher flow rates through the pipeline. Colonial introduces DRA at its booster facilities, pump stations, tank farms, and stub lines. Colonial also removes water that accumulates in the pipeline through a process called "sting." Colonial filters and drains "sting water" at its tank farms through the use of oil and water separators.

Every fifty to sixty miles along its mainlines, Colonial operates a booster station. Booster stations increase the pressure in the pipeline system to facilitate the movement of petroleum through the pipeline. Additionally, there are three pump stations in South Carolina on Lines 1 and 2, typically with four to five pumps per station, and there are pumps at the tank farms. To ensure safety and quality control, Colonial constantly measures gravity, pressure, and temperature of the products it transports.

In the geographical area at issue in this case (which covers small parts of Georgia and North Carolina in addition to South Carolina), Colonial employees thirty to thirty-five operators and technicians on a full-time basis (and an equal number of independent contractors) to oversee operations, run its facilities, make repairs, and respond to issues. These employees assist, in part, with managing Colonial's two tank farms in South Carolina: one in Belton and one in Spartanburg. Each tank farm has a complex system of pumps, motors, valves, manifolds, injection equipment, control systems, and other infrastructure necessary to move and store product. The two tank farms receive petroleum products from Lines 1 and 2 "into tankage and then that product is delivered out from that tankage to multiple delivery lines to customers."

Belton Junction is a 130-acre above-ground breakout and delivery facility located in Anderson County. This tank farm is comprised of twenty tanks: twelve for gasoline, seven for distillate, and one for Transmix. The facility is staffed by an Operator 24/7. Spartanburg Delivery is a seventy-four-acre above-ground breakout and delivery facility. It is comprised of twenty-two tanks, including thirteen gasoline tanks, six distillate tanks, and three tanks that are out of service. The facility is staffed as the operation schedule dictates with a minimum of one operator on shift during all product receipts and delivery operations. Both tank farms have sting systems that remove water. These facilities also have utility tanks for draining product when maintenance must be performed. Colonial also provides petroleum storage services for third parties at its Belton and Spartanburg facilities. Additionally, truck terminals, which are owned by third parties, are strategically located close to the tank farms to ensure timely transportation.

Components of the Pipeline and Property at Issue

Colonial uses steel pipes, which tend to corrode in an electro-chemical reaction when exposed to air, water, or the ground. Corrosion can result in holes in the pipe that cause a loss of product into the environment and a loss of pressure carrying capacity. Thus, corrosion can lead to a discharge of pollution into the environment. Colonial uses two primary methods for controlling corrosion on its underground pipelines—pipe coatings and cathodic protection systems.

Pipe coatings create a barrier between the pipes and the environmental elements that cause the electro-chemical reactions resulting in corrosion. Modern pipes are purchased pre-coated with a number of different substances, including asphalt-based enamel, coal tar coating, and extruded polyethylene or fusion bonded epoxy. Current pipe coatings have an average lifespan of twenty-five years, so the coating must be replaced and repaired periodically. Colonial claimed the exemption in this case for pipe coating repairs, not new pipes.

Pipe coatings are the original way pipeline companies mitigated corrosion but adding cathodic protection systems proved to be even more effective. Cathodic protection systems help prevent corrosion on pipe exteriors by imparting a direct current onto the buried pipeline using devices call rectifiers. This current provides a new source of electrons that interrupts the electro-chemical reaction between the steel pipe and the environment. As long as the current is sufficient, corrosion is prevented, or at least mitigated.[3] Cathodic protection systems can also detect when a pipe becomes disbonded (the coating comes off) so that repairs can be made to prevent leaks. By preventing corrosion and detecting leaks, cathodic protection systems help prevent the discharge of pollution into the environment. Colonial has installed cathodic protection systems on all of its pipelines throughout the entire pipeline corridor. Performance of the cathodic protection system is monitored regularly.

Colonial also has an automatic shutoff valve that it installed in Gaffney in 2011. When a breach occurs, the valve shuts off the flow of product to impacted portions of the pipeline. The purpose of the valve is to minimize the release of product if the pipeline is compromised or breached. Colonial's valve is controlled remotely from Colonial's offices in Alpharetta, Georgia. Colonial also uses the valve to isolate an area for maintenance work as needed.

[3] Pipeline coatings have also been engineered to have "high dielectric strength," which prevents the flow of electrons to the pipe's surroundings. Thus, the pipe coatings work in tandem with the cathodic protection system to prevent the electro-chemical reactions that cause corrosion.

Pipe coatings, cathodic protection, and the automatic shutoff valve are required under federal law to prevent water and/or air pollution. The undisputed testimony showed this equipment is used in the conduct of Colonial's business.

Oversight of the Pipeline

The pipeline is monitored, at various intervals, both visually and mechanically. Mechanically, Colonial's control room monitors the pipeline from its Alpharetta office twenty-four hours a day. Every two weeks, Colonial conducts an aerial inspection of the pipeline corridor. Once a year, Colonial mows and clears debris from the pipeline right-of-way. The right-of-way is inspected periodically to ensure there are no encroachments on the pipeline. The pipeline is also monitored for flooding and erosion to ensure it has not become exposed. Every five years, Colonial conducts a "close interval survey." During this survey, Colonial inserts an electrode into the ground every 2.5 feet to take a polarization reading. The electrode checks voltage levels to ensure the cathodic protection system is working.

Colonial also uses devices called "smart PIGS" to identify cracks and compromises in the pipeline. Smart PIGS are essentially small machines that are inserted into the pipeline. The PIGS flow along with the product and gather data that is transmitted back to Colonial. Every 200 miles or so, the PIGS are extracted using a "PIG trap."

Rectifiers, which are part of the cathodic protection system, are checked at least six times a year and physically inspected twice a year. Rectifiers are also remotely monitored to make sure they are functioning. When Colonial detects that a rectifier is not functioning, Colonial sends out a crew to fix it.

Colonial must replace pipeline coating periodically on older sections of the pipeline. Colonial estimates it digs up and replaces "thousands of feet a year of pipeline."

Environmental Permits

Colonial was issued environmental permits from DHEC and Spartanburg Water & Sewer Authority that are designated for "industrial activities" like petroleum bulk stations and terminals. Some of these permits have expired or are no longer in place. Colonial's permits include an NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, SCR 000000 (September 1, 2016). Section 1.1.1 of the permit, Facilities Covered, states: "To be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity." The permit specifically references "industrial plant" as follows: "Storm Water Discharges Associated with Industrial Activity – the discharge

from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant."

CONCLUSIONS OF LAW

Standard of Review

This Court has jurisdiction over this case pursuant to section 12-60-460 of the South Carolina Code (2014) and section 1-23-600(A) of the South Carolina Code (Supp. 2020). This is a contested case, and it is heard *de novo. Be Mi, Inc. v. S.C. Dep't of Revenue,* 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014) ("In reaching a decision in a contested violation matter, the ALC serves as the sole finder of face in the de novo contested case proceeding."); *Brown v. S.C. Dep't of Health & Envtl. Control,* 348 S.C. 507, 512, 560 S.E. 2d 410, 413 (2002) (explaining that a contested case before the ALC is "in the nature of a de novo hearing with the presentation of evidence and testimony"). The standard of proof is by a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2020); *see also Sierra Club v. S.C. Dep't of Health & Envtl. Control*, 426 S.C. 236, 257, 826 S.E.2d 595, 67 (2019). Generally, the complaining party bears the burden of proof. *Leventis v. Dep't of Health and Envtl. Control,* 340 S.C. 118, 132-33, 530 S.E. 2d 643, 651 (Ct. App. 2000). Therefore, Colonial has the burden to show by a preponderance of the evidence that the Department's decision was incorrect.

Construction of Tax Exemptions

South Carolina's tax exemption statutes are strictly construed against taxpayers. *See, e.g.*, *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that South Carolina courts have a long-standing policy of "strictly construing tax exemption statutes against the taxpayer"). The burden is on the taxpayer to prove he is entitled to an exemption by bringing himself clearly within the conditions of the statute authorizing the exemption. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing *York Cty. Fair Assoc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)); *see also Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (stating that a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund). This rule of strict construction "simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor" and "[i]t does not mean that we will search for an interpretation in [DOR]'s favor

where the plain and unambiguous language leaves no room for construction." *CFRE*, 395 S.C. at 74–75, 716 S.E.2d at 881.[4]

Failure to Exhaust Administrative Remedies

The Counties make an unusual argument in this case. They argue that because Colonial failed to elicit a "department determination" from **DHEC** (as opposed to **DOR**/the Department), Colonial failed to exhaust its administrative remedies and this case is thus not properly before this Court. The Counties' argument is based on section 12-37-220(A)(8), which allows the Department to seek DHEC's expertise. It states, in relevant part:

> At the request of the Department of Revenue, the Department of Health and Environmental Control **shall investigate** the property of any manufacturer or company, eligible for the exemption [for pollution control equipment] to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, the Department of Health and Environmental Control **shall furnish** the Department of Revenue with a detailed listing of the property that qualifies as pollution control property.

§ 12-37-220(A)(8) (emphasis added). The Counties contend that when the Department requested a determination from DHEC pursuant to section 12-37-220(A)(8) as to whether the disputed property qualified as pollution control equipment, it relinquished to DHEC its authority to make this determination itself. The Counties further argue that when DHEC responded to the Department's request and disclaimed any authority to permit or review the disputed property, Colonial should have (1) challenged DHEC's and (2) forced DHEC to comply with their statutory duty to investigate and provide a detailed list of qualifying property. In effect, the Counties argue that before Colonial could challenge the Department's decision, it had to force DHEC to issue a department determination and exhaust its administrative remedies with DHEC.[5]

I conclude Colonial did not have to exhaust any administrative remedies with DHEC before challenging the Department's decision and coming before this Court. "The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule."[6] *Storm M.H. ex rel. McSwain v. Charleston Cty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). Importantly, the exhaustion principle applies to

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[4] It is also notable that the principle of strict construction is used to resolve issues of statutory interpretation not factual issues. The Court cannot use this principle to liberally or strictly "construe" facts for or against a taxpayer.

[5] The Counties do not cite any statute that specifically requires DOR or Colonial to exhaust any remedy with DHEC before seeking a contested case hearing at the Administrative Law Court.

[6] Notably, "[t]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Ward v. State*, 343 S.C. 14, 17, 538 S.E.2d 245, 246 (2000) (quoting *Vaught v. Waites,* 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989)).

the remedies available within the agency whose decision is challenged. *See Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) ("If this were an appeal from the denial of the permit through the administrative process in which DHEC was the appropriate fact finder, [Petitioner] would clearly be required to exhaust its administrative remedies prior to bringing suit. . . DHEC is not the appropriate fact finder to answer this question."). In this case, the Department, and not DHEC, ultimately decides whether the exemption is granted, and it is the Department from whom a remedy can be sought.

Specifically, nothing in section 12-37-220(A)(8) indicates the Department gives up its fact-finding or decision-making authority with regard to the exemption because it requests advice from DHEC.[7] *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."). In fact, section 12-4-710 of the South Carolina Code (2014) provides the Department "shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State." Thus, since the Department, not DHEC, has authority to grant or deny tax exemptions, the Department has discretion to accept or reject DHEC's advice after asking for its input. *See id.* And, since DHEC rendered an opinion that was clearly favorable to the taxpayer, Colonial, as the taxpayer, had no need to challenge DHEC's decision; rather, it was the Department's adverse decision on the ultimate issue of the exemption that triggered Colonial's need for administrative review.

Overall, the Court finds Colonial did not have a remedy through DHEC and, therefore, Colonial was not required to exhaust its administrative remedies with DHEC before proceeding with the Department's internal administrative process.[8] *See Thomas Sand Co.*, 349 S.C. at 413, 563 S.E.2d at 115 (holding that the doctrine of administrative remedies must be invoked as to the appropriate fact-finder who can provide the remedy sought).

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[7] Indeed, pursuant to section 12-37-220(A)(8), the Department can request that DHEC review "property of any manufacturer or company that is **eligible for the exemption**," which indicates the Department ultimately determines eligibility. (emphasis added).

[8] Presumably, the legislature allowed the Department to seek DHEC's opinion because DHEC is the regulatory body charged with protecting this State's environment from pollution. In this case, although DHEC acknowledged it does not generally regulate pipelines that transport petroleum, etc., its disclaimer did not suggest that its knowledge in this area was inadequate to render a helpful opinion. In other words, DHEC's lack of specialized knowledge in pipeline regulation does not undermine its ability to provide a more educated decision than the Department regarding what property may qualify as pollution control equipment.

DHEC's Letter

DHEC's letter to the Department dated August 27, 2018, shows it sufficiently fulfilled its obligations under section 12-37-220(A)(8) to investigate the disputed property and list which property it believed qualified as pollution control equipment.[9] In particular, DHEC's letter stated that in the context of USTs, which it regulates and which may contain petroleum products, DHEC would characterize pipeline cathodic protection, pipeline coatings, and automatic shut-off valves as pollution control equipment. After analyzing the disputed property more generally, DHEC further concluded for the purpose of the Department's request that the disputed property could be "fairly described as pollution control equipment."

The Counties argue DHEC did not fulfill its obligation under section 12-37-220(A)(8) because this statute describes an **affirmative** duty to physically investigate the claimed property at its location. The Counties' interpretation of section 12-37-220(A)(8) is contrary to the plain language of the statute. *See Hodges v. Rain*ey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). Nothing in section 12-37-220(A)(8) qualifies the type of investigation DHEC must undertake. Moreover, under the facts of this case, it would be senseless to require DHEC to physically visit Colonial's property and, for example, dig up the pipeline where the automatic shut-off valve exists to investigate the valve. The nature of the property at issue in this case makes it appropriate to evaluate the property based on its type because there is no evidence to indicate that individual valve shut-off valves would have different and unique purposes other than their purpose as a type of property. Therefore, I find the Department's request to DHEC to investigate the three types of claimed property in this case was appropriate, and DHEC could sufficiently investigate the claimed property without viewing it *in situ* at Colonial's property.

In their Motion for Reconsideration, the Other Counties also object to this Court's consideration of DHEC's opinion about the disputed property because DHEC disclaimed any authority to regulate the disputed property.[10] The Other Counties likened this Court's consideration of DHEC's opinion to a court rendering a decision even though it does not have the authority to "opine on a dispute." Yet, simply because DHEC does not have authority to regulate

[9] DHEC did not initially fulfill its obligation because it failed to offer an opinion about the disputed property in its first letter responding to the Department's request.

[10] Specifically, the Other Counties note that DHEC indicated "[DHEC] is unable to speak for those [federal] agencies with regard to the purpose of any specific requirements promulgated by those agencies."

pipelines does not mean it does not have the requisite expertise to determine whether property is pollution control equipment or not. In fact, in setting forth that DHEC shall respond to the Department's requests pursuant to section 12-37-220(A)(8), the legislature recognized DHEC's expertise as the government agency responsible for protecting public health and the environment in South Carolina. Moreover, this Court presided over a *de novo* hearing in this case and the Court has the authority, just like the Department had the authority, to determine the weight given to DHEC's opinion. *See Be Mi, Inc.,* 408 S.C. at 297, 758 S.E.2d at 740 ("In reaching a decision in a contested violation matter, the ALC serves as the sole finder of face in the de novo contested case proceeding."). Therefore, I reject the Other Counties' argument that this Court could not consider DHEC's opinion.

Pollution Control Equipment Exemption

Colonial disputes the Department's determination that its pipe coatings, cathodic protection system, and automatic shutoff value are not entitled to the exemption for pollution control equipment for tax years 2017 and 2018.[11] *See* § 12-37-200(A)(8).

The pollution control exemption exempts the following: "all facilities[12] 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 the state or federal government and used in the conduct of their business." § 12-37-220(A)(8).[13] The exemption can be split into four requirements. The first requirement is that the property for which

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[11] The Department initially found that some of Colonial's property qualified for the exemption. The Department contends that although its Government Services Division initially granted the exemption for some of Colonial's property, its analysis was limited to whether the property was used for pollution control, and it did not consider whether the property satisfied the first element of the exemption – whether the claimed property was a facility or equipment of an industrial plant. The Department now asserts that none of Colonial's property is eligible for the exemption because it is not property that is a facility or equipment of an industrial plant. *See* § 12-37-220(A)(8).

[12] Regulation 117-1700.5 defines a "facility" as follows:

> [G]enerally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

S.C. Code Regs. Ann. § 117-1700.5 (2012).

[13] Section 3 of Article X of the South Carolina Constitution likewise provides, in relevant part: "There 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) (West 2020).

the exemption is sought constitutes "facilities or equipment of industrial plants." *Id.* The second requirement is that the facilities or equipment are designed for the "elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external." *Id.* The third requirement is that the facilities or equipment be required by state or federal law and, finally, the fourth requirement is that he facilities or equipment be used in the conduct of the business. *Id.* The Court will address each requirement in turn.

Facilities or Equipment of Industrial Plants

The exemption is for "facilities or equipment" of "industrial plants." § 12-37-220(A)(8). The parties do not contest whether the disputed property qualifies as "facilities or equipment"; the issue is whether Colonial's operations constitute an "industrial plant." However, it is notable that the General Assembly distinguished the equipment from the facilities themselves.

Colonial argues their operations constitute an "industrial plant" under section 12-37-220(A)(8) because their "complex and dynamic" operations involving tank farms, pipelines, boosters, motors, injection equipment, and the processing of Transmix are industrial activities that collectively qualify as a "plant." Colonial thus contends that the definition of "plant" includes its, infrastructure, buildings, and pipeline that is necessary to carry on its industrial operations.

The Department concedes that Colonial's business can be described as "industrial" but argues none of Colonial's property qualifies as a "plant." The Department contends that a "plant" must have some form of production or output based upon its interpretation of the dictionary definitions of "industrial plant" and the "dual-purpose" portion of the exemption that refers to equipment used for "production." Because Colonial's business is transporting fuels from one point to another without engaging in any kind of production, the Department argues Colonial's business cannot constitute and industrial plant. The Department maintains transportation companies like Colonial are treated differently under the tax code than manufacturing companies and other companies that produce a product.[14]

[14] At the summary judgement hearing, this Court determined the Department's interpretation is not entitled to deference because its position has changed during the course of this case. In its original determination in this case, the Department granted Colonial the Pollution Control Equipment Exemption for some of its property, but not for automatic shut-off valves, pipeline cathodic protection, and pipeline coatings. In other words, the Department had to initially determine Colonial's property was "facilities or equipment of industrial plants" or it could not have granted the exemption for any of Colonial's property. Later, in its amended pre-hearing statement, the Department changed its position to now argue none of Colonial's property qualifies for the exemption because none of it is "facilities or equipment of industrial plants." Because the Department's interpretation of "industrial plant" has changed during this case, the Department cannot show its interpretation is a long-standing administrative policy worthy of deference. *See Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530-31 (2010) ("An agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled

Aiken and the Other Counties similarly argue that the exemption was intended for companies engaged in industrial production, not a transportation company like Colonial.[15] They contend the term "industrial plant" must mean the physical location where goods or materials are actually and substantially produced (as opposed to a location where minor modifications to a product occur). Aiken and the Other Counties further argue that the meaning of "industrial plant" is ambiguous, and that ambiguity must be construed against Colonial.

There are no statutes or regulations defining "industrial plant" for the purpose of section 12-37-220(A)(8). In fact, it is difficult to find a definition of "industrial plant" in any statutory law in South Carolina. Moreover, the Department has never formally interpreted the meaning of the phrase "industrial plant." Indeed, Taylor Ingram, the Department's Utility Coordinator who reviewed Colonial's exemption request, could not articulate what the term "industrial plant" means or how it would apply to the property at issue. Therefore, the Court must first determine what "industrial plant" means. However, before the Court explores the specific meaning of the term "industrial plant," the language of the exemption statute indicates whether the legislature intended "industrial plant" to apply only to manufacturers or producers as Respondents' argue.

First, the language of the exemption statute itself signifies the exemption is not limited to manufacturers. In relevant part, section 12-37-220(A)(8) instructs DHEC to investigate "the property of any manufacturer **or company**." (emphasis added). In construing a statute, we presume that no word is superfluous or without meaning. *Sweat*, 379 S.C. at 377, 665 S.E.2d at 651 ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . ." (citation omitted)). Therefore, the words "or company" must refer to a company that is separate and distinct from a "manufacturer" or the terms would be redundant.[16] Similarly, the Court disagrees with Respondent's contention that "company" refers to utilities. If the legislature intended "company" to refer only to utilities, it would have said so. *See*, *e.g.*, § 12-43-220(a)(1) (classifying and assessing ad valorem property taxation of "[a]ll real and personal property owned by or leased to **manufacturers** and utilities and used by the **manufacturer** or utility in the conduct of the business" at ten and one-half percent of the fair

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by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute's plain language.").

[15] The Other Counties argue Colonial's pipelines are akin to wastewater collection pipes (which they would not classify as a "plant") rather than a sewage treatment plant or a manufacturer (which they would classify as plants). However, the Court cannot properly evaluate this comparison without impermissibly contemplating facts not before the Court.

[16] Colonial also argues that reading a manufacturing requirement into the definition of "plant" would render the term manufacturing plant redundant and meaningless.

market value of the property" (emphasis added)). It is reasonable to conclude the breadth of the word "company" is meant to compensate as many companies as possible for adhering to pollution control laws, and perhaps encourage even greater efforts.

Next, Respondents contend that the use of the word "production" in the language of section 12-37-220(A)(8), discussing dual-purpose property, reflects an intention by the legislature to limit the exemption to only property used for production. Section 12-37-220(A)(8) provides that "[f]or equipment that serves a dual purpose of **production** and pollution control," the value of the exemption is reduced based upon a formula (emphasis added). In construing the meaning of this provision, the Court "should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Enos v. Doe*, 380 S.C. 295, 305, 669 S.E.2d 619, 623 (Ct. App. 2008). Reading section 12-37-220(A)(8) as a whole, it would be unreasonable to conclude the legislature would limit the exemption to producers in the last few sentences of the statute while wording the rest of the statute more broadly. Indeed, Respondents' interpretation would require the Court to fixate on the word "production" under the dual-purpose limitation and ignore the use of the word "company" in the same statutory provision. Rather, the legislature clearly recognized that not all pollution control equipment is solely used for that function. In instances in which the equipment is also used for production, the legislature determined an exemption was not authorized. Accordingly, viewing section 12-37-220(A)(8) as a whole, the word "production" does limit the type of business that can receive the exemption but rather limits the property that can receive the exemption.

Having established the statutory language of the exemption includes manufacturers or companies, the Court turns to the meaning of "industrial plant." Here, the legislature used the word "industrial" as an adjective to describe the nature of a "plant" that may receive the exemption. Therefore, in analyzing the meaning of the phrase "industrial plant," the Court must first determine whether Colonial operates a plant, and if so, whether that operation is industrial in nature.[17]

[17] The Department and Aiken took a similar approach and analyzed "industrial" and "plant" separately and then used those definitions to reach an overall meaning for "industrial plant." The Other Counties, however, did not cite any dictionary definitions but rather relied upon the definition of "industrial plant" found in 42 U.S.C.S. § 6326(5). This federal statute does not relate to property tax issues but rather relates to whether energy conservation measures and renewable-resource energy measures were eligible (on a national or regional basis) for financial assistance. I did not find this federal statute to be edifying in this case. Accordingly, I will not address the Other Counties' argument regarding this issue any further.

Plant

"Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002). In Merriam-Webster's Online Dictionary, "plant" is defined as:

> a: the land, buildings, 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 February 8, 2021).

Respondents contend these four definitions support their assertion that Colonial's business is not an industrial plant because some of them reference production and manufacturing. In particular, the Department and Aiken contend the Court should adopt definition (b), which defines a "plant" as a factory or workshop that manufactures a particular product. Since Colonial does not produce or manufacture anything, definition (b) would exclude Colonial from being a "plant" in support of Respondents' position.

Merriam Webster's definitions illustrate the difficulty of interpreting the meaning of a statute when multiple definitions may be applicable. Definition (b) certainly describes **a** common meaning of "plant," but here the question is whether it **the most** applicable definition. To resolve this dilemma, the Court must consider which definition of "plant" the legislature most likely intended to apply in the context of the pollution control exemption statute, not which definition best fits the parties' theories of the case. *See S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 492, 697 S.E.2d 587, 590 (2010) ("Courts should not merely consider the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.").

Here, the most applicable and relevant definition to the statute is definition (a), which defines a "plant" to include the "land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." It is the most applicable not only because it incorporates the adjective "industrial," like section 12-37-220(A)(8), but this definition describes the common conception of a plant as a collection of land, fixtures, and equipment that are utilized

together, much like the statute refers to "facilities and equipment" of an industrial plant.[18] *See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) ("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning."); *Santee Cooper Resort v. South Carolina Pub. Serv. Comm'n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) ("Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation.").

I find definition (b) to be inferior to sub-definition (a) because the pollution control exemption uses the phrase "industrial plant" and, although manufacturing can be a component of an industrial plant, the legislature did not restrict the use of the phrase to that function.[19] *See State v. Sweat*, 379 S.C. 367, 375, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."). In particular, the legislature could have used the phrase "manufacturing plant" in section 12-37-220(A)(8) but did not.

The Court's determination that definition (a) is most applicable does not ignore the implication of definition (c). Indeed, definition (c) recognizes that the breadth of a plant includes the "total" facility not just for production but also for service. However, I conclude neither definitions (c) nor (d) are as appliable as definition (a) because they do not incorporate an industrial aspect or otherwise reflect the language of section 12-37-220(A)(8) as well as definition (a). In particular, nothing in section 12-37-220(A)(8) indicates the legislature intended the exemption to be for "institutions" as described in sub-definition (d).

The Court next turns to the word "industrial."

Industrial

In Merriam-Webster's Online Dictionary, "Industrial" is defined as "of or relating to industry." *Industrial*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industrial (last visited February 8, 2021). "Industry" is defined as:

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[18] Notably, the Court of Appeals of North Carolina relied on Merriam-Webster's definition (a) of "plant" to find that a small, unincorporated business that manufactured pallets qualified as a manufacturing "plant." *Richards v. Jolley*, 208 N.C. App. 436, 441, 703 S.E.2d 467, 470 (2010) (citing the definition of "plant" in Merriam–Webster's Collegiate Dictionary 948 (11th ed.2005)). Like in this case, the statute at issue in the North Carolina case did not define "plant." *See id.*

[19] Significantly, Chapter 28 of Title 12, which imposes user fees on gasoline and diesel fuel, including fuel at a "bulk plant." Section 12-28-110(7) defines "bulk plant" as "a motor fuel **storage and distribution facility** that is not a terminal and from which motor fuel may be removed at a rack." S.C. Code Ann. § 12-28-110(7) (Supp. 2019) (emphasis added). In the context of these user fees, it appears the legislature labeled a storage and distribution facility without a manufacturing component a "plant." *See id.*

> 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 manufacture (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 February 8, 2021).[20] It is unlikely that our legislature intended to adopt definition (a). Definition (a) refers to manufacturing "as a whole" in the context of the "nation's industry." This definition is thus too broad to refer to an exemption for a specific industry in South Carolina.

Definition (b) is also too broad because it would incorporate businesses, like banks, that would not be associated with an "industrial plant" in our common understanding. *See Santee Cooper Resort*, 298 S.C. at 184, 379 S.E.2d at 122 ("Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation."). A business may be part of an industry without being an industrial plant, as explained by the Pennsylvania Supreme Court:

> By no stretch of the imagination could a bank building, a hotel, a theater or any of the other business establishments referred to by plaintiff be considered an industrial plant. It is true that we sometimes speak of 'the movie industry', 'the hotel industry' or 'the banking industry', but that is merely a loose use of language to convey that idea that the particular business is a sizeable one. In spite of that colloquialism, we do not speak of the buildings housing such businesses as 'industrial plants'. . . . The law can do no better than to define an industrial plant as that type of establishment which the ordinary man thinks of as such.

N. Side Laundry Co. v. Bd. of Prop. Assessment, Appeals & Review, Allegheny Cty., 366 Pa. 636, 639–40, 79 A.2d 419, 421 (1951).

On the other hand, definition (c) appears too narrow. Although definition (c) broadly recognizes that industry can include a "craft, art, business, **or** manufacture," it narrows the definition to a "department or branch" of one of those larger industries.

Ultimately, definition (d) is the most applicable to the statute at issue. Definition (d) is also broad, but it captures the essence of what happens at an industrial plant as commonly understood without specifically tying the definition to the "nation's industry" or non-applicable businesses like the banking industry. *See Liberty Mut. Ins. Co.*, 363 S.C. at 622, 611 S.E.2d at 302

[20] The American Heritage Dictionary (1993) contains similar definitions of "plant," "industrial," and "industry."

("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.").[21] Indeed, although not directly related to taxes, our State's statutes governing the Public Service Commission defines the term "industrial user" to include businesses engaged in "processing" and other "related work," not just manufacturing and production. S.C. Code Ann. § 58-3-240(A)(3) ("Industrial user" means any person, corporation, or association which is engaged in the business of manufacturing, processing, assembling, fabricating, or related work.").

The Court nevertheless recognizes that defining "industry" as "systematic labor for some useful purpose" could, indeed, result in a very broad interpretation that would include many business enterprises that would not fit within the term "industrial plant," including banks or restaurants. However, in the context of the exemption at issue, "industrial" and "plant" must be read together. Therefore, the Court must examine whether Colonial's operations are the kind of business commonly understood to be an "industrial plant." But first, the Court will examine whether this State's broader statutory and regulatory scheme illuminates the meaning of "industrial plant" further.

State Statutory and Regulatory Scheme

Respondents argue this State's broader statutory and regulatory scheme shows the legislature intended the exemption to be limited to manufacturers and companies that produce something. Respondents focus on the fact that Colonial is classified as a transportation company rather than a manufacturer, utility, or some other kind of producer.[22] Indeed, article X, section 1 of the South Carolina Constitution (West 2020) and section 12-43-220 of the South Carolina Code (2014), distinguish, for property tax assessment purposes, transportation companies from manufacturing and utility companies. Specifically, they provide an assessment ratio for

[21] Furthermore, Respondent's efforts to limit industry to manufacturing is inconsistent with the fact that pipelines are also an industry. For instance, the North American Industry Classification System (NAICS) includes pipelines as an industry. Office of Mgmt. & Budget, Exec. Office of the President, North American Industry Classification System (2017). The Other Counties referenced the North American Industry Classification System (NAICS) as the standard used by Federal statistical agencies in classifying business establishments. Other states have also used that classification system in analyzing businesses. *See Thoma v. Slinger*, 373 Wis. 2d 766, 895 N.W.2d 854, *aff'd sub nom. Thoma v. Vill. of Slinger*, 381 Wis. 2d 311, 912 N.W.2d 56 (2018); *von Erdmannsdorff v. Indiana Dep't of State Revenue*, 82 N.E.3d 952 (Ind. T.C. 2017); *Opinion of the Justices*, 69 So.3d 847 (Ala. 2011); *Horn v. Tandem Health Care of Fla., Inc.*, 862 So.2d 938, 940 (Fla. Dist. Ct. App. 2004). In fact, in determining the nature of a taxpayer's business, the North Carolina Supreme Court has consulted NAICS. *Midrex Techs., Inc. v. N.C. Dep't of Revenue*, 369 N.C. 250, 253, 794 S.E.2d 785, 789 (2016).

[22] Colonial conceded in its Motion for Reconsideration that it is a transportation company and not a manufacturer.

transportation companies of 9.5% compared to an assessment ratio of 10.5% for manufacturers.[23] Based on these provisions, Respondents argue transportation companies and manufacturing/utility companies are treated differently for property tax assessment purposes.[24]

While it is true that the legislature assesses manufacturers and transporters at different rates for property tax purposes, this does not signify that Colonial is excluded from the pollution control exemption because it is a transportation company. Looking at disparate assessment ratios does not capture the legislative purpose of the pollution control exemption, which presumably is to compensate those who are required to install equipment to prevent or minimize pollution. *See State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1967) ("The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose."). Manufacturers and producers are not the only businesses that need to control pollution. The classification of Colonial's business as a transportation company should not preclude it from receiving the exemption if it meets the statutory requisites.

Respondents next point to regulation 117-1700 of the South Carolina Code of Regulations (2012) to support their conclusion that transportation companies are (1) treated differently than manufacturers and (2) cannot operate a "plant." Regulation 117-1700 was promulgated for property tax assessment purposes. Section 117-1700.4 defines "transportation companies" to

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[23] S.C. Const. Art. X, § 1(1) (West 2020) ("All real and personal property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility or mining operation, in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property."); S.C. Const. Art. X, § 1(2) (West 2020) ("All real and personal property owned by or leased to companies primarily engaged in transportation for hire of persons or property and used by the company in the conduct of such business shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property."); S.C. Code Ann. § 12-43-220(a)(1) (2014) ("All real and personal property owned by or leased to manufacturers and utilities and used by the manufacturer or utility in the conduct of the business must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property."); S.C. Code Ann. § 12-43-220(g) (2014) ("All real and personal property owned by or leased to companies primarily engaged in the transportation for hire of persons or property and used by such companies in the conduct of such business and required by law to be assessed by the department shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.").

[24] Although the Department applies different assessment ratios to manufacturers/utilities and transportation companies, the Department appraises the property of pipelines similarly to utilities for valuation purposes. As authorized by section 12-4-540 of the South Carolina Code (2014), the Department uses the unit valuation method for certain companies including pipelines, railroads, and utilities. The unit valuation method allows the Department to consider a taxpayer's operations as a whole when valuing them for assessment purposes.

include "(1) Railroad companies; (2) **Pipeline companies**; and (3) Express companies." S.C. Regs. Ann. 117-1700.4 (2012) (emphasis added). A later section of the same regulation, section 117-1700.7, defines a "plant site" as:

> A plant site shall consist of all land contiguous to a plant which is related to the overall manufacturing operation. It shall include all land on which personal property is located including but not limited to the following: parking lots, manufacturing areas, buildings, landscaping, **piping**, railroad siding, docking, water sheds, ditching, pollution control facilities, pumping stations, wells, roads, water tanks, areas for ingress and egress, water storage facilities, and all other lands directly related to manufacturing. When possible, a plant site will be one contiguous parcel using legal and or natural boundaries.

S.C. Code Ann. Regs. 117-1700.7 (2012) (emphasis added). Respondents argue that, read together, these sections suggest that a "plant site" is limited to manufacturing site; moreover, a transportation company like Colonial, who is not a manufacturer, cannot operate a "plant site." Respondents further note that Reg. 117-1700.7 suggests plant sites constrained to contiguous piece of property and Colonial's pipelines cannot meet this definition.

Although Respondents are correct that Colonial's operations cannot meet the definition of "plant site" under Regulation 117-1700.7, I find this regulation is narrowly applied only to manufacturers by statute and therefore cannot be used to interpret the exemption at issue, which is not similarly limited to manufacturers. The only time the term "plant site" appears is in section 12-43-220(a)(3) of the South Carolina Code (2014). Section 12-43-220(a)(3) addresses whether office buildings are "used by the manufacturer" in the conduct of their business because they are "located on the premises of or contiguous to the **plant site of the manufacturer**." (emphasis added). Thus, the definition of "plant site" found in Regulation 117-1700.7 does not refer to plant sites generally or industrial plants, but to manufacturing plant sites specifically.[25] Also, neither Reg. 117-1700.4 nor Reg. 117-1700.7 provide that transportation companies cannot be engaged in both transportation and other business activities, such as processing or manufacturing. Indeed, the Department, as well as our courts, have clearly set forth that energy producing utilities may be classified as utilities yet recognized as manufacturers within the tax code. *See*, *e.g.*, S.C. Code Ann. § 12-43-220(a)(1) (2014) (classifying and assessing ad valorem property taxation of "[a]ll real and personal property owned by or leased to **manufacturers** and **utilities** and used by the manufacturer or utility in the conduct of the business" at ten and one-half percent of the fair market value of the property" (emphasis added)). And, in this case, the Court is not addressing the

[25] Even though Regulation 117-1700.7 does not apply, it is notable that the definition of "plant site" includes personal property containing "piping." Colonial's operations obviously include extensive piping.

assessment ratio but rather a specific exemption for a business's use of pollution control equipment.

Finally, Colonial argues that because it would qualify for industrial revenue bonds, it should qualify as an industrial plant. Under section 4-29-10(3) of the South Carolina Code (Supp. 2020), a "Project" eligible for industrial revenue bonds includes

> any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:
>
> (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;
>
> (b) **any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry**, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

(emphasis added). Colonial would qualify for industrial bonds because it engages in the "commercial enterprise" of "storing, warehousing, distributing [and] transporting" refined petroleum, which is the product of industry. However, this statute does not define industrial plant and does not limit the distribution of industrial bonds to industrial plants. Therefore, while the statute may be suggestive with its breadth of application, it is not dispositive and was not considered as part of this Court's reasoning.

"Industrial Plant" Conclusion

I find the term "industrial plant" means the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business that uses systematic labor for some useful purpose. This "useful purpose" is often related to manufacturing or production but is not exclusively related to such. Processing is also a useful industrial function, and Colonial engages in processing, though processing is not its primary function. Colonial more broadly engages in an industry that is commonly considered "industrial." And, notably, the Department concedes Colonial's business is industrial in nature. The bigger issue in this case is whether Colonial's operation constitutes a "industrial **plant**."

Respondents contend Colonial's operation does not fit within the meaning of "industrial plant" because a "plant" must actually and substantially produce goods or materials. Aiken and

the Department argue the Court should have chosen the definitions of "industry" and "plant" that would have resulted in the following definition of "industrial plant": "the land, building, machinery, apparatus, and fixtures employed in carrying on manufacturing activity as a whole." However, to reach this definition Aiken and the Department ignored the part of the definition of "industry" that refers to "the nation's industry." *See Industry*, def. (a), MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited February 8, 2021) (defining "industry" as "manufacturing activity as a whole (the nation's industry)"). The definition must be read in whole, not in pieces. The Court rejected this definition because "the nation's industry" is too broad. The Court finds the Department and Aiken's approach troubling. Reading out a portion of a definition to reach a favorable result would create a false definition and this is an approach the Supreme Court sought to avoid in *CFRE*. 395 S.C. at 74–75, 716 S.E.2d at 881 (2011) (holding strict construction "does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction.").

As set forth above, the dictionary definition of a "plant" includes the "machinery, apparatus, and fixtures" used in carrying on an industrial business. Nothing in this definition requires a plant to produce or manufacture something. Rather, the inclusion of machinery and fixtures shows that Colonial's equipment, such as pumps and pipelines, are consistent with the definition of "plant." Similarly, the modifying adjective "industrial" does not require that a plant produce goods or materials. Indeed, a plant can be "industrial" if it is engaged in business of, or relating to, systematic labor for some useful purpose. Further, as discussed above, nothing in section 12-37-220(a)(8) or the broader statutory or regulatory scheme restricts a "plant" to a manufacturing or production facility.

In its Motion for Reconsideration, Aiken nevertheless argues this Court's interpretation of "industrial plant" is too broad because this definition "could apply to almost any business activity." Respondents also argue that applying the exemption to all companies that are involved in "industry" would extend the application of the exemption beyond what the legislature intended. In particular, they argue Colonial is functionally no different than a railroad company, a trucking company, or a shipping company. Each of these companies transport petroleum products like Colonial and, also like Colonial, they have facilities and use equipment to contain the products they transport to protect their assets, prevent loss of product, and prevent environmental pollution. Based upon these similarities, Respondents argue that approval of the exemption in this case would open the door for railroads, trucking companies, and shipping companies to claim the exemption.

However, simply because the construction of the statute may allow other companies besides manufacturers and producers to utilize the pollution control exemption is not a reason to deny its use. In fact, it would be troubling for this Court to misconstrue this exemption to protect the government from the tax consequences of allowing businesses to lawfully utilize this exemption. Rather, the interpretation of section 12-37-220(A)(8) must be made based upon the language of the statute and not Respondents' concerns as to who may take advantage of its provisions. Moreover, since the purpose of the pollution control exemption is to reward the use of pollution control equipment, it is not unreasonable for the exemption to be broadly applicable since pollution is highly regulated. This conclusion is even more pertinent for a company like Colonial who transports products that are considered hazardous substances which could clearly cause pollution if not contained. *See* 49 C.F.R. § 195.2 (defining "hazardous liquid" to mean "petroleum, petroleum products, anhydrous ammonia, and ethanol or other non-petroleum fuel, including biofuel, which is flammable, toxic, or would be harmful to the environment if released in significant quantities").

Next, the Court must analyze whether Colonial's operations not only fit the technical definition of "industrial plant" but whether its operations meet the common understanding of what is an "industrial plant." This determination involves not just the dictionary meanings of the words "industrial" and "plant," but an application of what the common understanding of an industrial plant is to the facts in this case.

Colonial engages in an industry, petroleum or oil and gas, that is commonly considered "industrial." And, notably, the Department concedes Colonial's business is industrial in nature. In fact, Colonial employs a labor force and various equipment and machines that engage in systematic labor for a useful purpose: the transportation and distribution across South Carolina and the country. As part of the transportation process, Colonial also processes Transmix. Therefore, Colonial's operations are industrial in nature.

The bigger issue in this case is how much of Colonial's operation constitutes a "industrial **plant**." In particular, in this Court's previous summary judgement order, the Court concluded that at least part of Colonial's operations (for example, its tank farms) met the broad definition of "industrial plant" but questioned whether an industrial plant was constrained to one contiguous piece of land or whether a plant could extend beyond those confines. In other words, could pipelines that extend across the state be part of an industrial plant?

In viewing the evidence presented at the hearing, the Court finds Colonial's property—tank farms and pipelines and pump stations—work together as an integrated whole and should be

evaluated as a whole rather than piecemeal. This approach is consistent with the Department's position that the Court should look at the pipeline as a whole instead of zooming in on certain portions of it. This approach also accords with the Department's unit valuation method for pipeline companies, which values the business as a whole rather than considering individual pieces.

When evaluated as a whole, I conclude Colonial's operations constitute an industrial plant. Colonial's pipeline is part of an integrated infrastructure needed to carry on Colonial's industrial business. Even if the pipelines are not confined to a single piece of property, they are contiguous to each other and to the tank farms, booster stations, and pump stations. Indeed, of great significance to this Court is the evidence reflecting the complexity and interconnectivity of Colonial's pipeline operations. Colonial's pumps, motors, valves, manifolds, injection equipment, control systems, and other infrastructure all work together as an integrated unit to transport product through the pipes and to the tank farms. The "booster stations" along the pipelines increase pressure in the pipeline to facilitate movement of the product through the pipeline. Colonial also utilizes three pump stations on Lines 1 and 2, typically with four to five pumps per station, and there are pumps at the tank farms. Additionally, Colonial introduces DRA at its booster facilities, pump stations, tank farms, and stub lines to facilitate smoother and quicker transport. The design and expertise needed to properly inject DRA throughout the pipelines reflects the integrated aspect of Colonial's facilities and, thus, its operation as a plant. Indeed, these various integrated parts of Colonial's operations clearly meet Merriam Webster's definition of a "plant" as "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." *Plant*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/plant (last visited February 8, 2021).

Moreover, as with the operation of many plants, Colonial's control room monitors the pipeline twenty-four hours a day. Every two weeks, Colonial also conducts an aerial inspection of the pipeline corridor by flying over the corridor in a plane. To ensure the product is safely transported, Colonial constantly measures gravity, pressure, and temperature of the products it transports. Equipment is also used to measure and detect leaks. Additionally, devices called "smart PIGS" are used to identify cracks and compromises in the pipeline.

Finally, Colonial addresses products mixing in its pipeline by using optical interface detectors to isolate Transmix. It then either sells the Transmix as a different grade, precisely injects it back into the pipeline, or, upon determining that it cannot use those methods to salvage the fuel, sells the products to an independent processor.

Thus, I find the operations, activities, and processes Colonial engages in not only meet the dictionary definitions of "industrial" and "plant," but they also incorporate the type of activities and materials one would commonly associate with an "industrial plant" based upon its customary meaning. *See Liberty Mut. Ins. Co.*, 363 S.C. at 622, 611 S.E.2d at 302 ("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning."). Therefore, I do not find that the term "industrial plant," as applied in this case, is ambiguous. Because I do not find it to be ambiguous, there is no need to strictly construe the exemption against Colonial.[26] *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."); *see also Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, __, 124 S.E. 761, 765 (1924) ("That rule of strict construction of . . . tax statutes is subordinate to the rule of reasonable, sensible construction, having in view effectuation of the legislative purpose, and does not prevent the courts from calling to their aid all the other rules of construction and giving each its appropriate scope, etc." (internal quotation marks and citations omitted)). Accordingly, the Court concludes Colonial's operations, as a whole, fit within the definition of "industrial plant."

Designed for Pollution Control

For the facilities or equipment of an industrial plant to qualify for the exemption, they must be "designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external." § 12-37-220(A)(8). The exemption further provides that, "[a]t the request of the Department of Revenue, the Department of Health and Environmental Control 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." *Id.* Further, [u]pon investigation of the property, the Department of Health and Environmental Control shall furnish the Department of Revenue with a detailed listing of the property that qualifies as pollution control property." *Id.* The exemption also envisions that facilities or equipment may have a dual use for both production and pollution control. *Id.* In these situations, "the value eligible for the ad valorem exemption is the difference in cost between this equipment

[26] In its Motion for Reconsideration, Aiken suggests the meaning of "industrial plant" in section 12-37-220(A)(8) is ambiguous because "the Court's own analysis of the term 'industrial plant' encompasses 13 pages of the Court's 33-page Order." However, simply because the Court has spent a meaningful amount of time addressing the Respondents' extensive arguments regarding the meaning of "industrial plant" does not mean that the phrase is ambiguous in the context of this case. Defining an undefined term necessarily takes some thought and discussion but an undefined term is not inherently ambiguous.

and equipment of similar production capacity or capability without the ability to control pollution." *Id.*

In this case, as provided by section 12-37-220(A)(8), the Department sought DHEC's input regarding whether pipelines coatings, cathodic protection, and automatic shutoff valves qualified as "pollution control property." In response, DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel acknowledging it did not regulate the items described, but opining that the pipe coatings, cathodic protection, and automatic shut-off valves could be fairly described as pollution control equipment. Specifically, the Department advised:

> Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

As the Court discussed earlier, the Department had the authority to decide whether the property at issue qualified as pollution control equipment; therefore, the Department had discretion to consider DHEC's opinion and to give it whatever weight it saw fit. Nevertheless, Respondents contend DHEC's lack of regulatory authority impugns it ability to opine about the use of the disputed equipment. As already stated, although DHEC does not have regulatory authority over the property at issue, DHEC's staff presumably possesses expertise to evaluate whether the equipment serves a pollution control purpose. Indeed, this presumption is substantiated by the statute's explicit provision for DHEC's input. *See* § 12-37-220(A)(8). Therefore, DHEC's finding that the disputed property "can be fairly described as pollution control equipment" reflects that the property is designed for pollution control. Moreover, DHEC's finding was introduced into evidence and Respondents offered no evidence to dispute it. Furthermore, the fact the disputed property is required by federal law also suggests it serves a pollution control function.

In its Motion for Reconsideration, Colonial clarified it claimed the exemption only for repairs to the pipeline coating and cathodic protection system. Such repairs are required by federal

law. The recoating of the pipeline is an identifiable cost that serves a pollution control function because it helps prevent leaks. Similarly, repairs to the cathodic protection system help Colonial identify leaks and thus prevent product loss and pollution. Further, the automatic shutoff valve limits the extent of potential pollution by allowing Colonial to stop the flow of product through its pipeline upon detecting a leak or spill. Thus, DHEC's findings, along with the uncontroverted testimony from several of Colonial's witnesses, established that pipeline coatings, cathodic protection devices, and the automatic shutoff valve were designed, at least in part, for the elimination, mitigation, prevention, abatement or control of water and air pollution. *See* § 12-37-220(A)(8).

Required by State or Federal Law

Next, to qualify for the exemption the facilities or equipment must be "required by the state or federal government." § 12-37-220(A)(8). Colonial's witnesses testified all of the disputed property is required by federal regulation. And, indeed, the disputed items are required by federal law for pipeline facilities that transport hazardous liquids (petroleum) as follows:

Colonial Installations	**Pipeline Integrity Statutory Requirement**
Pipeline Coatings	49 C.F.R. § 195.557(a)
Cathodic Protection	49 C.F.R. § 195.563(a)
Automatic Shut-Off Valves	49 C.F.R .§ 195.260(a)

In general, 49 C.F.R. § 195 deals with regulating pipelines that transport hazardous liquids, which is defined to mean "petroleum, petroleum products, anhydrous ammonia, and ethanol or other non-petroleum fuel, including biofuel, which is flammable, toxic, or would be harmful to the environment if released in significant quantities." 49 C.F.R. § 195.2; *see also* 49 C.F.R. § 195.1. Pipeline coatings are required by federal law for submerged pipeline to prevent corrosion of the pipeline. 49 C.F.R. § 195.557(a). Corrosion can lead to large or small leaks in the pipes which allows the discharge of petroleum products into the air or water. The automatic shutoff valve allows Colonial to shut off or "control" a line in the event of leakage. Based on the above, I conclude the disputed property meets this requirement of the exemption.

Used in the Conduct of Business

Finally, to qualify for the exemption the facilities or equipment must be "used in the conduct of their business." § 12-37-220(A)(8). Colonial's witnesses testified at length regarding

how the pipeline coatings, cathodic protection devices, and automatic shut-off value at issue support Colonial's business operations. This testimony was uncontroverted. Therefore, I find the property at issue is used in the conduct of Colonial's business. I further conclude that Colonial meets all four requirements to qualify for the exemption. Accordingly, the only issue left for the Court to consider is whether the disputed property has a dual purpose.

Dual Purpose

Section 12-37-220(A)(8) provides that "[f]or 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." (emphasis added). The dual-purpose provision within section 12-37-220(A)(8) directly relates to the method of assessment of pollution control property when that property serves a dual purpose of production and pollution control. If the pollution control property is not used for production, then the special assessment described in this provision does not apply. Here, the equipment at issue is not used to produce a product. In fact, all the parties agree Colonial is not engaged in production. Therefore, the dual-purpose provision in inapplicable to the equipment at issue in this case.

CONCLUSION

I conclude Colonial's disputed pipeline coating repairs, cathodic protection, and automatic shut-off valve are (1) facilities and equipment of an industrial plant; (2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; (3) required by state or federal government; and (4) used in the conduct of Colonial's business. § 12-37-220(A)(8). Therefore, these disputed items meet the initial qualifications to receive the pollution control equipment exemption. *See id.* Furthermore, since the dual-purpose provision of the exemption is inapplicable, the exemption is justified for the pipeline coating repairs, cathodic protection repairs, and automatic shutoff valve because they clearly serve a pollution control function required by law.

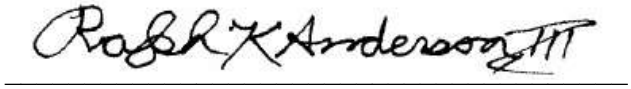
ORDER

IT IS THEREFORE ORDERED that Petitioner's application for the pollution control exemption for pipeline coating repairs is GRANTED for the 2017 and 2018 tax years.

IT IS FURTHER ORDERED that Petitioner's application for the pollution control exemption for cathodic protection repairs is GRANTED for the 2017 and 2018 tax years.

IT IS FURTHER ORDERED that Petitioner's application for the pollution control exemption for the automatic shut-off valve is GRANTED for the 2017 and 2018 tax years.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

February 9, 2021
Columbia, South Carolina

NEXSEN|PRUET

Jim Rourke, J.D., LL.M (Tax)
Member

December 5, 2018

VIA HAND DELIVERY
Jana E. Shealy
Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Colonial Pipeline Company
1185 Sanctuary Parkway, Suite 100
Alpharetta, GA 30009

Dear Ms. Shealy:

Enclosed please find the original and one copy of the Request for Contested Case Hearing Form, along with the $500.00 filing fee for the above-referenced case. Please return clocked copy via our courier.

Thank you for your attention to this matter.

Very truly yours,

Jim Rourke

JR/mw

cc: Marcus D. Antley, III – w/enclosures

FILED
DEC 05 2018
SC ADMIN LAW COURT

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South Carolina Administrative Law Court (SC ALC)

Request for Contested Case Hearing FORM

Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name:	First:	Middle:	☐ Mr. ☐ Miss ☐ Mrs. ☐ Ms.	Docket No. (To Be Completed by ALC)
Colonial Pipeline Company				

Mailing Address:	City:	State and Zip:
1185 Sanctuary Parkway, Suite 100	Alpharetta	GA 30009

Home Number:	Work Number:	Cell Number:	*E-Mail Address:

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No	Name of Attorney: Burnet R. Maybank III / Jim Rourke
Attorney Mailing Address: 1230 Main Street, Suite 700	City, State and Zip: Columbia, SC 29201
Attorney Work Number and Cell Number: 803-540-2048 / 803-540-2030	Attorney E-Mail Address: bmaybank@nexsenpruet.com jrourke@nexsenpruet.com

CASE INFORMATION

Name of Agency that Issued the Decision:
(Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, **you must attach the agency decision.** Is it attached?: ☒ Yes ☐ No	If no, please explain:
Date the decision was issued: 11/19/2018	Date the decision was received: 11/20/2018

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

The taxpayer contests the Department of Revenue's determination that certain pollution control machinery and equipment is not eligible for the pollution control property tax exemption available under S.C. Code 12-37-220(A)(8) and S.C Const. Art. X, Sec. 3(h). The taxpayer requests that this Court determine that the equipment is eligible for the cited exemption for the 2017 and 2018 tax years at issue.

Payment via ☒ Check ☐ Money Order ☐ Cash for $500.00 (applicable **filing fee pursuant to** ALC Rule 71) is being submitted today to the Administrative Law Court via ☐ U.S. Postal Service ☒ Hand-delivery

X _____ December 5, 2018

Your Signature or Signature of Attorney *Date*

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Jim Rourke Date: 12/5/2018 City: Columbia State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

South Carolina Department of Revenue/Office of General Counsel	300A Outlet Pointe Blvd.	Columbia, SC 29210
Name and/or Agency Name	Address	City, State and Zip
Marcus D. Antley, III	300A Outlet Pointe Blvd.	Columbia, SC 29210
Name and/or Agency Name	Address	City, State and Zip

FILED
DEC 05 2018
SC ADMIN LAW COURT

X _____ 12/5/2018

Your Signature or Signature of Attorney *Date*

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

Physical Address:
300A Outlet Pointe Blvd.
Columbia, SC 29210

Mailing Address:
PO Box 12265
Columbia, SC 29211-9979

November 19, 2018

J. Keith Fuqua, Director of Tax
Colonial Pipeline Company
1185 Sanctuary Parkway, Ste. 100
Alpharetta, GA 30009

Re: Department Determination
Colonial Pipeline Company
Periods Involved: 2017 and 2018 Property Tax Years

Dear Mr. Fuqua:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a $500.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: P.O. Box 12265, Columbia, SC 29211-9979.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D. Antley, III

Marcus D. Antley, III
Counsel for Litigation
marcus.antley@dor.sc.gov
803-898-5623

Enclosures
MDA: tm

DEPARTMENT DETERMINATION

Taxpayer:

Colonial Pipeline Company
1185 Sanctuary Parkway, Suite 100
Alpharetta, GA 30009

Periods Involved:

2017 Property Tax Year
2018 Property Tax Year

Matter in Dispute:

Is Colonial Pipeline Company (Taxpayer) entitled to an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014)?

Assessment in Dispute:

Tax Year	Property Tax Assessment[1]	Taxpayer's Proposed Value[2]
2017	$12,621,080.00	Exempt
2018	$13,682,230.00	Exempt

Determination:

The Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8).

Relevant Facts:

1. The Taxpayer is a pipeline company that transports refined petroleum.

2. The personal property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville, Greenwood, Laurens, McCormick, Spartanburg, and York (the "counties involved").

3. On April 19, 2017, the Department of Revenue (the "Department") received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption for pipe

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[1]This only represents the portion of the property tax assessment that is in dispute.

[2]The Taxpayer does not dispute the valuation of the property nor does it dispute the valuation method; rather, the Taxpayer argues that the property in dispute is exempt from ad valorem taxation pursuant to § 12-37-220(A)(8).

coatings, cathodic protection, and automatic shut-off valves.

4. On August 15, 2017, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2017.

5. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017.

6. On September 20, 2017, the Department notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

7. On October 19, 2017, the Department forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

8. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of the property that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

9. The file was subsequently forwarded to the Department's Office of General Counsel for Litigation.

10. On April 23, 2018, the Department received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8).[3]

11. On April 26, 2018, the Department mailed DHEC a letter requesting clarification of whether the claimed property qualified as pollution control equipment.

12. On July 27, 2018, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2018.

13. The Department received correspondence postmarked August 13, 2018 from the Taxpayer protesting the proposed assessment for property tax year 2018.

14. On August 14, 2018, the Department forwarded the 2018 exemption application information to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § on 12-37-220(A)(8).

15. DHEC submitted a letter dated August 27, 2018 to the Department clarifying that the

[3]The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

property claimed for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

Analysis:

When a taxpayer timely files an exemption application, the Department is required to determine whether the property qualifies for the exemption. S.C. Code Ann. § 12-4-710 (2014). This determination is made only after a proper investigation. S.C. Code Ann. § 12-4-730 (2014). It is well established in South Carolina that an exemption of private property is strictly construed – taxation is the rule and exemption is the exception. State v. City of Columbia, 115 S.C. 108, 104 S.E.2d 337 (1920). Exemption statutes are narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. See Owen Indus. Prods., Inc. v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 (1980); S. Soya Corp. of Cameron v. Wasson, 252 S.C. 484, 167 S.E.2d 311 (1969); S. Weaving Co. v. Query, 206 S.C. 307, 34 S.E.2d 51 (1945).

I. The Taxpayer Is Not Entitled To An Ad Valorem Tax Exemption Pursuant To § 12-37-220(A)(8).

South Carolina law provides for a tax on "[a]ll real and personal property in this State . . . ." S.C. Code Ann. § 12-37-210 (2014). This general rule is subject to delineated exceptions which provide tax exemptions for certain property. Section 12-37-220(A)(8) states, in part, that:

> (A) [T]here 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 the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the Department of Health and Environmental Control 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 Department of Health and Environmental Control 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...

The exemption listed in this subsection is generally referred to as a "pollution control" exemption.

To qualify for the pollution control exemption, the claimed property must be: 1) facilities or equipment of industrial plants; 2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; 3) required by state or federal government; and 4) used in the conduct of their business. Here, the claimed property fails the first element because the claimed property is not a facility or equipment of an industrial plant. The Taxpayer is a pipeline company, and all property the Taxpayer submitted as exempt under § 12-37-220(A)(8) is connected to its pipeline. Although § 12-37-220(A)(8) does not define the term industrial plant,[4] S.C. Code Ann. Regs. 117-1700.4 (2012) defines "transportation companies" to include "(1) Railroad companies; (2) Pipeline companies; and (3) Express companies." See also 42 U.S.C.A. § 6326 (West) ("The term 'industrial plant' means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output."); S.C. Code Ann. Regs. 117-1700.7 (2012) ("A plant site shall consist of all land contiguous to a plant which is related to the overall manufacturing operation."). The Taxpayer is more similar to railroads and delivery companies and not a manufacturer whose plants would qualify as industrial plants.

Pursuant to § 12-37-220(A)(8), the Department requested DHEC investigate the claimed property to determine if it qualified as pollution control equipment. In its responses to the Department, DHEC noted that it does not regulate pipelines, but instead federal agencies, including USDOT, regulate interstate petroleum pipelines. In fact, the federal regulations the Taxpayer cites as requiring the claimed property fall under USDOT.[5] This emphasizes that pipelines are transportation systems and not industrial plants. While a petroleum refinery may qualify as an industrial plant, the Taxpayer's pipeline is separate and distinct and merely transports the product. See 40 C.F.R. § 60.41b ("Petroleum refinery means industrial plants as classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.6"). Therefore, the property claimed as exempt is not facilities or equipment of industrial plants. Because exemption statutes are narrowly construed and the Taxpayer has not brought itself squarely within

---

[4]Section 12-37-220(A)(8) does go on to state "property of any manufacturer or company, eligible for the exemption," and therefore industrial plants may be synonymous with manufacturing plants. Further, S.C. Const. art. X, § 1 and S.C. Code Ann. § 12-43-220 (2014) distinguish transportation companies from manufacturing companies for property tax assessments.

[5]The Taxpayer cited the following federal regulations: 49 C.F.R. § 195.557(a) (requires pipeline coatings); 49 C.F.R. § 195.563(a) (requires cathodic protection); and 49 C.F.R. § 195.260(c) (requires automatic shut-off valves).

[6]SIC is now the North American Industry Classification System (NAICS). Pipeline transportation is under NAICS Code 486 while manufacturing is under NAICS Code 31-33.

the parameters of the statute granting the exemption, the Taxpayer is not entitled to an ad valorem tax exemption under § 12-37-220(A)(8) for property tax years 2017 and 2018.

Conclusion:

In South Carolina, exemption statutes are construed narrowly, and a taxpayer bears the burden of bringing itself squarely within the parameters of the statute that grants the exemption. In this case, the Taxpayer failed to carry that burden, and the denial of the property tax exemption is proper.

November 19, 2018

STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

PO Box 12265
Columbia, SC 29211-9979

January 4, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Colonial Pipeline Company vs. South Carolina Department of Revenue
Docket No. 18-ALJ-17-0443-CC

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's Prehearing Statement in connection to the above-referenced matter. Also enclosed is a Proof of Service.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D. Antley, III

Marcus D. Antley, III, Esquire
Counsel for Litigation
Marcus.Antley@dor.sc.gov
803-898-5623

MDA/gjm

Enclosures

c: Burnet R. Maybank, Esquire
James P. Rourke, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	Docket Number: 18-ALJ-17-0443-CC **RESPONDENT'S PREHEARING STATEMENT**

TO: The Honorable Ralph King Anderson, III, Presiding Judge:

Pursuant to ALC Rule 14, and the Order for Prehearing Statements dated January 2, 2019, the South Carolina Department of Revenue (Department) would respond as follows:

1. Nature of this proceeding:

The Petitioner (Taxpayer) has requested a contested case hearing to dispute the Department's Determination which concluded the Taxpayer was not entitled to a pollution control property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014).

2. Statutory provisions conferring subject matter jurisdiction to the Court and other applicable statutes and regulations:

Applicable statutory provisions include:

A. S.C. Code Ann. § 12-4-10 (2014): Creates the Department and gives it the power to administer and enforce the revenue laws of this State.

B. S.C. Code Ann. § 12-37-210 (2014): Imposes a tax on all real and personal property in this State.

C. S.C. Code Ann. 12-4-540 (2014): Grants the Department the power to administer and enforce the appraisal, assessment, and equalization of real and personal property owned or leased to pipelines and used in the conduct of its business.

D. S.C. Code Ann. § 12-4-710 (2014): Grants the Department the power to determine if a property qualifies for a property tax exemption under section 12-37-220.

E. S.C. Code Ann. § 12-4-730 (2014): Grants the Department the power to declare real and personal property qualifying for an exemption from ad valorem taxation as exempt.

F. S.C. Code Ann. § 12-60-450 (2014): Establishes the administrative process after the Department issues an assessment culminating in the Department Determination.

G. S.C. Code Ann. § 1-23-600 (2014): Confers jurisdiction upon the Administrative Law Court to hear this contested tax case.

H. S.C. Code Ann. § 12-60-460 (2014): Creates right for taxpayer to seek relief from Department Determination by requesting a contested case hearing before the Administrative Law Judge Division.

I. Section 12-37-220(A)(8): Provides an exemption from ad valorem taxation pollution control property of industrial plants.

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

Issue:

Is Colonial Pipeline Company (Taxpayer) entitled to an ad valorem property tax exemption pursuant to § 12-37-220(A)(8)?

Expected claims or defenses:

The Department intends to show that the Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8) because the property claimed by the Taxpayer is not facilities or equipment of industrial plants.

4. Action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:

The Department requests that the Court affirm the Department's Determination and uphold the Department's denial of both exemption requests for tax years 2017 and 2018. Please see the Department Determination issued on November 19, 2018, for a more thorough analysis of the issues presented herein.

5. Summary of the facts to be presented at the hearing:

A. The Taxpayer is a pipeline company that transports refined petroleum.

B. The personal property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville,

Greenwood, Laurens, McCormick, Spartanburg, and York (the "counties involved").

C. On April 19, 2017, the Department received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption for pipe coatings, cathodic protection, and automatic shut-off valves.

D. On August 15, 2017, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2017.

E. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017.

F. On September 20, 2017, the Department notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

G. On October 19, 2017, the Department forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

H. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of the property that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

I. The file was subsequently forwarded to the Department's Office of General Counsel for Litigation.

J. On April 23, 2018, the Department received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). [1]

K. On April 26, 2018, the Department mailed DHEC a letter requesting clarification of whether the claimed property qualified as pollution control equipment.

L. On July 27, 2018, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2018.

M. The Department received correspondence postmarked August 13, 2018 from the Taxpayer protesting the proposed assessment for property tax year 2018.

---

[1]The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

N. On August 14, 2018, the Department forwarded the 2018 exemption application information to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § on 12-37-220(A)(8).

O. DHEC submitted a letter dated August 27, 2018 to the Department clarifying that the property claimed for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

The Department anticipates that a motion for summary judgment may be appropriate after discovery is conducted. The Department reserves the right to raise other motions if circumstances warrant such action.

7. List of proposed witnesses and exhibits:

Witnesses:

A. Department custodian of records - member of property division.
B. An expert witness, should the need arise.

The Department reserves the right to supplement its list of witnesses if the need arises.

Exhibits:

A. The Department's Determination dated November 19, 2018.
B. The Taxpayer's request for exemption for 2017.
C. The Taxpayer's request for exemption for 2018.
D. The Department's denial of the exemption for 2017.
E. The Department's denial of the exemption for 2018.
F. DHEC letter dated December 18, 2017
G. DHEC letter dated August 27, 2018

The Department reserves the right to supplement the list of exhibits if the need arises.

8. Statement regarding necessity for discovery:

The Department respectfully requests standard discovery and reserves the right to take depositions as the need may arise.

9. **Estimated length of hearing:**

Four hours.

10. **Dates in the next 120 days when unavailable for a hearing:**

Unavailable dates: January 10, 18, 21, 25; February 1, 5, 11; March 18-20; May 13-24

11. **E-mail address that the Court can use for e-mail correspondence.**

Marcus.Antley@dor.sc.gov

Respectfully submitted,

Marcus D. Antley, III, Esquire (Bar No. 102176)
Counsel for Litigation
Jason P. Luther, Esquire (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
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Attorneys for South Carolina Department of Revenue
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Columbia, South Carolina
January 4, 2019

NEXSEN|PRUET

Jim Rourke, J.D., LL.M (Tax)
Member

January 17, 2019

VIA HAND DELIVERY
The Honorable Ralph King Anderson, III
SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Colonial Pipeline Company v. South Carolina Department of Revenue
Docket No. 18-ALJ-17-0433-CC

Dear Judge Anderson:

Enclosed please find the original and one copy of Petitioner's Prehearing Statement and the related Certificate of Service for filing in the above-referenced action. Please file the original and return the clocked copy to our courier.

Very truly yours,

Jim Rourke

JR/mw

Enclosures – Petitioner's Prehearing Statement

cc: Marcus D. Antley, III, SC Department of Revenue

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Charlotte
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JAN 2019
RECEIVED
S.C. Dept. of Rev.
OGC for Litigation

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, v. South Carolina Department of Revenue, Respondent.	)	Docket No. 18-ALJ-17-0443-CC **PETITIONER'S PREHEARING STATEMENT**

TO: The Honorable Ralph King Anderson, III, Presiding Judge:

Pursuant to the Order for Prehearing Statements dated January 2, 2019 and Rule 14 of the South Carolina Rules of Procedure for the Administrative Law Court, Petitioner Colonial Pipeline Company ("Petitioner") respectfully submits the following Prehearing Statement:

1. The nature of this proceeding:

The Petitioner disputes the Department of Revenue's ("Respondent or "Department") Determination that Petitioner is not entitled to the pollution control property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) for the 2017 and 2018 tax years.

2. Statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations:

a. S.C. Code Ann. § 12-4-10 - creates the Department and gives it the power to administer and enforce the revenue laws of the State.
b. S.C. Code Ann. § 12-37-210 – imposes a tax on all real and personal property in the State.
c. S.C. Code Ann. § 12-4-540 – grants the Department the power to administer and enforce the appraisal, assessment and equalization of real and personal property owned or leased to pipelines and used in the conduct of its business.
d. S.C. Code Ann § 12-4-710 – grants the Department the power to determine if a property qualifies for a property tax exemption under section 12-37-220.

e. S.C. Code Ann § 12-4-730 – grants the Department the power to declare real and personal property qualifying for an exemption from ad valorem taxation as exempt.
f. S.C. Code Ann § 12-60-450 – establishes the administrative process after the Department issues an assessment culminating in the Department Determination.
g. S.C. Code Ann § 1-23-600 – confers jurisdiction upon the Administrative Law Court to hear contested tax cases.
h. S.C. Code Ann § 12-60-460 – creates rights for taxpayers to seek relief from Department Determinations by requested a contested case hearing before the Administrative Law Judge Division.
i. S.C. Code Ann. § 12-37-220(a)(8) – provides an exemption from ad valorem taxation pollution control property of industrial plants.
j. S.C. Const. Art. X, § 3(h) – exempts 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;

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

The sole issue before this Court is whether the Automatic Shut-off Valves, Pipeline Cathodic Protection and Pipeline Coatings identified by Petitioner in its property tax refund claim are exempt from property tax under S.C. Const. Art. X, § 3(h) and § 12-37-220(A)(8) as pollution control property of an "industrial plant." Based on Respondent's Department Determination, its Prehearing Statement, and all substantive communication between Petitioner and Respondent, both parties appear to agree that Petitioner meets all other requirements of the pollution control exemption: that is, the property at issue is (1) designated for the elimination, mitigation, prevention, treatment, abatement, or control of water, air or noise pollution; (2) required by state or federal government; and (3) used in the conduct of Petitioner's business. Accordingly, the sole issue is whether Petitioner's facilities constitute an "industrial plant" in South Carolina, and thus are eligible for the property tax exemption.

4. The action requested of the Court and a detailed statement of the laws which supports the requested action, including statutory and/or case citations;

Petitioner requests this Court determine that the property identified below is exempt from property tax under the pollution control exemption available under S.C. Const. Art. X, § 3(h) and § 12-37-220(A)(8). The constitutional provision exempts from property tax "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." That statute exempts:

> 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 the state or federal government and used in the conduct of their business.

The Department contends that the property claimed as exempt by the Petitioner is "not facilities or equipment of industrial plants."

The term "industrial plant" is not defined for purposes of this property tax exemption. In other contexts, the term has been defined as "any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output." 42 U.S.C. § 6326(5). As described below, Petitioner's pipeline infrastructure is used in connection with and as part of the provision of its ultimate output—i,e., the petroleum products it blends, treats, and transports to customers.

Additionally, note that South Carolina's Pollution Control Act does use the modifier "industrial" in the context of "industrial waste." The term "industrial waste" is defined as "any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the

development of any natural resources." § 48-1-10. This means that in other contexts, the modifier "industrial" by definition refers broadly to "any process of industry, manufacturing, trade or business or from the development of any natural resources." Importantly, "industrial" is not limited to manufacturing operations.

In the context of industrial revenue bonds authorized by statute under § 4-29-10 et seq., South Carolina Code defines a "Project" eligible for industrial revenue bonds as

> any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:
>
> (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;
>
> (b) *any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry*, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;
>
> [...]
>
> (d) any enterprise engaged in commercial business including, but not limited to, wholesale, retail, or other mercantile establishments; residential and mixed use developments of two thousand five hundred acres or more; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities; and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem....

Petitioner very clearly engages in the "commercial enterprise" of "storing, warehousing, distributing [and] transporting" petroleum, which is extracted or *mined* from the ground, so Petitioner very clearly would qualify for *industrial* revenue bonds.

Moreover, Petitioner's operations are located in areas zoned for industrial use by

cities and counties. Finally, Petitioner maintains environmental permits from SCDHEC that by regulation are designated for "industrial activities" like petroleum bulk stations and terminals. Based on the foregoing, Petitioner operations constitute an "industrial plant" and thus are eligible for the property tax exemptions described above.

5. A brief summary of the facts to be presented at the hearing:

Petitioner operates a system of refineries, pipelines, pump and booster stations, and transfer terminals across the eastern seaboard. Petitioner's operations begin in the Gulf Coast and terminate in New York. In the geographical area at issue in this case (which covers small parts of Georgia and North Carolina, as well as South Carolina), Petitioner employees 30-35 operators and technicians on a full-time basis to oversee operations, run its facilities, make repairs, and respond to issues as needed.

While the Department characterizes the Petitioner as a simple pipeline company, Petitioner's operations are far more complex and dynamic. For example, Petitioner also is involved in the blending of fuel on its pipeline. In addition, every 50-60 miles, Petitioner operates a booster station on the line that increases pressure in the pipeline system and allows for the more efficient transfer of petroleum.

Petitioner also has a number of tank farms along the line, which strip product coming from the main line and direct it for local deliveries. Each of these tank farms has complex system of pumps, motors, and other industrial infrastructure necessary to move product. This means Petitioner also operates a number of subsidiary or stub lines. Once such subsidiary line has a terminal in North Augusta. The terminals also contain complex infrastructure to ensure the proper transfer of product to customers, including meters, valves, and measuring equipment.

In addition to the refining described above, Petitioner has blending operations across the system. It also purifies product on certain subsidiary lines to create salable product. Petitioner also adds products along the line. For example, it injects Drag Resisting Agent (DRA) to the product. It also operates chillers along the line, which cool the product to ensure safe transportation. It also has significant butane and biodiesel blending operations. Throughout the transfer process, Petitioner has sophisticated infrastructure, which allows for the constant quality testing of the product.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

Petitioner may file a motion for summary judgment. Summary judgment is proper when (1) there is no issue as to any material fact and (2) the moving party is entitled to a judgment as a matter of law. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000); Rule 56(c), SCRCP. Petitioner believes the facts are largely undisputed, and that this issue may be decided as a matter of law.

7. A list of proposed witnesses and exhibits:

A. Witnesses:

Potential fact witnesses include:

- Keith Fuqua – Director of Tax
- Jeffrey Pitus – Area Operations Manager
- Roger Madden – Lead Operator, Belton, SC facility
- Phillip Martin – Lead Technician, Belton, SC facility
- Thomas Michael Johnson – Lead Operator, Charlotte, NC facility
- Bob Davis – Lead Technician, Charlotte, NC facility
- Josh Black – Senior Operator
- Peter White – Senior Operator
- Andy White – Senior Technician
- David Pearson – Director of Asset Integrity
- Josh Stanley – System Integrity Department
- Robert Hughes – Environmental Permitting

Petitioner anticipates calling an expert witness, should the need arise.

B. Exhibits:

Petitioner anticipates providing the following exhibits:

- The Department's Determination dated November 19, 2018
- The Petitioner's request for exemption for 2017
- The Petitioner's request for exemption for 2018
- The Department's denial of the exemption for 2017
- The Department's denial of the exemption for 2018
- DHEC letter dated December 18, 2017
- DHEC letter dated August 27, 2018
- DHEC permits for storm water discharges associated with industrial activities

8. A statement regarding the necessity for discovery, if any:

The Petitioner anticipates standard discovery, but reserves the right to take depositions as the need may arise.

9. The estimated length of the hearing:

One day.

10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing:

Counsel for Petitioner is not available:

- March 1, 5, 7, 8, 11, 12, 13, 14, 15
- May 30, 31

11. An e-mail address where you can be reached:

bmaybank@nexsenpruet.com

jrourke@nexsenpruet.com

RESPECTFULLY SUBMITTED,

Burnet R. Maybank, III
Jim Rourke
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803.771.8900

Attorneys for Petitioner
Colonial Pipeline Company

January 17, 2019
Columbia, South Carolina

KOZLAREK LAW LLC

MICHAEL E. KOZLAREK SCCED
Admitted: SC, GA, NC, VA
Mobile: 803.312.3199
SC: 864.729.1931
GA: 470.333.2245

March 20, 2019

By United States Postal Service
The Honorable Ralph King Anderson, III
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 244
Columbia, South Carolina 29201

Re: ***Colonial Pipeline Company v. South Carolina Department of Revenue***
Docket No., 18-ALJ-17-0433-CC

Dear Judge Anderson:

On behalf of Abbeville County and Anderson County, please find enclosed an original and one copy of the Consolidated Motion to Intervene for Abbeville County and Anderson County with related Certificate of Service for the referenced Contested Case.

Please file the original and return a clocked copy in the self-addressed, stamped, envelope.

Do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Michael E. Kozlarek

Enclosures: stated

cc: Burnett R. Maybank, III, Esq.
Jim Rourke, Esq.
Jason Luther, Esq.
Marcus D. Antley, III, Esq.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue; Respondent.	Docket No. 18-ALJ-17-0433-CC **CONSOLIDATED MOTION TO INTERVENE FOR ABBEVILLE COUNTY AND ANDERSON COUNTY**

Abbeville County and Anderson County (collectively, "Taxing Entities") move under South Carolina Administrative Law Court Rules ("SCALCR"), Rule 20 for an order permitting intervention in the captioned matter with all rights and duties to respond and participate as afforded the current, named parties of Colonial Pipeline Company ("Colonial") and the South Carolina Department of Revenue ("Department").

I. BACKGROUND

As the Taxing Entities understand the situation, Colonial requested an exemption from the Department regarding 100% of its "pipeline" property. The Department denied Colonial's request and issued a final Department Determination on or about November 19, 2018. Colonial filed a request for contested case hearing with the Administrative Law Court on or about December 5, 2018 ("Request"). In its Request, Colonial "contests the Department of Revenue's determination that certain pollution control machinery and equipment is not eligible for the pollution control property tax exemption available under S.C. Code 12-37-220(A)(8) and S.C Const. Art. X, Sec. 3(h). [Colonial] requests that this Court determine that the equipment is eligible for the cited exemption for the 2017 and 2018 tax years at issue."

The property in dispute is located in numerous jurisdictions in South Carolina, including the Taxing Entities' jurisdictions. Although the Taxing Entities agree with the result of the final Department Determination, the requested property tax exemption would trigger a significant loss of future property tax

revenue and could create significant current refund liabilities for the Taxing Entities.

Accordingly, to protect their revenue interests, the Taxing Entities seek to intervene in the current dispute.

II. ANALYSIS FOR GRANTING THE MOTION TO INTERVENE

Under Rule 20B, SCALCR:

> Any person may intervene in a pending contested case hearing on a showing that:
>
> (1) the movant will be aggrieved or adversely affected by the final order;
>
> (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;
>
> (3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

In deciding a Motion to Intervene, the Court must begin with the premise that intervening "should be liberally permitted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Electric Coop. Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). The three factors of Rule 20 are addressed in light of this judicial preference for liberal permission of intervention.

A. The Taxing Entities Will Be Aggrieved or Adversely Effected by the Court's Final Order

In deciding if the intervening party will be "aggrieved," the inquiry is whether "without its intervention, the disposition of the case may impair or impede [the moving party's] . . . ability to protect its interest [not such that] . . . a party need . . . prove that it would be bound in a res judicata sense by the judgment, [but] only that it would have difficulty adequately protecting its interests if not allowed to intervene." *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 190, 394 S.E.2d at 715. Here, by not being allowed to intervene, the Taxing Entities would suffer substantial financial losses directly stemming from the property tax exemptions in dispute—a result establishing the Taxing Entities would have "difficulty adequately protecting [their] interests if not allowed to intervene."

Here, an adverse decision imposes no revenue loss, either prospective or retrospective, to the

Department. Not so for the Taxing Entities.

The requested property tax exemption would create lost revenue for the Taxing Entities in all future years and retrospectively in the form of potential refunds claimed for at least tax years 2017 and 2018. S.C. Code Ann. § 12-60-2140(C) ("After a final determination, . . . a corrected property tax assessment must be made and entered [with t]he overpayment of tax . . . refunded together with interest."). The addition of the Taxing Entities as parties to this matter would provide the Taxing Entities with the opportunity to protect themselves from these potential losses.

B. The Taxing Entities are Entitled to Intervene to Protect their Revenue Interests

The property tax paid on the property in dispute here is a property tax paid to the Taxing Entities and, in part, a property tax paid to all other taxing entities with authority to impose property taxes on the property. S.C. Code Ann. § 12-45-70(A) ("All [property] taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year [with t]he county treasurer, acting under the direction and supervision of the department, [to] . . . collect the taxes."). The Taxing Entities rely on property tax revenue for funding their annual budgets. *See, e.g.*, S.C. Code Ann. § 4-9-140 ("County council shall adopt annually . . . operating and capital budgets . . . and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted."). Thus, the property tax revenue ultimately impacted by this Court's decision will affect the Taxing Entities' ability to provide for its mission of providing governmental services. *See, e.g., Id.* ("Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements.").

Accordingly, the Taxing Entities should be entitled to intervene to protect their revenue interests. *See, e.g., Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 7 n.2, 698 S.E.2d 612, 614 n.2 (2010) (permitting a neighbor to intervene

C. Intervention by the Taxing Entities Will Not Prejudice the Existing Parties nor the Proceedings.

The contested case was requested approximately three months ago. The Taxing Entities are prepared

to comply with any existing scheduling order regarding the preparation for presentation of their position in this controversy. The Taxing Entities believe no undue delay results from their intervention because intervention.

Respectfully submitted,

KOZLAREK LAW LLC

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Counsel for the Taxing Entities

Greenville, South Carolina
March 20, 2019

KOZLAREK LAW LLC

MICHAEL E. KOZLAREK SCCED
Admitted: SC, GA, NC, VA
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GA: 470.333.2245

May 17, 2019

By United States Postal Service
The Honorable Ralph King Anderson, III
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 244
Columbia, South Carolina 29201

Re: ***Colonial Pipeline Company v. South Carolina Department of Revenue***
Docket No., 18-ALJ-17-0433-CC

Dear Judge Anderson:

On behalf of Greenville County, please find enclosed an original and one copy of the Motion to Intervene for Greenville County with related Certificate of Service and $50.00 Motion Fee for the referenced Contested Case.

Please file the original and return a clocked copy in the self-addressed, stamped, envelope.

Do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Michael E. Kozlarek

Enclosures: stated

cc: Burnett R. Maybank, III, Esq.
Jim Rourke, Esq.
Jason Luther, Esq.
Marcus D. Antley, III, Esq.

COPY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue; Respondent. Abbeville County and Anderson County, Intervenors.	)	Docket No. 18-ALJ-17-0433-CC **MOTION TO INTERVENE FOR GREENVILLE COUNTY**

Greenville County (collectively, "Greenville") moves under South Carolina Administrative Law Court Rules ("SCALCR"), Rule 20 for an order permitting intervention in the captioned matter with all rights and duties to respond and participate as afforded the current, named parties of Colonial Pipeline Company ("Colonial"), the South Carolina Department of Revenue ("Department"), and prior Intervenors Abbeville County and Anderson County.

I. BACKGROUND

As Greenville understands the situation, Colonial requested an exemption from the Department regarding 100% of its "pipeline" property. The Department denied Colonial's request and issued a final Department Determination on or about November 19, 2018. Colonial filed a request for contested case hearing with the Administrative Law Court on or about December 5, 2018 ("Request"). In its Request, Colonial "contests the Department of Revenue's determination that certain pollution control machinery and equipment is not eligible for the pollution control property tax exemption available under S.C. Code 12-37-220(A)(8) and S.C Const. Art. X, Sec. 3(h). [Colonial] requests that this Court determine that the equipment is eligible for the cited exemption for the 2017 and 2018 tax years at issue."

The property in dispute is located in numerous jurisdictions in South Carolina, including Greenville's jurisdiction. Although Greenville agrees with the result of the final Department Determination, the requested property tax exemption would trigger a significant loss of future property tax revenue and could

create significant current refund liabilities for Greenville.

Accordingly, to protect its revenue interests, Greenville seeks to intervene in the current dispute.

II. ANALYSIS FOR GRANTING THE MOTION TO INTERVENE

Under Rule 20B, SCALCR:

> Any person may intervene in a pending contested case hearing on a showing that:
>
> (1) the movant will be aggrieved or adversely affected by the final order;
>
> (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;
>
> (3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

In deciding a Motion to Intervene, the Court must begin with the premise that intervening "should be liberally permitted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Electric Coop. Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). The three factors of Rule 20 are addressed in light of this judicial preference for liberal permission of intervention.

A. Greenville Will Be Aggrieved or Adversely Effected by the Court's Final Order

In deciding if the intervening party will be "aggrieved," the inquiry is whether "without its intervention, the disposition of the case may impair or impede [the moving party's] . . . ability to protect its interest [not such that] . . . a party need . . . prove that it would be bound in a res judicata sense by the judgment, [but] only that it would have difficulty adequately protecting its interests if not allowed to intervene." *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 190, 394 S.E.2d at 715. Here, by not being allowed to intervene, Greenville would suffer substantial financial losses directly stemming from the property tax exemptions in dispute—a result establishing Greenville would have "difficulty adequately protecting [its] interests if not allowed to intervene."

Here, an adverse decision imposes no revenue loss, either prospective or retrospective, to the Department. Not so for Greenville.

The requested property tax exemption would create lost revenue for Greenville in all future years and

retrospectively in the form of potential refunds claimed for at least tax years 2017 and 2018. S.C. Code Ann. § 12-60-2140(C) ("After a final determination, . . . a corrected property tax assessment must be made and entered [with t]he overpayment of tax . . . refunded together with interest."). The addition of Greenville as a party to this matter would provide Greenville with the opportunity to protect itself from these potential losses.

B. Greenville is Entitled to Intervene to Protect its Revenue Interests

The property tax paid on the property in dispute here is a property tax paid to Greenville and, in part, a property tax paid to all other taxing entities with authority to impose property taxes on the property. S.C. Code Ann. § 12-45-70(A) ("All [property] taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year [with t]he county treasurer, acting under the direction and supervision of the department, [to] . . . collect the taxes."). Greenville relies on property tax revenue for funding its annual budget. *See, e.g.*, S.C. Code Ann. § 4-9-140 ("County council shall adopt annually . . . operating and capital budgets . . . and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted."). Thus, the property tax revenue ultimately impacted by this Court's decision will affect Greenville's ability to continue its mission of providing governmental services. *See, e.g., Id.* ("Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements.").

Accordingly, Greenville should be entitled to intervene to protect its revenue interests. *See, e.g., Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 7 n.2, 698 S.E.2d 612, 614 n.2 (2010) (permitting a neighbor to intervene in a dock-permitting dispute).

C. Intervention by Greenville Will Not Prejudice the Existing Parties nor the Proceedings.

The contested case was requested approximately five months ago. To Greenville's knowledge, only one set of four (basic) interrogatories have been served on or responded to by any party. Greenville is prepared to comply with any existing scheduling order regarding the preparation for presentation of its position in this controversy, including Colonial's proposed request to continue the hearing in this matter

until September 2019. Greenville believes no undue delay results from its intervention. Moreover, by granting Greenville's motion to intervene, this Court will promote judicial economy by consolidating Greenville's and the other Intervenors' arguments, which may be similar, into a single case.

Respectfully submitted,

KOZLAREK LAW LLC

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Counsel for Greenville County

Greenville, South Carolina
May 17, 2019

Parker Poe

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Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

May 28, 2019

VIA UNITED STATES MAIL
The Honorable Ralph K. Anderson, III
Clerk of Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Colonial Pipeline Company v. South Carolina Department of Revenue, et al.
Docket No. 18-ALJ-17-0433-CC

Dear Judge Anderson:

Enclosed please find the original and one (1) copy of *the Taxing Entities' Consolidated Motion to Intervene for Aiken County and Laurens County* in connection with the above-referenced matter. Please file the original and return a file stamped copy in the enclosed self-addressed envelope.

With best regards, I am

Sincerely,

Walter H. Cartin (CKD)
Walter H. Cartin

WHC/ckd
Enclosures
cc: Burnett R. Maybank, III, Esquire (*via US Mail*)
Jim Rourke, Esquire *(via US Mail)*
Jason Luther, Esquire *(via US Mail)*
Marcus D. Antley, III, Esquire *(via US Mail)*
Michael E. Kozlarek, Esquire *(via US Mail)*

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue; Abbeville County; Anderson County; and Greenville County, Respondents.	Docket No. 18-ALJ-17-0433-CC **CONSOLIDATED MOTION TO INTERVENE FOR AIKEN COUNTY AND LAURENS COUNTY**

Aiken County and Laurens County (collectively, the "Taxing Entities") move pursuant to Rule 20 of the South Carolina Administrative Law Court Rules ("SCALCR"), for an order permitting intervention in the above-captioned matter with all rights and duties to respond and participate as afforded the current, named parties of Colonial Pipeline Company ("Colonial"), the South Carolina Department of Revenue ("Department"), Abbeville County, South Carolina, and Anderson County, South Carolina, and Greenville County, South Carolina.

I. Background

As the Taxing Entities understand the situation, Colonial requested an exemption from the Department regarding 100% of its "pipeline" property. The Department denied Colonial's request and issued a final Department Determination on or about November 19, 2018. Colonial filed a request for contested case hearing with the Administrative Law Court on or about December 5, 2018 ("Request"). In its Request, Colonial "contests the Department of Revenue's determination that certain pollution control machinery and equipment is not eligible for the pollution control property tax exemption available under S.C. Code 12-37-220(A)(8) and S.C Const. Art. X, Sec. 3(h). [Colonial] requests that this Court determine that the equipment is

eligible for the cited exemption for the 2017 and 2018 tax years at issue."

The property in dispute is located in numerous jurisdictions in South Carolina, including the Taxing Entities' jurisdictions. Although the Taxing Entities agree with the result of the final Department Determination, the requested property tax exemption, if granted, would trigger a loss of future property tax revenue and could create current refund liabilities for the Taxing Entities.

Accordingly, to protect their revenue interests, the Taxing Entities seek to intervene in the current dispute.

II. Analysis for Granting the Motion to Intervene

Under Rule 20(B), SCALCR, any person may intervene in a pending contested case hearing on a showing that:

> (1) the movant will be aggrieved or adversely affected by the final order;
>
> (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;
>
> (3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

In deciding a Motion to Intervene, the Court must begin with the premise that intervening "should be liberally permitted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Electric Coop. Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). The three factors of Rule 20 are addressed in light of this judicial preference for liberal permission of intervention.

A. The Taxing Entities Will Be Aggrieved or Adversely Effected by the Court's Final Order.

In deciding if the intervening party will be "aggrieved," the inquiry is whether "without its intervention, the disposition of the case may impair or impede [the moving party's] . . . ability

to protect its interest [not such that] . . . a party need . . . prove that it would be bound in a res judicata sense by the judgment, [but] only that it would have difficulty adequately protecting its interests if not allowed to intervene." *Berkeley Elec. Co-op., Inc.,* 302 S.C. at 190, 394 S.E.2d at 715. Here, by not being allowed to intervene, the Taxing Entities could suffer financial losses directly stemming from the property tax exemptions in dispute—a result establishing the Taxing Entities would have "difficulty adequately protecting [their] interests if not allowed to intervene."

Here, an adverse decision imposes no revenue loss, either prospective or retrospective, to the Department. This is not the case for the Taxing Entities.

The requested property tax exemption would create lost revenue for the Taxing Entities in all future years and retrospectively in the form of potential refunds claimed for at least tax years 2017 and 2018. S.C. Code Ann. § 12-60-2140(C) ("After a final determination, . . . a corrected property tax assessment must be made and entered [with t]he overpayment of tax . . . refunded together with interest."). The addition of the Taxing Entities as parties to this matter would provide the Taxing Entities with the opportunity to protect themselves from these potential losses.

B. The Taxing Entities are Entitled to Intervene to Protect their Revenue Interests.

The property tax paid on the property in dispute here is a property tax paid to the Taxing Entities and, in part, a property tax paid to all other taxing entities with authority to impose property taxes on the property. S.C. Code Ann. § 12-45-70(A) ("All [property] taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year [with t]he county treasurer, acting under the direction and supervision of the department, [to] . . . collect the taxes."). The Taxing Entities rely on property tax revenue for funding their annual budgets. *See, e.g.*, S.C. Code Ann. § 4-9-140 ("County council shall adopt

annually . . . operating and capital budgets . . . and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted."). Thus, the property tax revenue ultimately impacted by this Court's decision will affect the Taxing Entities' ability to provide for its mission of providing governmental services. *See, e.g., Id.* ("Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements.").

Accordingly, the Taxing Entities should be entitled to intervene to protect their revenue interests. *See, e.g., Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 7 n.2, 698 S.E.2d 612, 614 n.2 (2010) (permitting a neighbor to intervene).

C. Intervention by the Taxing Entities Will Not Prejudice the Existing Parties or the Proceedings.

The contested case was requested approximately five months ago. It is the Taxing Entities' understanding that the hearing in this matter is set for September 2019. The Taxing Entities are prepared to comply with any existing scheduling order regarding the preparation for presentation of their position in this controversy. The Taxing Entities believe no undue delay would result from their intervention.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

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J. Evan Phillips, SC Bar #103679
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Attorneys for the Taxing Entities

May 28, 2019
Columbia, South Carolina

KOZLAREK LAW LLC

MICHAEL E. KOZLAREK SCCED
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May 28, 2019

By United States Postal Service
The Honorable Ralph King Anderson, III
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 244
Columbia, South Carolina 29201

Re: Colonial Pipeline Company v. South Carolina Department of Revenue
Docket No., 18-ALJ-17-0433-CC

Dear Judge Anderson:

On behalf of York County, please find enclosed an original and one copy of the Motion to Intervene for York County with related Certificate of Service and $50.00 Motion Fee for the referenced Contested Case.

Please file the original and return a clocked copy in the self-addressed, stamped, envelope.

Do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Michael E. Kozlarek

Enclosures: stated

cc: Burnett R. Maybank, III, Esq.
Jim Rourke, Esq.
Jason Luther, Esq.
Marcus D. Antley, III, Esq.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue; Respondent. Abbeville County and Anderson County, Intervenors.	)	Docket No. 18-ALJ-17-0433-CC **MOTION TO INTERVENE FOR YORK COUNTY**

York County ("York") moves under South Carolina Administrative Law Court Rules ("SCALCR"), Rule 20 for an order permitting intervention in the captioned matter with all rights and duties to respond and participate as afforded the current, named parties of Colonial Pipeline Company ("Colonial"), the South Carolina Department of Revenue ("Department"), and prior Intervenors Abbeville County and Anderson County. York understands there is an additional motion to intervene that has been filed by Greenville County, South Carolina, on which this Court has not yet ruled.

I. BACKGROUND

As York understands the situation, Colonial requested an exemption from the Department regarding 100% of its "pipeline" property. The Department denied Colonial's request and issued a final Department Determination on or about November 19, 2018. Colonial filed a request for contested case hearing with the Administrative Law Court on or about December 5, 2018 ("Request"). In its Request, Colonial "contests the Department of Revenue's determination that certain pollution control machinery and equipment is not eligible for the pollution control property tax exemption available under S.C. Code 12-37-220(A)(8) and S.C Const. Art. X, Sec. 3(h). [Colonial] requests that this Court determine that the equipment is eligible for the cited exemption for the 2017 and 2018 tax years at issue."

The property in dispute is located in numerous jurisdictions in South Carolina, including York's jurisdiction. Although York agrees with the result of the final Department Determination, the requested

property tax exemption would trigger a loss of future property tax revenue and could create significant current refund liabilities for York.

Accordingly, to protect its revenue interests, York seeks to intervene in the current dispute.

II. ANALYSIS FOR GRANTING THE MOTION TO INTERVENE

Under Rule 20B, SCALCR:

> Any person may intervene in a pending contested case hearing on a showing that:
>
> (1) the movant will be aggrieved or adversely affected by the final order;
>
> (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene;
>
> (3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

In deciding a Motion to Intervene, the Court must begin with the premise that intervening "should be liberally permitted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Electric Coop. Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). The three factors of Rule 20 are addressed in light of this judicial preference for liberal permission of intervention.

A. York Will Be Aggrieved or Adversely Effected by the Court's Final Order

In deciding if the intervening party will be "aggrieved," the inquiry is whether "without its intervention, the disposition of the case may impair or impede [the moving party's] . . . ability to protect its interest [not such that] . . . a party need . . . prove that it would be bound in a res judicata sense by the judgment, [but] only that it would have difficulty adequately protecting its interests if not allowed to intervene." *Berkeley Elec. Co-op., Inc.,* 302 S.C. at 190, 394 S.E.2d at 715. Here, by not being allowed to intervene, York would suffer financial losses directly stemming from the property tax exemptions in dispute—a result establishing York would have "difficulty adequately protecting [its] interests if not allowed to intervene."

Here, an adverse decision imposes no revenue loss, either prospective or retrospective, to the Department. Not so for York.

The requested property tax exemption would create lost revenue for York in all future years and

retrospectively in the form of potential refunds claimed for at least tax years 2017 and 2018. S.C. Code Ann. § 12-60-2140(C) ("After a final determination, . . . a corrected property tax assessment must be made and entered [with t]he overpayment of tax . . . refunded together with interest."). The addition of York as a party to this matter would provide York with the opportunity to protect itself from these potential losses.

B. York is Entitled to Intervene to Protect its Revenue Interests

The property tax paid on the property in dispute here is a property tax paid to York and, in part, a property tax paid to all other taxing entities with authority to impose property taxes on the property. S.C. Code Ann. § 12-45-70(A) ("All [property] taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year [with t]he county treasurer, acting under the direction and supervision of the department, [to] . . . collect the taxes."). York relies on property tax revenue for funding its annual budget. *See, e.g.*, S.C. Code Ann. § 4-9-140 ("County council shall adopt annually . . . operating and capital budgets . . . and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted."). Thus, the property tax revenue ultimately impacted by this Court's decision will affect York's ability to continue its mission of providing governmental services. *See, e.g., Id.* ("Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements.").

Accordingly, York should be entitled to intervene to protect its revenue interests. *See, e.g., Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 7 n.2, 698 S.E.2d 612, 614 n.2 (2010) (permitting a neighbor to intervene in a dock-permitting dispute).

C. Intervention by York Will Not Prejudice the Existing Parties nor the Proceedings.

The contested case was requested approximately five months ago. To York's knowledge, only one set of four (basic) interrogatories have been served on or responded to by any party. York is prepared to comply with any existing scheduling order regarding the preparation for presentation of its position in this controversy, including the Court's setting the hearing in this matter for September 24-26, 2019. York believes no undue delay results from its intervention. Moreover, by granting York's motion to intervene, this Court will promote judicial economy by consolidating York's and the other Intervenors' arguments,

which may be similar, into a single case.

Respectfully submitted,

KOZLAREK LAW LLC

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Counsel for York County

Greenville, South Carolina
May 28, 2019

STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE

OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

PO Box 12265
Columbia, SC 29211-9979

June 19, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Colonial Pipeline Company vs. South Carolina Department of Revenue
Docket No. 18-ALJ-17-0443-CC

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's Amended Prehearing Statement in connection to the above-referenced matter. Also enclosed is a Proof of Service. Please note that the only substantive change is in the Department's answer to question 4.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D Antley III

Marcus D. Antley, III, Esquire
Counsel for Litigation
Marcus.Antley@dor.sc.gov
803-898-5623

MDA/tm

Enclosures

c: Burnet R. Maybank, Esquire
James P. Rourke, Esquire
Michael E. Kozlarek, Esquire
Walter H. Cartin, Esquire
Madison Felder, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent.	Docket Number: 18-ALJ-17-0443-CC **RESPONDENT'S AMENDED PREHEARING STATEMENT**

TO: The Honorable Ralph King Anderson, III, Presiding Judge:

Pursuant to ALC Rule 14, and the Order for Prehearing Statements dated January 2, 2019, the South Carolina Department of Revenue (Department) would respond as follows:

1. Nature of this proceeding:

The Petitioner (Taxpayer) has requested a contested case hearing to dispute the Department's Determination which concluded the Taxpayer was not entitled to a pollution control property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014).

2. Statutory provisions conferring subject matter jurisdiction to the Court and other applicable statutes and regulations:

Applicable statutory provisions include:

A. S.C. Code Ann. § 12-4-10 (2014): Creates the Department and gives it the power to administer and enforce the revenue laws of this State.

B. S.C. Code Ann. § 12-37-210 (2014): Imposes a tax on all real and personal property in this State.

C. S.C. Code Ann. 12-4-540 (2014): Grants the Department the power to administer and enforce the appraisal, assessment, and equalization of real and personal property owned or leased to pipelines and used in the conduct of its business.

D. S.C. Code Ann. § 12-4-710 (2014): Grants the Department the power to determine if a property qualifies for a property tax exemption under section 12-37-220.

E. S.C. Code Ann. § 12-4-730 (2014): Grants the Department the power to declare real and personal property qualifying for an exemption from ad valorem taxation as exempt.

F. S.C. Code Ann. § 12-60-450 (2014): Establishes the administrative process after the Department issues an assessment culminating in the Department Determination.

G. S.C. Code Ann. § 1-23-600 (2014): Confers jurisdiction upon the Administrative Law Court to hear this contested tax case.

H. S.C. Code Ann. § 12-60-460 (2014): Creates right for taxpayer to seek relief from Department Determination by requesting a contested case hearing before the Administrative Law Judge Division.

I. Section 12-37-220(A)(8): Provides an exemption from ad valorem taxation pollution control property of industrial plants.

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

Issue:

Is Colonial Pipeline Company (Taxpayer) entitled to an ad valorem property tax exemption pursuant to § 12-37-220(A)(8)?

Expected claims or defenses:

The Department intends to show that the Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8) because the property claimed by the Taxpayer is not facilities or equipment of industrial plants.

4. Action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:

The Department requests that the Court affirm the Department's Determination and uphold the Department's denial of both exemption requests for tax years 2017 and 2018. Please see the Department Determination issued on November 19, 2018, for a more thorough analysis of the issues presented herein. However, please disregard the amounts under the "Property Tax Assessment" column in the table labeled "Assessment in Dispute" on page one of the Department Determination. Those amounts represent the total assessment of the Taxpayer's property in South Carolina, rather than the portion of the property tax assessment in dispute as the footnote states. The Department only denied the portion of that assessment that the Taxpayer claimed as pollution control property which is more likely in the range of $1-2 million. In other words, if the Court grants the pollution control exemption, the pipeline

would not be completely exempt from property taxes; instead, the total property tax assessment would decrease to approximately $11 million for 2017 and $12 million for 2018. The Taxpayer and the Department do not dispute the valuation of the property nor do they dispute the valuation method. Therefore, the only issue before the Court is whether the property in dispute is exempt from ad valorem taxation pursuant to § 12-37-220(A)(8).

5. Summary of the facts to be presented at the hearing:

A. The Taxpayer is a pipeline company that transports refined petroleum.

B. The personal property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville, Greenwood, Laurens, McCormick, Spartanburg, and York (the "counties involved").

C. On April 19, 2017, the Department received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption for pipe coatings, cathodic protection, and automatic shut-off valves.

D. On August 15, 2017, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2017.

E. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017.

F. On September 20, 2017, the Department notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

G. On October 19, 2017, the Department forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

H. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of the property that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

I. The file was subsequently forwarded to the Department's Office of General Counsel for Litigation.

J. On April 23, 2018, the Department received a 2018 application for an ad valorem tax

exemption based on § 12-37-220(A)(8). [1]

K. On April 26, 2018, the Department mailed DHEC a letter requesting clarification of whether the claimed property qualified as pollution control equipment.

L. On July 27, 2018, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2018.

M. The Department received correspondence postmarked August 13, 2018 from the Taxpayer protesting the proposed assessment for property tax year 2018.

N. On August 14, 2018, the Department forwarded the 2018 exemption application information to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § on 12-37-220(A)(8).

O. DHEC submitted a letter dated August 27, 2018 to the Department clarifying that the property claimed for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

The Department anticipates that a motion for summary judgment may be appropriate after discovery is conducted. The Department reserves the right to raise other motions if circumstances warrant such action.

7. List of proposed witnesses and exhibits:

Witnesses:

A. Department custodian of records - member of property division.
B. An expert witness, should the need arise.

The Department reserves the right to supplement its list of witnesses if the need arises.

Exhibits:

A. The Department's Determination dated November 19, 2018.
B. The Taxpayer's request for exemption for 2017.
C. The Taxpayer's request for exemption for 2018.
D. The Department's denial of the exemption for 2017.

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[1]The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

E. The Department's denial of the exemption for 2018.
F. DHEC letter dated December 18, 2017
G. DHEC letter dated August 27, 2018

The Department reserves the right to supplement the list of exhibits if the need arises.

8. Statement regarding necessity for discovery:

The Department respectfully requests standard discovery and reserves the right to take depositions as the need may arise.

9. Estimated length of hearing:

Four hours.

10. Dates in the next 120 days when unavailable for a hearing:

Unavailable dates: January 10, 18, 21, 25; February 1, 5, 11; March 18-20; May 13-24

11. E-mail address that the Court can use for e-mail correspondence.

Marcus.Antley@dor.sc.gov

Respectfully submitted,

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Counsel for Litigation
Jason P. Luther, Esquire (Bar No. 78021)
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Columbia, South Carolina
June 19, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company,

Petitioner,

vs.

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

Respondents.

Docket No. 18-ALJ-17-0443-CC

CONSOLIDATED PRE-HEARING STATEMENT FOR ABBEVILLE COUNTY, ANDERSON COUNTY, GREENVILLE COUNTY, AND YORK COUNTY

Intervenors Abbeville County, Anderson County, Greenville County, and York County (collectively, "Counties"), submit this Prehearing Statement according to Rule 14 of the Rules of Procedure for the Administrative Law Court and the Court's Order for Prehearing Statements dated January 2, 2019, as clarified by an email from the Court, dated June 18, 2019.

1. The nature of this proceeding

The Petitioner (Taxpayer Colonial Pipeline Company) has requested a contested case hearing to dispute the Department of Revenue's Department Determination, dated November 19, 2018, that concluded the Taxpayer is not entitled to a "pollution control equipment" tax exemption on certain of Taxpayer's pipeline property. S.C. Code Ann. § 12-37-220(A)(8).

2. Statutory provisions conferring subject matter jurisdiction and other applicable statutes and regulations

A. S.C. Code Ann. § 1-23-310, *et seq.*: related to the administrative procedures.

B. S.C. Code Ann. § 12-4-10: related to the Department's authority to administer and enforce the revenue laws.

C. S.C. Code Ann. § 12-37-210: related to the imposition of taxes on all property.

D. S.C. Code Ann. 12-4-540: related to the Department's power to administer and enforce the appraisal, assessment, and equalization of property owned or leased to pipelines and used in the conduct of a pipeline's business.

E. S.C. Code Ann.§ 12-4-710: related to the Department's power to determine if a property qualifies

for certain property tax exemptions.

F. S.C. Code Ann. § 12-4-730: related to the Department's the power to declare certain property as exempt.

G. S.C. Code Ann. § 12-60-450: related to the administrative process the Department uses to reach a "Department Determination."

H. S.C. Code Ann. § 1-23-500, *et. seq.*: related to the Administrative Law Court and contested case hearings.

I. S.C. Code Ann. § 44-1-50 and 44-1-60: related to the South Carolina Department of Health & Environmental Control's ("DHEC") authority to reach a "final agency determination" and seek contested case review by the Administrative Law Court.

J. S.C. Code Ann. § 12-60-460: related to a taxpayer's ability to seek relief from a Department Determination.

K. S.C. Code Ann. § 12-37-220(A)(8): related to the "pollution control equipment" tax exemption.

3. The issues presented for determination, including any claims or defenses expected to be raised

At this time, Counties understand there are three matters at issue for the Court's resolution:

1) Taxpayer's failing to challenge DHEC's lack of a determination, as provided under South Carolina Code Annotated section 12-37-220(A)(8), regarding whether certain of Taxpayer's property qualifies as "pollution control equipment," which bars Taxpayer from now claiming the exemption described under section 12-37-220(A)(8).

2) Certain of Taxpayer's property otherwise fails to meet the requirements of section 12-37-220(A)(8) as described in the Department Determination, dated November 19, 2018.

3) If a portion of the Taxpayer's property is exempt, then determining what portion is exempt (for example, the appropriate apportionment of the value of "pollution control equipment" versus "non-pollution control equipment," if any apportionment is appropriate or even possible).

Counties are not aware that Taxpayer could have any defenses to these issues raised, except as to disagreement over the value as contemplated under item (3).

4. The action requested of the Court and a detailed statement of the law which supports the

requested action, including statutory and/or case citations

Counties respectfully request the Court issue a final order:

a) Finding Taxpayer is barred from seeking a property tax exemption because of Taxpayer's failing to challenge DHEC's lack of a determination regarding whether certain of Taxpayer's property qualifies as "pollution control equipment";

b) Upholding the Department Determination (for the reasons stated in the Department Determination and as otherwise appropriate under South Carolina law); and

c) Alternatively, determining it is impossible or inappropriate to partition the value of Taxpayer's "pollution control equipment" from the value of the "non-pollution control equipment."

5. A brief summary of the facts to be presented at the hearing:

A. The Taxpayer is a pipeline company that transports refined petroleum.

B. The personal property at issue in this contested case is at least partially located in Counties' jurisdiction.

C. Based on information and belief, on April 19, 2017, the Department received a 2017 application for an *ad valorem* tax exemption based on section 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a "pollution control equipment" exemption for pipe coatings, cathodic protection, and automatic shut-off valves.

D. Based on information and belief, on August 15, 2017, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2017.

E. Based on information and belief, on September 7, 2017, the Taxpayer protested the proposed assessment for 2017.

G. Based on information and belief, on October 19, 2017, the Department forwarded the 2017 exemption application information to the DHEC for investigation into whether the Taxpayer's claimed property qualified as "pollution control equipment," pursuant to section 12-37-220(A)(8).

H. Based on information and belief, on December 18, 2017, DHEC submitted a letter to the Department in response to the Department's October 19, 2017, request.

Based on information and belief, in its response, DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations and refused to determine whether Taxpayer's property qualified as "pollution control equipment."

J. Based on information and belief, on April 23, 2018, the Department received a 2018 application for an *ad valorem* tax exemption based on section 12-37-220(A) (8).

K. Based on information and belief, on April 26, 2018, the Department mailed DHEC a letter

requesting clarification of whether Taxpayer's claimed property qualified as "pollution control equipment."

L. Based on information and belief, on July 27, 2018, the Department issued a Property Assessment Notice denying the Taxpayer's exemption application for property tax year 2018.

M. Based on information and belief, the Department received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

N. Based on information and belief, on August 14, 2018, the Department forwarded the 2018 exemption application information to DHEC.

O. Based on information and belief, DHEC provided a letter, dated August 27, 2018, to the Department clarifying that the property claimed for property tax years 2017 and 2018 could be described as "pollution control equipment," but again refused to determine whether Taxpayer's property qualified as "pollution control equipment" noting federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

P. Based on information and belief, Taxpayer has never challenged DHEC's refusing to determine whether certain of Taxpayer's property qualifies as "pollution control equipment."

Q. Based on information and belief, it would be inappropriate or impossible to apportion the value of any (if any) "pollution control equipment" versus the value of all "non-pollution control equipment."

R. Tax exemptions are strictly construed against the taxpayer claiming the exemption.

6. ***A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion***:

Counties anticipate a motion for summary judgment would likely be appropriate after discovery is concluded, particularly if the other parties are amenable to a potential resolution based on stipulated facts. Counties reserve the right to raise other motions as appropriate as warranted during the development of this contested case.

*7. **A list of proposed witnesses and exhibits***:

Proposed Witnesses:

1) Each witness listed by each other party to this contested case.

2) An expert witness regarding the use/cost/specifications/necessity and other similar items of the putative exempt property.

Proposed Exhibits:

1) Each exhibit listed or otherwise described by each other party to this contested case.

Counties reserve the right to supplement the proposed witness list and proposed exhibit list as

discovery progresses.

8. A statement regarding the necessity for discovery, if any:

Counties request standard discovery apply to this case. However, depending on actions and witnesses potentially to be called by Taxpayer or the Department, Counties' reserve the right to seek the Court's permission for additional discovery, including depositions.

9. The estimated time required for the hearing:

Counties estimate this matter could be resolved through stipulated facts and a motion for summary judgment during a three to four-hour hearing. A full, evidentiary hearing of this matter should take no more than two days.

10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing:

Subject to the possibility of other court proceedings being set with minimal notice, Counsel for Counties is unavailable on the following dates:

July:	2-11, 15, 18, 19, 29-31
August:	1, 5-9, 19, 22-26
September:	18-20, 24
October:	10, 11

11. An email address where you can be reached.

michael@kozlareklaw.com

Respectfully submitted,

KOZLAREK LAW LLC

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Counsel for the Counties

Greenville, South Carolina
July 2, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County and York County, Respondents.	Docket No. 18-ALJ-17-0443-CC **CONSOLIDATED PREHEARING STATEMENT FOR LAURENS AND AIKEN COUNTIES**

Pursuant to the Court's Order for Prehearing Statements dated January 2, 2019, Respondents Aiken County and Laurens County (the "Taxing Entities"), by and through their undersigned counsel, submit this Consolidated Prehearing Statement.

1. The nature of this proceeding.

This matter arises from Petitioner Colonial Pipeline Company's ("Colonial") Request for a Contested Case Hearing of the South Carolina Department of Revenue's (the "Department") Determination that Colonial is not entitled to a pollution control property tax exemption pursuant to S.C. Code Ann. §12-37-220(A)(8) for the tax years 2017 and 2018.

2. The statutory provision(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations.

A. S.C. Code Ann. § 1-23-310, *et seq*: Related to administrative procedures.

B. S.C. Code Ann. § 12-4-10: Creates the Department and gives it the power to administer and enforce the revenue laws of the State.

C. S.C. Code Ann. §12-37-210: Imposes a tax on all real and personal property in the State.

D. S.C. Code Ann. § 12-4-540: Grants the Department the power to administer and enforce the appraisal, assessment, and equalization of real and personal property owned or leased to pipelines and used in the conduct of its business.

E. S.C. Code Ann. § 12-4-710: Grants the Department the power to determine if a property qualifies for a property tax exemption under section 12-37-220.

F. S.C. Code Ann. § 12-4-730: Grants the Department the power to declare real and personal property qualifying for an exemption from ad valorem taxation as exempt.

G. S.C. Code Ann. § 12-60-450: Establishes the administrative process after the Department issues an assessment culminating in the Department Determination.

H. S.C. Code Ann. § 1-23-500, *et seq*: Related to the Administrative Law Court and contested case hearings.

I. S.C. Code Ann. §12-60-460: Creates a right for taxpayer to seek relief from a Department Determination by requesting a contested case hearing before the Administrative Law Judge Division.

J. S.C. Code Ann. § 12-37-220(A)(8): Establishes the "pollution control equipment" tax exemption.

3. The issues presented for determination set forth with particularity, including any claims or defenses expected to be raised.

Reserving the right to present any issue identified by any of the Respondents or the Petitioner in their prehearing statements and to address any issue that may arise during discovery, the Taxing Entities will argue that the Department correctly concluded that the property identified by Colonial in its property tax refund claim (the "Property") is not entitled to an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8).

4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations.

The Taxing Entities request that the Court affirm the Department's Determination and uphold the Department's denial of both exemption requests for the tax years 2017 and 2018. Section 12-37-220(A)(8) provides an exemption from ad valorem taxation for certain pollution control property (the "Exemption") under the following circumstances:

> [A]ll 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 the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the Department of Health and Environmental Control

> 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 Department of Health and Environmental Control 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. For 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.

To qualify for the Exemption, the claimed property must be (1) facilities or equipment of industrial plants; (2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; (3) required by state or federal government; and (4) used in the conduct of the taxpayer's business.

At this time, but reserving the right to amend this statement as discovery progresses, the Taxing Entities do not intend to dispute elements (2)–(4) listed above. However, the Taxing Entities will argue that the Property is not "facilities or equipment of industrial plants." Although section 12-37-220(A)(8) does not define the term industrial plant, S.C. Code Ann. Regs. 117-1700.4 defines "transportation companies" to include "(1) Railroad companies; (2) Pipeline companies; and (3) Express companies." Additionally, 42 U.S.C. § 6326 states that "[t]he term 'industrial plant' means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output." *See also* S.C. Code Ann. Regs. 117-1700.7 (stating that "[a] plant site shall consist of all land contiguous to a plant which is related to the overall manufacturing operation"). The Property is more akin to a railroad or delivery company than to a manufacturer whose plant would qualify as an industrial plant. Therefore, the Property is not within the Exemption because the Property is not "facilities or equipment of industrial plants."

Although the Department's Amended Prehearing Statement noted that the portion of the assessment Colonial claimed as pollution control property is "more likely in the range of $1-2 million," the official Department Determination states that the property tax assessment is $12,621,080.00 for tax year 2017 and is $13,682,230.00 for tax year 2018. Regardless of the assessed value at issue, the Taxing Entities believe that certain of the taxpayer's property includes property that serves a dual purpose of production and pollution control. Pursuant to section 12-37-220(A)(8), "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." Thus, the Court will need to make a factual determination regarding the assessed value at issue in this matter, based upon the application of the dual purpose principles outlined in section 12-37-220(A)(8).

Finally, the Taxing Entities adopt, and incorporate by reference, the arguments asserted by the other Respondent-Counties in their Prehearing Statement, which was served on July 2, 2019.

5. A brief summary of the facts to be presented at the hearing.

Colonial is a pipeline company that, among other things, transports refined petroleum. The Property in South Carolina is specifically located throughout the counties of Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville, Greenwood, Laurens, McCormick, Spartanburg, and York.

On April 19, 2017, the Department received Colonial's 2017 application for an ad valorem tax exemption for the Property, which consisted of automatic shut-off valves, pipeline cathodic protection, and pipeline coatings.

On August 15, 2017, the Department issued a Property Assessment Notice denying Colonial's exemption application for the property tax year 2017. On September 7, 2017, Colonial protested the proposed assessment for 2017, and on September 20, 2017, the Department notified the Counties' respective auditors of Colonial's appeal of the 2017 assessment.

On October 19, 2017, the Department forwarded the information contained in Colonial's 2017 exemption application to the South Carolina Department of Health and Environmental Control ("DHEC") in order for DHEC to investigate whether the Property qualified as pollution control property. On December 18, 2017, DHEC submitted a letter in response to the Department's investigation request, explaining that DHEC lacked authority to permit, inspect, or enforce pipeline operations. DHEC also stated that it was federal agencies, like the United States Department of Transportation who was responsible for, and had jurisdiction over, the regulation of pipelines.

On April 23, 2018, the Department received Colonial's 2018 application for an ad valorem tax exemption for the Property. On April 26, 2018, the Department sent a letter to DHEC requesting clarification of whether the Property qualified as pollution control equipment.

On July 27, 2018, the Department issued a Property Assessment Notice denying Colonial's exemption application for the property tax year 2018. On August 13, 2018, Colonial sent correspondence to the Department protesting the proposed assessment for property tax year 2018. On August 14, 2018, the Department forwarded the information contained in Colonial's 2018 exemption application to DHEC in order for DHEC to investigate whether the Property qualified as pollution control property. On August 27, 2018, DHEC sent a letter to the Department again confirming that federal agencies, like USDOT, regulate pipelines, and DHEC lacked authority to permit, inspect, or enforce pipeline operations.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion.

The Taxing Entities are hopeful that many, if not all, of the material facts in this matter can be agreed to via a joint stipulation. As such, the Taxing Entities anticipate that a motion for summary judgment will be appropriate at some point following completion of discovery. The Taxing Entities reserve the right to raise any necessary motions prior to or at the hearing on this matter.

7. A list of proposed witnesses and exhibits.

Reserving its right to supplement this list at any time, and to call any witnesses listed by any party to the proceeding, as well as any witnesses that may become known to the parties during the discovery process or as the case develops, the Taxing Entities identify the following persons or category(ies) of witnesses as potential witnesses at the hearing in this matter:

A. A witness from the Department of Revenue

B. A witness from the Department of Health and Environmental Control.

C. A witness from Colonial who can discuss the nature and use of the Property.

Reserving its right to utilize and introduce as evidence any documents identified by any party to the proceeding and to introduce the documents gathered during the discovery period, the Taxing Entities identify the following as potential exhibits at the hearing of this matter:

A. The Department's Determination dated November 19, 2018.

B. Colonial's request for exemption for 2017.

C. Colonial's request for exemption for 2018.

D. The Department's denial of exemption for 2017.

E. The Department's denial of exemption for 2018.

F. DHEC letter dated December 18, 2017.

G. DHEC letter dated August 27, 2018.

H. Any other relevant documents, data/information, or materials produced during discovery by any party or non-party.

8. A statement regarding the necessity for discovery, if any.

The Taxing Entities believe that normal discovery will be sufficient in this case. However, depending on the actions and witnesses potentially to be called by Colonial or the Department, the Taxing Entities reserve the right to seek the Court's permission for additional discovery.

9. The estimated length of the hearing.

One day.

10. Any dates in the next one hundred (120) days when you will not be available for a hearing.

July 11-12, 2019

August 5, 2019

October 21-31, 2019

11. An email address where you can be reached.

waltcartin@parkerpoe.com
madisonfelder@parkerpoe.com
evanphillips@parkerpoe.com

with a copy to: vickilynnmitchell@parkerpoe.com
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[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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Attorneys for the Taxing Entities

July 8, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE

OFFICE OF THE GENERAL COUNSEL

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PO Box 12265
Columbia, SC 29211-9979

September 4, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: **Colonial Pipeline Company vs. South Carolina Department of Revenue**
Docket No. 18-ALJ-17-0443-CC
Our File Number: 180048

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's Second Amended Prehearing Statement in connection to the above-referenced matter. Also enclosed is a Proof of Service. The purpose of the Second Amended Prehearing Statement is to clarify the Department's position that the Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption. The Department has communicated this clarification with the parties.

If you should have any questions, please do not hesitate to contact me at 803-898-5623 or Marcus.Antley@dor.sc.gov.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D. Antley, III, Esquire
Counsel for Litigation

MDA/hch

Enclosures

c: Burnet R. Maybank, III, Esquire and Jim Rourke, Esquire; Michael Kozlarek, Esquire for Intervenors (*Abbeville, Anderson, Greenville, and York*)
Walter Cartin, Esquire, J. Evan Phillips, Esquire, and Madison Felder, Esquire for Intervenors (*Aiken and Laurens*)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County Intervenors.	)	Docket No. 18-ALJ-17-0443-CC **RESPONDENT'S SECOND AMENDED PREHEARING STATEMENT**

TO: The Honorable Ralph King Anderson, III, Presiding Judge:

Pursuant to ALC Rule 14, and the Order for Prehearing Statements dated January 2, 2019, the South Carolina Department of Revenue (Department) would respond as follows:

1. Nature of this proceeding:

The Petitioner (Taxpayer) has requested a contested case hearing to dispute the Department's Determination which concluded the Taxpayer was not entitled to a pollution control property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014).

2. Statutory provisions conferring subject matter jurisdiction to the Court and other applicable statutes and regulations:

Applicable statutory provisions include:

A. S.C. Code Ann. § 12-4-10 (2014): Creates the Department and gives it the power to administer and enforce the revenue laws of this State.

B. S.C. Code Ann. § 12-37-210 (2014): Imposes a tax on all real and personal property in this State.

C. S.C. Code Ann. 12-4-540 (2014): Grants the Department the power to administer and enforce the appraisal, assessment, and equalization of real and personal property owned or leased to pipelines and used in the conduct of its business.

D. S.C. Code Ann. § 12-4-710 (2014): Grants the Department the power to determine if a property qualifies for a property tax exemption under section 12-37-220.

E. S.C. Code Ann. § 12-4-730 (2014): Grants the Department the power to declare real and personal property qualifying for an exemption from ad valorem taxation as exempt.

F. S.C. Code Ann. § 12-60-450 (2014): Establishes the administrative process after the Department issues an assessment culminating in the Department Determination.

G. S.C. Code Ann. § 1-23-600 (2014): Confers jurisdiction upon the Administrative Law Court to hear this contested tax case.

H. S.C. Code Ann. § 12-60-460 (2014): Creates right for taxpayer to seek relief from Department Determination by requesting a contested case hearing before the Administrative Law Judge Division.

I. Section 12-37-220(A)(8): Provides an exemption from ad valorem taxation pollution control property of industrial plants.

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

Issue:

Is Colonial Pipeline Company (Taxpayer) entitled to an ad valorem property tax exemption pursuant to § 12-37-220(A)(8)?

Expected claims or defenses:

The Department intends to show that the Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8) because the property claimed by the Taxpayer is not facilities or equipment of industrial plants.

4. Action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:

The Department requests that the Court affirm the Department's Determination that the

Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8) for any of its claimed property—including the property that was initially exempted by the Department's Government Services Division.

When a taxpayer timely files an exemption application, the Department is required to determine whether the property qualifies for the exemption. S.C. Code Ann. § 12-4-710 (2014). This determination is made only after a proper investigation. S.C. Code Ann. § 12-4-730 (2014). It is well established in South Carolina that an exemption of private property is strictly construed – taxation is the rule and exemption is the exception. State v. City of Columbia, 115 S.C. 108, 104 S.E.2d 337 (1920). Exemption statutes are narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. See Owen Indus. Prods., Inc. v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 (1980); S. Soya Corp. of Cameron v. Wasson, 252 S.C. 484, 167 S.E.2d 311 (1969); S. Weaving Co. v. Query, 206 S.C. 307, 34 S.E.2d 51 (1945).

South Carolina law provides for a tax on "[a]ll real and personal property in this State . . . ." S.C. Code Ann. § 12-37-210 (2014). This general rule is subject to delineated exceptions which provide tax exemptions for certain property. Section 12-37-220(A)(8) states, in part, that:

> (A) [T]here 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 the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the Department of Health and Environmental Control 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 Department of Health and Environmental Control 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…

The exemption listed in this subsection is generally referred to as a "pollution control" exemption. To qualify for the pollution control exemption, the claimed property must be: 1) facilities or equipment of industrial plants; 2) designed for the elimination, mitigation, prevention, treatment,

abatement, or control of water, air, or noise pollution; 3) required by state or federal government; and 4) used in the conduct of their business.

Despite the Government Services Division initially granting the pollution control exemption as to some of the Taxpayer's property, all property claimed by the Taxpayer under the pollution control exemption (i.e. pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs) fails the first element because the claimed property is not a facility[1] or equipment of an industrial plant. The Taxpayer is a pipeline company, and all property the Taxpayer submitted as exempt under § 12-37-220(A)(8) is connected to its pipeline, not an industrial plant. Although § 12-37-220(A)(8) does not define the term industrial plant, the statute does go on to state "property of any *manufacturer* or company, eligible for the exemption," (emphasis added). As such, the term "industrial plants" may be synonymous with manufacturing plants. This would make transportation companies ineligible for the pollution control exemption because S.C. Const. art. X, § 1 and S.C. Code Ann. § 12-43-220 (2014) distinguish transportation companies from manufacturing companies for purposes of property tax assessments. Specifically, S.C. Const. art. X, § 1 and § 12-43-220 provide an assessment ratio for manufacturers of 10.5% while the assessment ratio for transportation companies is 9.5%. Therefore, transportation companies and manufacturing companies are mutually exclusive for property tax purposes. S.C. Code Ann. Regs. 117-1700.4 (2012) defines "transportation companies" to include "(1) Railroad companies; (2) *Pipeline companies*; and (3) Express companies." (emphasis added). The Taxpayer is a pipeline company so it is a transportation company. *See also* 42 U.S.C.A. § 6326 (West) ("The term 'industrial plant' means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial *production* or *output*." {emphasis added}). Further, S.C. Code Ann. Regs. 117-1700.7 (2012) provides "[a] plant site shall consist of all land contiguous to a plant which is related to the overall *manufacturing* operation..." (emphasis added). Because the Taxpayer is transporting the product rather than manufacturing it, the Taxpayer does not have a plant site for an industrial plant.

Pursuant to § 12-37-220(A)(8), the Department requested that DHEC investigate the claimed property to determine if it was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. In its responses to the Department, DHEC noted that it does not regulate pipelines, but instead federal agencies, including USDOT, regulate interstate petroleum pipelines. In fact, the federal regulations the Taxpayer cites as requiring the

[1] S.C. Code Ann. Regs. 117-1700.5 provides, "A "facility" is generally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met."

claimed property fall under USDOT.[2] This emphasizes that pipelines are transportation systems and not industrial plants. While a petroleum refinery may qualify as an industrial plant, the Taxpayer's pipeline is separate and distinct from any refinery and transports, rather than produces or manufactures, the product. See 40 C.F.R. § 60.41b ("Petroleum refinery means industrial plants as classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.[3]").

Regardless of DHEC's determination of whether the property controls pollution, none of the Taxpayer's property is facilities or equipment of industrial plants. Because exemption statutes are narrowly construed and the Taxpayer has not brought itself squarely within the parameters of the statute granting the exemption, the Taxpayer is not entitled to an ad valorem tax exemption under § 12-37-220(A)(8) for property tax years 2017 and 2018.

5. Summary of the facts to be presented at the hearing:

A. The Taxpayer is a pipeline company that transports refined petroleum products such as jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks.

B. The personal property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville, Greenwood, Laurens, McCormick, Spartanburg, and York (the "counties involved").

C. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption for pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

D. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, the Government Services Division, based on its evaluation, issued a Property Assessment Notice granting the exemption application as to waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

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[2]The Taxpayer cited the following federal regulations: 49 C.F.R. § 195.557(a) (requires pipeline coatings); 49 C.F.R. § 195.563(a) (requires cathodic protection); and 49 C.F.R. § 195.260(c) (requires automatic shut-off valves).

[3]SIC was replaced by the North American Industry Classification System (NAICS). Pipeline transportation is under NAICS Code 486 while manufacturing is under NAICS Code 31-33.

E. On September 7, 2017, the Taxpayer protested the Department's denial of the exemption for the pipe coatings, cathodic protection, and automatic shut-off valves.

F. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

G. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

H. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of the pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

I. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

J. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

K. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

L. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

M. The Government Services Division received correspondence postmarked August 13, 2018 from the Taxpayer protesting the proposed assessment for property tax year

2018.

N. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

O. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

The Department expects to file a motion for summary judgment. The Department reserves the right to raise other motions if circumstances warrant such action.

7. List of proposed witnesses and exhibits:

Witnesses:

A. Department custodian of records - member of property division.
B. An expert witness, should the need arise.

The Department reserves the right to supplement its list of witnesses if the need arises.

Exhibits:

A. The Department's Determination dated November 19, 2018.
B. The Taxpayer's request for exemption for 2017.
C. The Taxpayer's request for exemption for 2018.
D. The Department's denial of the exemption for 2017.
E. The Department's denial of the exemption for 2018.
F. DHEC letter dated December 18, 2017
G. DHEC letter dated August 27, 2018

The Department reserves the right to supplement the list of exhibits if the need arises.

8. Statement regarding necessity for discovery:

The Department will conduct discovery in accordance with the Consent Scheduling Order filed on August 20, 2019.

9. Estimated length of hearing:

Four hours.

10. Dates in the next 120 days when unavailable for a hearing:

The Department is available for a hearing on December 9, 2019 in accordance with the Consent Scheduling Order filed on August 20, 2019.

11. E-mail address that the Court can use for e-mail correspondence.

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Respectfully submitted,

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Columbia, South Carolina
September 4, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County and York County, Respondents.	Docket No. 18-ALJ-17-0443-CC **AIKEN COUNTY'S AND LAURENS COUNTY'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT**

Respondents Aiken County and Laurens County (the "Counties"), acting by and through their undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby file their Motion for Summary Judgment and Memorandum of Law in Support ("Motion"), moving this Court to grant Counties summary judgment on the grounds that there is no genuine issue of material fact and Counties are entitled to judgment as a matter of law. The Counties' Motion is based on the following grounds.

BRIEF SUMMARY

Colonial Pipeline Company (the "Taxpayer") is a transportation company. Like a trucking company or a railroad, the Taxpayer transports a product across South Carolina. Like other transportation companies, the Taxpayer uses specialized equipment to transport the product. Like other transportation companies, the Taxpayer takes measures to protect the product it transports and to deliver the product intact to the end user. Like other transportation companies, the Taxpayer uses equipment to prevent the emission of hazardous materials. The Taxpayer should be treated no differently than any other transportation company.

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Unlike other transportation companies, however, the Taxpayer seeks special treatment under South Carolina's tax laws. The Taxpayer asks this Court to find that its transportation equipment, which prevents the loss of the product it transports and protects against hazardous emissions, should be exempt from taxation pursuant to South Carolina Constitution Article X, section 3(h) and South Carolina Code Annotated section 12-37-220(A)(8) (the "Exemption"). However, the Exemption only applies to the facilities or equipment of "industrial plants," such as manufacturing facilities. As a transportation company, the Taxpayer's facilities and equipment—which exist for the purpose of transporting a product—cannot comply with the Exemption because the Taxpayer's facilities and equipment are not the equipment of an "industrial plant." Therefore, the Taxpayer's request for the Exemption should be denied.

UNDISPUTED FACTS

The following facts[1] are undisputed:

I. The Taxpayer's Business

1. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each a "Refined Petroleum Product").

2. The Taxpayer is, at its core, a transportation company. (30(b)(6) Dep. Tr. 46:16-20; 98:9–10). The Taxpayer's primary function is to transport Refined Petroleum Products. (*Id.* at 46:20; 69:24–70:16; 71:13–15). The Taxpayer constructed its first pipeline in South Carolina in 1962. (*Id.* at 187:8–15).

[1] Although there are scattered modifications and additions, the "Stipulated Facts" set forth herein are substantially in the form and format of the Stipulation of Facts that has been filed with the Court. Unless otherwise cited, all facts cited in this section are supported by the Stipulation of Facts. All referenced portions of the Taxpayer's 30(b)(6) deposition testimony are attached as **Exhibit A**.

3. The Taxpayer's competitors are other transportation companies, such as pipeline companies, railroads, trucking companies, and shipping/barge companies. (*Id.* at 186:20–187:7).

4. Refined Petroleum Products are all present in the pipeline simultaneously. Because there are no physical barriers between each Refined Petroleum Product in the pipeline, the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

5. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use. The Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline. If the Taxpayer transported a single Refined Petroleum Product, the Taxpayer would not create Transmix. Each Refined Petroleum Product that initially combines to create Transmix can later be separated out into a once again saleable Refined Petroleum Product.

6. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's transportation services and is not charged to the customer.

7. The Taxpayer's activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline.

8. At least 90% of each Refined Petroleum Product transported by the Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

9. The Taxpayer does not refine petroleum, nor does it operate any refineries. (30(b)(6) Dep. Tr. 188:13–16).

10. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

11. The Taxpayer does not own the Refined Petroleum Products it transports.

12. The property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville, Greenwood, Laurens, McCormick, Spartanburg, and York (the "Counties Involved").

13. The Taxpayer's transmission pipelines are operated from a control center located in Georgia. (30(b)(6) Dep. Tr. 181:6–18). The control center monitors the pipeline and can shut off the pipeline via automatic shut off valves in the event that the integrity of the pipeline is compromised. (*Id.* at 182:1–16).

II. The Taxpayer's Protest

14. This matter involves tax years 2017 and 2018. The value of the property at issue for each tax year is as follows:

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

15. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment,

abatement, or control of water, air, or noise pollution. On August 15, 2017, the Government Services Division, based on its evaluation, issued a Property Assessment Notice granting the exemption application as to waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017, but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017 and the Department's denial of the exemption for the pipe coatings, cathodic protection, and automatic shut-off valves.

18. On September 20, 2017, the Government Services Division notified the county auditors for the Counties Involved of the Taxpayer's appeal of the 2017 assessment.

19. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

20. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

21. The Taxpayer has not challenged DHEC's determination. (*See* Pet. Prehearing Statement).

22. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

23. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

24. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

25. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

26. The Government Services Division received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

27. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves,

waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

28. DHEC submitted a letter dated August 27, 2018, to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

29. The Department issued its Determination in this matter on November 19, 2018.

30. The Taxpayer timely requested a contested case hearing on December 5, 2018.

31. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8) as to all claimed property. The Taxpayer claimed the same property as pollution control property for 2019 as it did for 2017 and 2018. On August 6, 2019, the Taxpayer timely protested the 2019 exemption denial.

32. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that the Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) for *any* of its claimed property—including property for which the Department initially granted the exemption.

LEGAL STANDARD

A court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also* Rule 68, SCRPALC (stating that the South Carolina Rules of Civil Procedure may be applied where the Rules of Procedure for the ALC are silent). The sole issue presented by this case is a purely legal issue ripe for an expedited disposition via summary judgment. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)) (holding the "purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.").

ARGUMENT

The Taxpayer's pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs (collectively, the "Property") are not eligible for the Exemption. Although the Counties do not concede that the Property meets any of the elements of the Exemption, the Counties will focus here on the Taxpayer's inability to show one particular element of the Exemption. The Counties are entitled to judgment as a matter of law because the Property is not part of an "industrial plant," an express requirement to qualify for the Exemption. Further, because the Taxpayer failed to challenge DHEC's lack of a determination regarding whether Taxpayer's Property qualifies as "pollution control equipment," the Taxpayer is barred from claiming the Exemption.

I. All Property is Subject to Taxation Unless a Taxpayer Proves That it is Entitled to an Exemption.

The Taxpayer cannot show that the Property meets all of the Exemption's elements. As an initial, fundamental matter, all property in South Carolina is presumed to be taxable. *See, e.g.*, S.C. Const. Art. X, § 1 ("The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property."); S.C. Code Ann. § 12-37-210 ("All real and personal property in this State . . . . shall be subject to taxation."). Exemption from taxation is, therefore, the exception to the general rule. The General Assembly grants exemptions expressly via statute. South Carolina's exemption statutes are strictly construed against taxpayers. *See, e.g.*, *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that South Carolina courts have a long standing policy of "strictly construing tax exemption statutes against the taxpayer"). In other words, the "statutory language will not be strained or liberally construed in the taxpayer's favor." *Southeastern Kusan, Inc. v. South Carolina Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981).

Further, 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. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing *York County Fair Assoc. v. South Carolina Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)); *see also Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (stating that a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund). The Taxpayer faces a high hurdle in asking this Court to grant the Exemption.

The Exemption requires that the Taxpayer prove that the Property is: (1) part of the facilities or equipment of an "industrial plant"; (2) designed for the elimination, mitigation,

prevention, treatment, abatement, or control of water, air, or noise pollution; (3) required by the state or federal government; and (4) used in the conduct of the taxpayer's business. S.C. Code Ann. § 12-37-220(A)(8).[2] Here, the Property is not part of the facilities or equipment of an "industrial plant."

A. What is an Industrial Plant?

The term "industrial plant" must be given a strict construction that limits its application to only those physical locations where goods or materials are actually and substantially produced. This interpretation is supported by the language of the Exemption statute, the Department's regulations, and the South Carolina Constitution.

i. The Exemption's Language Shows that the Property is not Part of an Industrial Plant.

Section 12-37-220 does not define "industrial plant," but the General Assembly provides strong contextual clues regarding what the term means. First, the statute indicates that a greige mill is an example of an "industrial plant" within the meaning of the Exemption. A greige mill is a type of textile mill where a raw material is manufactured into an unfinished product. *See* 12-

[2] The pertinent statutory text reads: "[A]ll 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 the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the Department of Health and Environmental Control 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 Department of Health and Environmental Control 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. For 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."

37-220(A)(8) ("'Greige mill' means all textile processes from opening through fabric formation ***before dyeing and finishing***." (emphasis added)). The inclusion of a greige mill as an example strongly suggests that an "industrial plant" is a place where products are created from raw materials.

The "dual purpose" provisions of Section 12-37-220(A)(8) provide further context. Specifically, the Exemption 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" (emphasis added). This language tells us how to value certain dual purpose property. However, the underlying assumption is that the only property subject to the exemption at all is property associated with "production." Again, the language suggests that the Exemption applies to a physical place that is primarily engaged in ***production***.

ii. The Department's Regulations Show that the Property is not Part of an Industrial Plant.

Furthermore, the Department's regulations suggest that the Taxpayer'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." The Taxpayer is clearly, under the Department's regulations and by its own admission, a transportation company. 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). The terms "plant" and "plant site" are essentially analogous. Because the Department's duly promulgated regulation ties the existence of a plant to a manufacturing operation, the Exemption should be applicable only to property that is classified for property tax purposes as manufacturing property. Consequently, a transportation company

should not be allowed to take advantage of a manufacturer's Exemption. As the agency charged with interpreting and administering the tax laws, the Department's appropriately promulgated regulations are entitled to deference. *Brown v. S.C. Dep't of Health & Envtl. Control,* 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons."). The Department's construction of the term "plant site," which is simply an analog for "plant," is consistent with the statute and, therefore, entitled to deference.

iii. The South Carolina Constitution Shows that the Property is not Part of an Industrial Plant.

Finally, the Constitutional taxation structure implies that transportation companies and companies that produce goods are, and should be, treated differently for property tax purposes. As a transportation company, the Taxpayer should not be allowed to take advantage of an exemption meant for an entirely different class of taxpayers.

Article X, section 1 of the South Carolina Constitution sets forth the assessment ratios applicable to different classes of property. Many of these separate classifications are based on the activities of the property's owner. Section 1(1) states that all "real and personal property owned by or leased to manufacturers, utilities, and mining operations . . . shall be taxed on an assessment equal to [10.5%] of the fair market value of such property." Thus, taxpayers that manufacture products, create energy, or pull raw materials from the Earth are subject to a 10.5% assessment ratio. Section 1(2) states that all "real and personal property owned by or leased to companies primarily engaged in transportation for hire of persons or property . . . shall be taxed on an assessment equal to [9.5%] of the fair market value of such property." Based on the

Stipulations and the Taxpayer's 30(b)(6) testimony, the Taxpayer clearly falls into this transportation company category.

The Exemption is clearly intended for manufacturers—not for transportation companies. While the Constitution does not expressly address the definition of "industrial plant," the categorical segregation shows that there is a clear delineation between the activities of a transportation company and the activities of a company that produces goods or raw materials. This delineation is so meaningful that entirely different assessment ratios apply to these different types of companies. While a manufacturing company subject to the 10.5% assessment ratio should be able to claim the Exemption, the Constitutional segregation of transportation companies and manufacturers suggests that a transportation company's activities are fundamentally different than those of manufacturers, such that their facilities and equipment could not be part of the "industrial plant" contemplated in the Exemption.

B. The Taxpayer's Construction and Why it is Wrong

There is a very real need for this Court to draw a firm line regarding what is and what is not an "industrial plant." Based on the statutory context, the Counties assert that the term "industrial plant" must mean the physical location where goods or materials are actually and substantially produced. This interpretation is consistent with the language of the statute itself, the Department's regulations, and the South Carolina Constitution.

The Taxpayer appears to suggest that "industrial plant" simply means a location used as part of a business involving a tangible product. (*See* Pet. Prehearing Statement, at pp. 3-4) Such a broad definition would expand the application of the Exemption to virtually every business in South Carolina. The term cannot mean simply any location where a tangible product is

transported, handled, or stored. The term cannot mean any location where minor modifications to a product occur. The undisputed facts establish why the Taxpayer's loose definition is untenable.

The Taxpayer operates a transportation company. It does not refine petroleum. It does not own the products it transports. The overwhelming majority of the Refined Petroleum Products that go into the pipeline leave the pipeline in the exact same form that they entered it.[3] The Taxpayer's do not even control the pipeline from a site within this State, but, rather, remotely operate it from Georgia most of the time. Functionally, and for tax purposes, the Taxpayer is no different than a railroad company, a trucking company, or a shipping company. Each of these transporters can transport Refined Petroleum Products—just like the Taxpayer. Each of these transporters use equipment that keeps Refined Petroleum Products contained and prevents accidental leakage into the environment—just like the Taxpayer. If the Court were to adopt the Taxpayer's expansive interpretation, then there would be no reason that railroads, trucking companies, and shipping companies could not seek the Exemption on their trucks, tankers, cars, and ships as well.

II. The Taxpayer's Failure to Challenge DHEC's Lack of a Determination Bars this Action.

Because the Taxpayer failed to challenge DHEC's lack of a determination, both before DHEC and before this Court, it is barred from seeking this Exemption. Section 12-37-220(A)(8) sets forth a specific process whereby the Department can seek the expertise of DHEC. It states:

[3] According to 30(b)(6) testimony and the Stipulations of Fact, the Taxpayer's operations produce a waste product called Transmix. The Taxpayers re-separate Transmix into its component parts. The Taxpayer does not charge its customers for this service. Transmix is simply a byproduct of the transportation activities, and the Taxpayer's handling of Transmix is no different than a trucking company's need to clean out a tanker truck before transporting a new kind of fuel. (*See* 30(b)(6) Dep. Tr. 173:12–174:20) Therefore, the Taxpayer's handling of Transmix is not the type of production contemplated by the Exemption.

> At the request of the Department of Revenue, the Department of Health and Environmental Control ***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 Department of Health and Environmental Control ***shall furnish*** the Department of Revenue with a detailed listing of the property that qualifies as pollution control property.

S.C. Code Ann. § 12-37-220(A)(8) (emphasis added). The Department invoked this portion of the Exemption by submitting an inquiry to DHEC on October 19, 2017.

On December 18, 2017, DHEC responded to the Department, concluding that it lacked authority to permit, inspect, or enforce pipeline operations. Notwithstanding the fact that it had a ***statutory mandate to make a decision***, DHEC never issued a determination regarding whether the Property qualifies for the Exemption. The Taxpayer never challenged DHEC's failure to make a determination.

While there is nothing in the statute that says the Department must ask DHEC to evaluate whether the Property is "pollution control" property, when the Department chose to seek DHEC's advice, it changed the nature of the evaluation. Having asked DHEC to investigate, the decision as to whether the Property was "pollution control" property arguably sat exclusively with DHEC. While the Department could deny the Exemption on other grounds (such as it did here), the Taxpayer should have disputed DHEC's decision. It should have availed itself of any administrative remedies available under the South Carolina Administrative Procedures Act and, at a minimum, should have joined DHEC as a party to this action.

The Taxpayer was required to exhaust their administrative remedies before seeking relief from this Court and it was required to challenge all of the agency actions that impact the Exemption. Because the Taxpayer failed to do that in this case, the Taxpayer is not entitled to relief.

CONCLUSION

Because the Taxpayer cannot show that its Property is part of an "industrial plant," and because Taxpayer did not challenge DHEC's lack of determination regarding whether the Property is "pollution control" property, the Taxpayer's request for the Exemption should be denied.

Respectfully submitted,

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Attorneys for the Taxing Entities

December 11, 2019
Columbia, South Carolina

Exhibit A

30(B)(6) Deposition of Colonial Pipeline Company

(Pages 1-2, 46, 69-71, 73-74, 98, 181-182, and 186-188)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No.: 18-ALJ-17-0443-CC

Colonial Pipeline Company,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

and

Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County,

Intervenors.

30(B)(6) DEPOSITION OF COLONIAL PIPELINE COMPANY

****

Tuesday, August 6, 2019

9:30 a.m. - 4:06 p.m.

The 30(b)(6) deposition of COLONIAL PIPELINE COMPANY was taken on behalf of the Respondent at the South Carolina Department of Revenue, 300A Outlet Pointe Boulevard, Columbia, South Carolina, on the 6th day of August, 2019 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

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Q. Have you deleted any e-mails related to the pollution control exemption?
A. Not since we have filed for it, no; not that I'm aware of.
Q. Have you destroyed any written -- other written communications related to the pollution control exemption?
A. No. I have paper files for each tax year for each state, so. It has the -- has the return in it and any documents we submitted to the state.
Q. Okay. All right. So I'm going to ask now more about at a high level what Colonial does. Could you give me just a high-level overview of your company?
A. I think at the highest level, Colonial Pipeline is a -- it transports refined petroleum products for others; that's the short version. We also provide other services related to that, but that's our primary function.
Q. Okay. You said other services?
A. Storage services, blending services. I thought we still did red dye services, but I'm told yesterday we do not, though. But that's done in the terminals now, so.

control exemption for these assets now?
A. It was something I identified when I came to Colonial in 2013 that they weren't taking the exemptions that they were entitled to.
So it was an initiative I started when I got there to -- I think if you don't do that kind of thing, you're at a disadvantage to your competitors if they're claiming them, too, so.
Q. So -- so other than you starting, nothing changed at Colonial as far as --
A. No.
Q. -- this exemption? Okay. And at any point, did Colonial Pipeline Company request a Revenue Ruling from the South Carolina Department of Revenue as to whether pipelines qualify for the pollution control exemption?
A. Not that I know of.
Q. Okay. Give me one moment. I'm just making sure I haven't missed anything. I had to go a little -- a little out of order. I do have one question, I guess, for you. For tax purposes, since you are the director of tax, is Colonial a manufacturer?
A. We do not have a manufacturing code for the pipeline. It's -- the NAICS code is for

transportation.
Q. Okay. Okay. And is that code -- is that a fair representation of what Colonial does or --
A. It's -- it --
Q. -- is that -- do you agree with that classification?
A. Well, I think the classification is supposed to be your primary function and that's -- I'd say that's fair. It's -- it hasn't changed in -- since they created the codes.
Q. Okay.
A. We do have other activities that we do, blend product and -- and even Colonial blends some of its products, but it's not the -- for an NAICS code, it's the primary or the biggest thing you do, which is transport.
Q. Okay. And is -- is Colonial a utility?
A. It -- that's a term that in some states it is; in some states it's not.
Q. For South Carolina?
A. I think they call us a utility when we're assessed for property tax purposes, but ...
Q. But Colonial is not a water company, is it? They don't ...
A. No, we --

Q. Okay. Or a power company?
A. No.
Q. Okay. Or they don't -- they're not an electric light company --
A. No.
Q. -- or electric cooperative?
A. No.
Q. And they're not a telephone or telegraph company?
A. No.
Q. Okay. So Colonial is a transportation company; is that ...
A. It's a -- it's a transporter of refined petroleum products; that's what we do. And some states call us utilities; others don't, so.
MR. ANTLEY: Okay. I think that's all I have.
MR. CARTIN: I can be real quick.
THE WITNESS: Sure.

CROSS-EXAMINATION

BY MR. CARTIN:
Q. I have to remind myself what exhibit this is. On Department Exhibit 14, I think you said that this had to be created by your staff; is that correct?

A. Okay.
Q. And this is, for the record, Colonial 0550 through -- too small for me to read -- 566, yeah.
A. Okay.
Q. And this appears to go through a number of the different states we referenced and talked about what the different statutory requirements are in those states; is that fair?
A. I believe that's what this is. This is something Duff & Phelps prepared for me.
Q. Okay. And to the extent that Colonial sought and received or was denied exemptions in these other states, this document, I would imagine, would set forth specific statutory sections that were applicable in those states?
A. Yes.
MR. CARTIN: Okay. We can mark that 16.
THE WITNESS: Are we done with this one?
MR. CARTIN: Yes, sir.
(RESPONDENT'S EXHIBIT 16 WAS MARKED FOR IDENTIFICATION PURPOSES)
BY MR. CARTIN:
Q. All right. Mr. Fuqua, please take a second

to go through this document, just kind of familiarize yourself with it.

Aside from the first two pages, it should be a document that is somewhat familiar to you. And for the record, this is a document Bates labeled DHEC_Subpoena_Response_00001 through 47.

A. (Perusing.)

Q. And while you're looking through that, I will represent to you that this is a part of a subpoena response that we received from the Department of Health and Environmental Control. And, specifically, what I want to chat with you about begins on page DHEC_Subpoena_Response_00005 and continues through the end.

A. Okay.

Q. Okay. And I just want to make sure, this letter was authored by you; is that fair?

A. This letter was -- yes, it was.

Q. Okay. And did you create and compile the attachments, as well, or were they created at your direction?

A. The -- they were done by Duff & Phelps. I mean, the ones that are on their letterhead were done by them.

Q. Okay. Do they also -- did Duff & Phelps

deposition today, have you been involved at all in the application for the pollution control exemption?

A. No. Up until this, no.

Q. Okay. All right. So what I'd like to get from you is a high-level overview of what your company does. Could you -- could you give me a good description of that?

A. Sure. Colonial Pipeline Company is a transportation company. We're one of the largest in the -- we are the largest refined petroleum products pipeline system in the country.

We do -- transport petroleum products, gasoline, diesel, jet fuel, primarily from the Gulf Coast to the Northeast -- well, through the Southeast and up to the Northeast. We start in Pasadena, Texas, and we end in New Jersey.

We transport over, again, 2.6 million barrels of petroleum products a day. We also are involved in other services, things such as blending operations. We provide services at some of our locations to blend product to create gasoline.

We also do injection services of biodiesel and butane. We also are involved in other

those types of asset -- those types of assets, cathodic protection, coating, shut-off valves, things of that nature, have been present on our -- present on our system since original construction.

Q. Okay. I think we're almost done. Again, I apologize for some of this being what may seem to be a repeat, but when you talked about the -- I think you said "central control." And, again, I apologize if I'm -- I don't want to misstate it. I think you said that the control of our facilities or at least most of them was centrally located, I think you said, in Alpharetta; is that correct?

A. Again, for our main line -- our main line controls, line one and two and line 29, those lines are being operated from our Atlanta control center.

The tank farm, the individual tank farms and their deliveries there at the tank -- each of the tank farms, that's all being controlled from the local operations at the tank farms themself.

Q. Okay. Okay. Thank you. That is very helpful. I didn't -- I didn't understand that originally.

How does -- how did the automatic shut-off valves tie into the centralized control? What's that look like? What -- how do they operate?

A. The -- the control center in Atlanta has the ability to basically shut that valve in the event of any kind of integrity issue or in the event of even a potential integrity issue. So they have control over that valve so that in certain conditions, that valve can be closed very quickly.

We also have -- we also have monitoring -- our control systems and things are monitoring the operation of the pipe. They're monitoring pressures, temperatures, and things. So we're monitoring the pipe to help support our operator controller.

And so, in certain cases, our control systems may begin a shutdown of the pipe based on information that it's receiving and things and so that's where that auto shut -- the shut-off valve and things assist and help with.

So it allows us to respond immediately to things that we -- that may be an integrity event or that are an integrity event to minimize the impact of those events.

A. We are not. We are a privately-held company.

Q. Okay. What federal agencies regulate pipeline companies like Colonial?

A. Primarily for -- for my side of the business, the shipper side of the business, it's Federal Energy Regulatory Commission, FERC. There's also PHMSA and I will let --

Q. And what -- what --

A. -- our specialist say that name because I always get it wrong and -- Pipeline Hazardous something.

Q. All right. And are you regulated by the EPA?

A. EPA and OSHA.

Q. Okay. And are you subject to state and federal environmental laws -- pipeline companies subject to them?

A. Yes, sir.

Q. All right. And who are your major competitors nationally? You briefly mentioned that, but ...

A. Plantation is a pipeline that runs in our -- our own -- in our corridor. So they are what I'll call a very direct competitor to us. Also

truck, rail, barge, ship is -- is another mode -- modes of transportation, are competitive with Colonial.

Q. Okay. And would that be true -- I asked you at a national level. That would be true all in South Carolina, as well?

A. Correct.

Q. Okay. When did Colonial start business in South Carolina? If you could give us a very brief history of getting started in South Carolina.

A. Well, again, the original construction of the pipeline in 1962 would be when we -- when we began shipping products through and to South Carolina.

Q. Okay. And was it basically the same pipeline today as it was in '62? Obviously, you've made improvements, but was it --

A. Right. Well, in the original construction in 1962, it was a single line that ran from Pasadena all way to the New York Harbor.

And then in the 1980's -- late seventies, early eighties, we expanded our system. We added another pipe from Pasadena to Greensboro, and then from Greensboro, we added another piece of

pipe from Greensboro to the Baltimore area, which is currently what we call our line four.

So in the past, we were one line going all the way; then we added another line going from Pasadena all way to Baltimore.

Q. Okay.

A. So now we have our two main lines, line one, line two, lines three and four.

Q. All right. And then I think we all got a little confused about what you do nationally versus what you do in South Carolina. So I'm going to try and narrow that down a little bit.

So in terms of making a buck in South Carolina today, you do no refinery in South Carolina anywhere, correct?

A. Correct.

Q. But you do transport in South Carolina.

A. Yes.

Q. You do store in South Carolina.

A. Yes.

Q. Do you regrade fuel in South Carolina?

A. We have.

Q. Okay. And what is regrading?

A. Regrade is where we -- we're able to change a label of the product, the product's grade.

CERTIFICATE OF REPORTER

I, Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the 30(b)(6) deposition of COLONIAL PIPELINE COMPANY on the 6th day of August, 2019; that the deponents were first duly sworn to tell the truth, and that the foregoing is a true and correct transcription of the testimony taken under oath.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter sealed and delivered to Marcus "Trey" D. Antley, III, Esquire, South Carolina Department of Revenue, 300A Outlet Pointe Blvd., Columbia, South Carolina 29211.

This sealed original transcript shall be retained by the above party, who shall be responsible for filing same with the Court prior to trial or any hearing which might result in a final order on any issue.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of August, 2019.

Cassandra E. Vance, Court Reporter
Notary Public for South Carolina

My commission expires: 12-13-2027

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC **ABBEVILLE COUNTY'S, ANDERSON COUNTY'S, GREENVILLE COUNTY'S, AND YORK COUNTY'S MOTION FOR AND MEMONRANDUM IN SUPPORT OF SUMMARY JUDGMENT**

Intervenors Abbeville County, Anderson County, Greenville County, and York County (collectively, "Counties"), acting by and through their counsel, move this Court to grant summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP") and Rule 68 of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC") (providing that the SCRCP may be applied where the RPALC are silent), in favor of Counties, because no genuine issue of material fact exists between the parties as to whether (a) Colonial Pipeline Company ("Taxpayer") is a transportation, company not an "industrial plant" as provided for under South Carolina Code Annotated section 12-37-220(A)(8)[1]; (b) the South Carolina Department of Health and Environmental Control ("DHEC") determined (i) Taxpayer sought a

[1] "(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 the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the **Department of Health and Environmental Control 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 **Department of Health and Environmental Control shall furnish** the Department of Revenue **with a detailed listing of the property** that qualifies as pollution control property. . . ." (emphasis added).

determination regarding pipe coatings, cathodic protection, and automatic shut-off valves ("Pipeline Enhancements") but (ii) DHEC lacks authority to make a determination over Taxpayer's pipeline operations and (iii) DHEC determined Taxpayer's transportation system was governed by those regulations and federal agencies governing all transportation systems, (c) DHEC's determination that it lacks authority over this issue and that Taxpayer's pipeline is a transportation system are, each, necessarily, a determination Pipeline Enhancements are not facilities or equipment of "industrial plants"; (d) the South Carolina Department of Revenue ("Department") accepted DHEC's determination in denying Taxpayer's exemption; and (f) Taxpayer failed to contest either of DHEC's determinations.

As a result, Counties are entitled to judgment as matter of law on these issues.

INTRODUCTION

Intervenors Abbeville County, Anderson County, Greenville County, and York County (collectively, "Counties") request that the Court confirm DOR's denial of property tax exemptions requested by to Colonial Pipeline Company ("Taxpayer") under section 12-37-220(A)(8). This statute allows an *ad valorem* property tax exemption for "all facilities or equipment of industrial plants which … qualifies as pollution control property" ("Pollution Control Exemption"). The South Carolina Department of Revenue ("Department") was correct, as a matter of law, in denying Taxpayer Pollution Control Exemption because (i) Taxpayer's property fails the "facilities or equipment of industrial plants" requirements of Pollution Control Exemption, (ii) Taxpayer is a transportation company, not an industrial plant, (iii) Department's determination is predicated upon, and consistent with, the South Carolina Department of Health and Environmental Control's ("DHEC") determination that Taxpayer's property is a pipeline that is outside of DHEC's authority.

BACKGROUND

In 2017, Taxpayer sought an *ad valorem* property tax exemption pipe coatings, cathodic protection, and automatic shut-off valves ("Pipeline Enhancements") based on section 12-37-220(A)(8). Department transmitted Taxpayer's 2018 exemption application to DHEC for investigation into whether Taxpayer's claimed property qualified as pollution control property pursuant to section 12-37-220(A)(8). DHEC replied August 27, 2018, to Department clarifying that for property tax years 2017 and 2018 Pipeline Enhancements could be described as pollution control equipment; however, DHEC specifically determined (a) it lacked the authority to make a determination over Taxpayer's pipeline operations and (b) Taxpayer's transportation system was governed by those regulations and federal agencies governing all transportation systems.

Thereafter, on November 19, 2018, Department denied Taxpayer Pollution Control Exemption. Taxpayer subsequently claimed the same property as pollution control property for 2019 as it did for 2017 and 2018, which application Department also denied. On August 6, 2019, Taxpayer also protested the 2019 exemption denial.

On September 4, 2019, Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an *ad valorem* property tax exemption for ***any*** of its claimed property: pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs ("Claimed Property"). Claimed Property includes property for which Department initially granted the exemption.

Throughout this entire process, Taxpayer has failed to contest any of DHEC's determinations, but instead requested a contested case hearing involving Department.

SOLE LEGAL QUESTION PRESENTED

1. Is Taxpayer entitled to an *ad valorem* property tax exemption according to section 12-37-220(A)(8)?

A court will grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also* Rule 68, SCRPALC (incorporating SCRCP into the SCRPALC).

In this contested case, summary judgment is appropriate. Summary judgment is proper when a claim raises issues of law devoid of disputed material facts. The listed question is purely a legal issue ripe for an expedited disposition by summary judgment. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)) (holding the "purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder").

RELEVANT STIPULATED FACTS[2]

A. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

B. Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina[] and does various inspections in this state.

C. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline,

[2]As excerpted without change, except where denoted, from Parties' joint "Stipulation of Facts" filed with the Court December 5, 2019.

so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

D. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use.

E. Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline.

F. If Taxpayer transported a single Refined Petroleum Product, then Taxpayer would not create Transmix.

G. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product.

H. Separating Transmix back into each Refined Petroleum Product is part of Taxpayer's transportation services and is not charged to the customer.

I. At least 90% of each Refined Petroleum Product transported by Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

J. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

K. On April 19, 2017, Department's Government Services Division received a 2017 application for an *ad valorem* tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary

containment, and tank internal/external floating roofs.

L. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

M. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

N. On December 18, 2017, DHEC submitted a letter to Department in response to Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

O. On April 23, 2018, the Government Services Division received a 2018 application

for an *ad valorem* tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

P. On April 26, 2018, Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish Department of Revenue with a detail listing of the property that qualifies as pollution control property.

Q. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

R. On August 14, 2018, Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

S. DHEC submitted a letter dated August 27, 2018 to Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-

off valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

T. On September 4, 2019, Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an *ad valorem* property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which Department initially granted the exemption.

ADDITIONAL UNDISPUTED FACTS

1. Taxpayer's purpose in having Pipeline Enhancements as part of its transportation system was not because of any pollution control regulatory scheme:

> Q. So why would [Pipeline Enhancements] have been used in 1962 if they weren't required by state or federal law?
>
> A. It's in our -- it's in the best interest to protect the asset and keep the product in the pipeline. So at the time, a decision was made to spend the extra money. Coatings were being used and cathodic protection was being used well before 1971 and -- and most of the companies were using them. But it wasn't a federal requirement, so not all were using them.
> it makes good -- it's a good investment.
> It makes good financial sense and -- to protect your asset . . . .

30(b)(6) Deposition of Colonial Pipeline (Designee: Joshua Stanley)), p. 291, ll. 4-16, attached as Exhibit A.

2. Taxpayer never challenged either: (1) DHEC's determination that it lacked authority to make a determination over Taxpayer's pipeline operations or (2) DHEC's determination that

Taxpayer's transportation system was governed by those regulations and federal agencies governing all transportation systems:

> Q. Have you had any communications with Department of Health and Environmental Control?
>
> A. I have not.

30(b)(6) Deposition of Colonial Pipeline (Designee: James Keith Fuqua)), p. 79, ll. 4-6, attached as Exhibit A.[3]

3. Taxpayer's pipeline transportation system is essentially a tanker truck or a tank on a rail car:

> Q. I thought I heard you say earlier that the products that you transport could not be transported by any other method, and I'll give an example. Let's say tanker truck. Did I mishear you or is that what you said?
>
> A. No, you misheard me . . .
>
> * * *
>
> Obviously, those – those [tanker truck and rail car] modes of transportations can transport the same products that we do . . .
>
> * * *
>
> Q. Okay. So -- so a tanker truck or a tank on a – on a rail car could transport the same types of product.
>
> A. Yes.

30(b)(6) Deposition of Colonial Pipeline (Designee: James Edward Brown)), p. 170, ll. 5-10 & 15-17, 20-23, attached as Exhibit A.

4. Taxpayer's creation of Transmix is purely a function of how Taxpayer operates its pipeline

[3]The Court may also take judicial notice of its own docket to reveal Taxpayer has never filed a contested case hearing request regarding either of these DHEC determinations.

and not a function of any legal or customer requirement or of any manufacturing process:

> Q. So pushing product through the pipe and having a separate type of product behind it or in it at the same time where those -- and I forget the word you used, but where there's an interaction between two products, that's really just a mechanism of trying to keep the pipes full.
>
> A. That is -- that is how to operate a pipeline, correct.
>
> * * *
>
> Q. Okay. So that kind of blending [Transmix] is basically just because of the way you operate a pipeline.
>
> A. Yeah, that's how to operate the facilities and ensure quality of the product in doing those things, correct.

30(b)(6) Deposition of Colonial Pipeline (Designee: James Edward Brown)), p. 175, l. 24 – p. 176 l. 7 & p. 178 l. 8-12, attached as Exhibit A.

5. Pipeline Enhancements are not in any way related to a "manufacturing process," even if the Court were to accept that Taxpayer's self-induced creation of Transmix was somehow "manufacturing":

> Q. Okay. So the three types of assets [Pipeline Enhancements] that we've been talking about that are claimed exempt, the auto shut-off valves, the cathodic protection, and the pipe coatings, what do those have to do with transmixing?
>
> A. They -- those particular items do not.

30(b)(6) Deposition of Colonial Pipeline (Designee: James Edward Brown)), p. 176, ll. 8-13, attached as Exhibit A.

BRIEF SUMMARY OF STIPULATED/UNDISPUTED FACTS

The Stipulated and Undisputed Facts can be easily summarized as follows (with their

application to this matter evident).

Taxpayer receives one or more fluids from customers. When received by Taxpayer for transport through Taxpayer's pipes and subsequent warehousing in storage tanks, these fluids are fully refined, finished petroleum products. That is, before transport, each product could be sold according to that product's specifications without further modification. Taxpayer accepts each fluid and transports that fluid from one location to another.

Solely to keep its transportation system full (and, therefore, more profitable), Taxpayer pushes multiple fluids through the transportation system at the same time. Taxpayer's election to do so causes multiple products to "mix" in transit. This mixed fluid is known as Transmix. Neither legal nor customer requirements or any manufacturing process force Taxpayer to create Transmix. Taxpayer's self-imposed process of creating Transmix takes two or more fully refined, finished petroleum products that were saleable before Taxpayer's transport and makes them unsaleable at each product's original specifications.

So, Taxpayer has to "fix" the problem that Taxpayer created by its transportation method. On at least two occasions, DHEC determined: (a) it lacked authority to make a determination over Taxpayer's pipeline operations and (b) Taxpayer's transportation system was governed by those regulations and federal agencies governing all transportation systems. Taxpayer never challenged either of DHEC's determinations.

APPLICATION OF STIPULATED/UNDISPUTED FACTS TO LAW

A. The Pollution Control Exemption Does Not Apply to Property Unless Such Property is Determined by DHEC and Department to be Facilities or Equipment of Industrial Plants

In South Carolina, the general rule is that all property is subject to taxation. S.C. Code Ann. § 12-37-210. Further, exemptions to property taxation are strictly construed, because in such cases taxation is the rule and exemption the exception *State v. Columbia*, 115 S.C. 108, 112, 104 S.E.

337, 338 (1920). Exemption statutes are narrowly construed, and taxpayers who claim an exemption must prove they come clearly within the delineated exemption. *Henry p. Moses Co. v. S.C. Tax Com.*, 224 S.C. 193, 198, 78 S.E.2d 187, 189 (1953). It is axiomatic that statutes granting property tax exemptions will not be strained or liberally construed in favor of the taxpayer and, to be entitled to an exemption, the taxpayer must clearly bring itself within the exemption upon which it relies. *Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949). In this case, given the stipulated and undisputed facts, Taxpayer has not met the requirements of Pollution Control Exemption.

Department's denial of Pollution Control Exemption to Taxpayer is correct as a matter of law: (1) neither Pipeline Enhancements nor any of Taxpayer's Claimed Property is an "industrial plant" as required by section 12-37-220(A)(8); (2) section 12-37-220(A)(8) predicates Department's approval of Pollution Control Exemption on an ***affirmative*** determination from DHEC, which DHEC has repeated refused to provide and which Taxpayer has never challenged.

Definition of Industrial Plant

Counties incorporate by reference the portion of Department's Second Amended Prehearing Statement, dated September 4, 2019 ("DOR Statement"), in which Department discusses the "industrial plant" requirement of section 12-37-220(A)(8). As described by DOR Statement, none of Taxpayer's Claimed Property could ever be exempt from *ad valorem* taxation under section 12-37-220(A)(8) because Taxpayer is not an "industrial plant." Department's conclusion is supported by the Stipulated and Undisputed Facts, the two key facts being: (a) Taxpayer operates a pipeline with storage tanks, which transports, and stores finished, fluid product and (b) neither legal nor customer requirements or any manufacturing process force Taxpayer to create Transmix.

Further, according to section 12-37-220(A)(8), Department requested DHEC investigate the claimed property to determine if it qualified as pollution control equipment. In its responses, DHEC noted that it does not regulate pipelines, but instead the United States Department of Transportation ("USDOT") regulates interstate petroleum pipelines,[4] which Taxpayer admitted when making its exemption request to Department. As a result, Department, Counties, Taxpayer, and DHEC all agree pipelines are transportation systems not "industrial plants."

The South Carolina Code of Regulations provides additional guidance about what constitutes an "industrial plant." "A plant site shall consist of all land contiguous to a plant which is related to the overall ***manufacturing operation***. It shall include . . . ***all other lands directly related to manufacturing***. When possible, ***a plant site will be one contiguous parcel*** using legal and or natural boundaries." S.C. Code Ann. Regs. 117-1700.7 (emphasis added). Essentially, the term "industrial plant" appears to be similar to (if not synonymous with) the term "manufacturing."

By way of contrast, Taxpayer is a "'Transportation company[y]' [which is] defined to include but not necessarily be limited to (1) Railroad companies; (2) ***Pipeline companies***; and (3) Express companies." S.C. Code Ann. Regs. 117-1700.4 (emphasis added).

Although Taxpayer suggests a petroleum refinery might qualify as an industrial plant, Taxpayer's pipeline is separate and distinct and merely transports items that come from refineries as finished, fluid products. Taxpayer's pipeline and storage systems are most akin to collection pipes and storage tanks for a sewage treatment plant, rather than the ***actual*** sewage treatment plant.

Because exemption statutes are narrowly construed against a taxpayer, based on these

---

[4]A simple review of the USDOT's website, reveals the USDOT's mission is not related to "industrial plants," "manufacturing," "pollution control," but rather is to:

> Ensure our nation has the safest, most efficient and modern transportation system in the world; that improves the quality of life for all American people and communities, from rural to urban, and increases the productivity and competitiveness of American workers and businesses.

https://www.transportation.gov/mission/about-us <last accessed December 11, 2019>.

stipulated and undisputed facts, Taxpayer has not brought itself squarely within the parameters of section 12-37-220(A)(8).

Taxpayer's Failure to Challenge DHEC's (Lack of) Determinations

Under the circumstances presented in this contested case proceeding, for Taxpayer's Claimed Property to be eligible for Pollution Control Exemption, irrespective of what Department determined, DHEC would have had ***affirmatively*** to investigate Taxpayer's property "to **determine the portion of the property that qualifies** as pollution control property" (emphasis added). Further, if DHEC had determined some portion of Taxpayer's property qualified as pollution control property, then DHEC would have had to "**furnish** the Department of Revenue **with a detailed listing of the property that qualifies as pollution control property**" (emphasis added).

None of DHEC's communications ever determined that any portion of Taxpayer's property qualified as pollution control property. Rather, DHEC specifically points out its lack of authority to make that determination. Taxpayer has never challenged DHEC's failing to make a determination as required by section 12-37-220(A)(8).

However, to the extent of DHEC's communications could be read as an affirmative determination that some portion of Taxpayer's property qualified as pollution control property, nothing in those communications provide a "**detailed listing**" of which of Taxpayer's property qualifies. Again, Taxpayer has never challenged DHEC's failing to provide a detailed listing as required by section 12-37-220(A)(8).

Having failed to seek review of the administrative agency that is actually charged with making threshold determinations about whether, and, if so, what Taxpayer's property constitutes pollution control property, Taxpayer is now barred from doing so. And, this Court's analysis of

Taxpayer's exemption request under section 12-37-220(A)(8) is at an end.

CONCLUSION

For the foregoing reasons, Counties are entitled to an Order granting summary judgment confirming DOR's determination that Taxpayer is not entitled to an *ad valorem* tax exemption under section 12-37-220(A)(8) for either Pipeline Enhancements or Claimed Property.

[SIGNATURE PAGE FOLLOWS]
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Respectfully submitted,

KOZLAREK LAW LLC

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Counsel for Abbeville County, Anderson County, Greenville County, and York County

Greenville, South Carolina
December 11, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No.: 18-ALJ-17-0443-CC

Colonial Pipeline Company,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

and

Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County,

Intervenors.

30(B)(6) DEPOSITION OF COLONIAL PIPELINE COMPANY

****

Tuesday, August 6, 2019

9:30 a.m. - 4:06 p.m.

The 30(b)(6) deposition of COLONIAL PIPELINE COMPANY was taken on behalf of the Respondent at the South Carolina Department of Revenue, 300A Outlet Pointe Boulevard, Columbia, South Carolina, on the 6th day of August, 2019 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

VANCE REPORTING
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VanceReporting@gmail.com

the assets, that he wasn't familiar with all the different kinds of assets. So I thought he was going to reach out to them for help.

Q. Have you had any communications with the Department of Health and Environmental Control?

A. I have not.

Q. Do you know if Duff & Phelps had?

A. I don't know. I suspect they have, but I do not know that for sure.

MR. KOZLAREK: Okay. I think that's it. Thank you.

MR. MAYBANK: All right. I've got a -- quickly (sic) questions. I'm going to quickly go through these. A lot of these are just "yes" or "no" answers.

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. MAYBANK:

Q. All right. Did Colonial list certain assets as exempt pollution control in their 2017 property tax return?

A. Yes, we did.

Q. And did they list certain assets as exempt pollution control under 2018 property tax return?

A. Yes, we did.

answers or wasn't sure exactly what the answer was. So I apologize, again, if a couple of these seem duplicative of things you already answered, but bear with me.

I thought I heard you say earlier that the products that you transport could not be transported by any other method, and I'll give an example. Let's say tanker truck. Did I mishear you or is that what you said?

A. No, you misheard me. I think the question was centered around could -- could those other transportation modes provide the same services that Colonial does, as I -- as I believe what the vein of that question was.

Obviously, those -- those modes of transportations can transport the same products that we do, but as far as offering the same services and supporting the same processes, that would -- that would be a "no."

Q. Okay. So -- so a tanker truck or a tank on a -- on a railcar could transport the same types of product.

A. Yes.

Q. Okay. Would you imagine that those would also have some sort of corrosion protection and

A. So -- so the first question would be is: What do I clean out the pipe with? The -- the -- you know, the theory behind our pipe is, is I need volume to be able to -- I need volume coming in to be able to deliver volume going out.

The pipe -- the pipe is just kind of -- kind of be the constant. There will always have product in the pipe. So to get product out of the pipe, I've got to push product into the pipe.

To say could I do that? Could -- I could inject nitrogen, potentially, into the pipe and purge out the entire pipe and then fill it back, but from an operational standpoint, that would be -- is very impractical.

Q. Understood. I'm just trying to figure out what the -- what the possible reality is, not whether it makes operational and efficient sense.

So -- so, really, transmixing products is a measure of trying to keep the pipelines full, not necessarily a measure of really anything else. It's just trying to keep product in the pipe.

A. Say the term again? I'm not sure. You used a term "transmixing" or ...

Q. So pushing product through the pipe and having a separate type of product behind it or in

it at the same time where those -- and I forget the word you used, but where there's an interaction between two products, that's really just a mechanism of trying to keep the pipes full.

A. That is -- that is how to operate a pipeline, correct.

Q. Okay. So the three types of assets that we've been talking about that are claimed exempt, the auto shut-off valves, the cathodic protection, and the pipe coatings, what do those have to do with transmixing?

A. They -- those particular items do not. I mean, trans -- dealing with transmix and managing transmix is a process -- is a process that we do that produces fuel that basically manages -- it's a managing our operation of the -- of the system.

Q. And the other thing that I think I heard you mention, although I've heard two different -- what I thought were two different answers.

Originally, when you're speaking at the very beginning, I thought I heard you say that you do blending for one customer but it's not in South Carolina. And then later, I thought I heard you say that you do some blending or maybe you used

Carolina at the various facilities in South Carolina; that is --

A. Yes.

Q. -- pump stations, delivery facilities, and tank farms. That would be transmix blending only.

A. Yes.

Q. Okay. So that kind of blending is basically just because of the way you operate a pipeline.

A. Yeah, that's how to operate the facilities and ensure quality of the product in doing those things, correct.

Q. Okay. And in doing that, the three types of claimed exempt property, what specifically do they -- how do they impact transmix blending?

A. I'm not -- I'm not exactly sure the question as far as impact transmix blending.

Q. Well --

A. There --

Q. -- what is the pipe coating have to do with transmix blending? How does that -- how does that help you or hurt you? How does that change taking two products that may have touched and turning them into two separate products again and whatever that -- whatever that third mixed

prior to any kind of regulatory requirements that they be used?

A. That's correct.

Q. So why would they have been used in 1962 if they weren't required by state or federal law?

A. It's in our -- it's in the best interest to protect the asset and keep the product in the pipeline. So at the time, a decision was made to spend the extra money. Coatings were being used and cathodic protection was being used well before 1971 and -- and most of the companies were using them. But it wasn't a federal requirement, so not all were using them.

So it makes good -- it's a good investment. It makes good financial sense and -- to protect your asset and to keep the -- the product from -- from being released from your pipeline and -- and -- and causing a lot of concerns such as pollution, contamination.

MR. KOZLAREK: I don't think I have anything else. Thank you.

(There being no further questions, the deposition concluded at 4:06 p.m.)

NEXSEN|PRUET

Burnet R. Maybank, III
Member
Admitted in SC

December 11, 2019

VIA HAND DELIVERY

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Colonial Pipeline Company v. South Carolina Department of Revenue
Docket No. 18-ALJ-17-0443-CC

Dear Judge Anderson:

Enclosed please find the original and one copy of Petitioner's Motion for Summary Judgment and Petitioner's Memorandum of Law in Support of its Motion for Summary Judgment in connection to the above-referenced matter. Please stamp the copy and return via our courier. Proof of Service is enclosed as is a check for $50.00 to cover filing fees.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

Burnet R. Maybank, III

cc: Jason Luther, Esquire
Marcus D. Antley, III, Esquire
Michael E. Kozlarek, Esquire
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, v. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC **PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

TO: The Honorable Ralph King Anderson, Administrative Law Judge:

PLEASE TAKE NOTICE that the undersigned, as attorneys for Petitioner Colonial Pipeline Company, moves for an Order of Summary Judgment pursuant to Rule 56(c), SCRCP, granting Petitioner's request that it is an "industrial plant" and is therefore entitled to the Pollution Control exemption available under S.C. Code Ann. § 12-37-220(A)(8) for certain machinery and equipment. The grounds for the Motion are that there is no genuine issue of material fact and that there is no statutory, regulatory, or policy document mechanism to that allows the DOR to invoke market share sourcing as a matter of law.

THEREFORE, by the undersigned counsel as attorneys for Petitioner, Petitioner respectfully requests that this Court grant Summary Judgment pursuant to Rule 56(c), SCRCP.

Respectfully submitted,

December 11, 2019

Columbia, South Carolina

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, v. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC **PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Colonial Pipeline Company (hereinafter "Colonial" or "Petitioner") has filed this motion for Summary Judgment. The sole issue in this case is whether Petitioner's facilities constitute an "industrial plant" for purposes of the pollution control exemption.

I. INTRODUCTION

As stated below, in 2017 and 2018 Petitioner listed $1.6 million of pollution control assets on its property tax returns. It asserted these assets were exempt from property taxes under S.C. Code Ann. § 12-37-220(A)(8). The Department granted the exemptions for certain assets (i.e., wastewater and storm water pollution control equipment, secondary containment and floating roofs) but denied the exemption for other assets (i.e., pipe coatings, cathodic protection, automatic shut off valves) on the basis that Petitioner's facilities were not an industrial plant within the meaning of section 12-37-220(A)(8). Petitioner now requests this Court determine as a matter of law that these assets are exempt from property tax as pollution control assets.

II. STATEMENT OF FACTS[1]

A. General

Petitioner is a pipeline company that transports refined petroleum products (e.g., refined petroleum, jet fuel, gasoline, diesel, heating oil, and kerosene). As discussed more fully below, in order to conduct its in-state operations, Petitioner has developed a technical and sophisticated process for moving the refined petroleum products which requires 24-hour oversight and maintenance. The personal property at issue in this matter is spread among eleven counties in South Carolina (the "counties involved").

Given the nature of its business, Petitioner has maintained numerous environmental permits, including air, pollution discharge, groundwater and solid waste disposal at its facilities.

B. Procedural History

On April 19, 2017, the Department of Revenue's Government Services Division (the "Department") received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, Petitioner reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, the Government Services Division, based on its evaluation, issued a Property Assessment Notice granting the exemption application as to waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year

[1] Petitioner, Respondent, and Intervenors entered into Stipulations of Fact, a copy of which is enclosed as Exhibit A.

2017 but denying Petitioner's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

On September 7, 2017, Petitioner protested the proposed assessment for 2017 and the Department's denial of the exemption for the pipe coatings, cathodic protection, and automatic shut-off valves. Petitioner contends the subject equipment provides the technical means for the pipeline to prevent or eliminate leaks or spills from the pipeline during operations. Specifically, corrosion controls are put in place to maintain the soundness and integrity of the transportation pipelines and to prevent the unintended release/escape of petroleum due to corrosion mechanisms. Pipe coatings are used to protect the pipeline and provide additional protection from corrosion. Pipe coatings and cathodic protection are physical barriers to prevent corrosion Automatic shut off valves provide emergency shut off/shut down of a pipeline product flow in sections of the pipeline in the event of a pipeline leak or spill. Attached as Exhibit A are Federal Government descriptions of the need for such equipment.

On September 20, 2017, the Department's Government Services Division notified the county auditors for the counties involved of Petitioner's appeal of the 2017 assessment.

On October 19, 2017, the Department's Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether Petitioner's claimed property, specifically cathodic protection, pipe coatings, and automatic shut-off valves, qualified as pollution control property, pursuant to § 12-37-220(A)(8) qualified as pollution control property, pursuant to § 12-37-220(A)(8).

On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation

("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). Petitioner claimed the same property as pollution control property on its 2017 and 2018 property tax returns.

On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying Petitioner's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to waste water pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

The Government Services Division received correspondence postmarked August 13, 2018, from Petitioner protesting the proposed assessment for property tax year 2018.

On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, waste water pollution control equipment, storm water pollution control, secondary containment, and

tank internal/external floating roofs to DHEC for investigation into whether Petitioner's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations. A portion of the DHEC letter (Exhibit B) stated:

> Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. UST's are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

The Department issued its Determination in this matter on November 19, 2018, and Petitioner timely requested a contested case hearing on December 5, 2018.

C. Agreed Pollution Control Property

As stated above, the DOR actually granted the pollution control exemption for certain property in both 2017 and 2018. It is briefly described below:

1. Wastewater Pollution Equipment

These are facility drain lines. If Colonial had an issue with a station or tank, it could isolate it from the main line and contain or mitigate the emergency. The DOR approved it for upgrades done in Gaffney and Spartanburg.

2. Stormwater Pollution Control

These are dike drains used in coordination with earthen berms at Colonial's larger tanks and areused to maintain a closed system. The DOR approved it for upgrades done in Belton.

3. Secondary Containment

There is a sump in North Augusta, which could be used for secondary containment. It was designed for a situation where, if Colonial had a tank at risk of overflow because of a pressure surge in a line, Colonial could direct the flow to the sump and mitigate the chance of a tank overflowing. The DOR approved it for upgrades in North Augusta.

4. Tank Internal Floating Roof

These are lightweight internal roofs that float on top of the petroleum products. They reduce the vapor area and minimize the amount of emissions that are pushed out as the tank is filled up. The DOR approved it for upgrades in Spartanburg and it is used in many tanks. (30(B)(6) Deposition of Colonial Pipeline Company (hereinafter "30(B)(6) Deposition"), pp. 243-6)

D. Disputed Pollution Control Property

The assessment in dispute is as follows:

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

As stated above, Colonial filed for the pollution control exemption for various equipment in 2017 and 2018. The Department granted the exemption for certain equipment and denied it for others. A chart showing the granting and denial is below:

Table 1. Summary of Colonial Schedule X & South Carolina DOR Determinations

No.	Colonial Schedule X Filings	South Carolina DOR Determination
I. Transmission Pipeline		
A. Water Pollution Control Equipment		
1.	Pipeline Cathodic Protection	Denied
2.	Pipeline Coatings	Denied
3.	Automatic Shut-off Valves	Denied
II. Storage & Terminals		
A. Water Pollution Control Equipment		
4.	Waste Water Pollution Control Equipment	Approved
5.	Storm Water Pollution Control	Approved
6.	Secondary Containment	Approved
B. Air Pollution Control Equipment		
7.	Tank Internal/External Floating Roofs	Approved

The disputed items are required by federal law for pipeline facilities that transport hazardous liquids (petroleum), see 49 CFR § 195, as follows:

Colonial Installations	**Pipeline Integrity Statutory Requirement**
Pipeline Coatings	49 CFR § 195.557 (A)
Cathodic Protection	49 CFR § 195.563 (a)
Automatic Shut-Off Valves	49 CFR § 195.260 (a)
Colonial Installations	**Tank Floating Roof Statutory Requirement**
Tank Internal/External Floating Roofs	49 CFR § 63.1062 (a)

Colonial applied for and was granted the pollution control exemption for some or all of the same equipment in Alabama, Virginia, and North Carolina (shut off valve). (30(B)(6) Deposition, pp. 27-30).

E. Brief Description of Colonial Pipeline Company Operations

Colonial transports refined petroleum products to users across the east coast. As noted from its website: "Every day, Colonial Pipeline safely and efficiently delivers more than 100 million gallons of gasoline, home heating oil, aviation fuel, and other refined petroleum products." (*Id.* at p. 134, citing Respondent's Exhibit 4 to 30(B)(6) Deposition)) "Our first job is to move fuel safely and responsibly from refinery to market." (*Id.* at p. 135 (quoting Exhibit 4 to 30(B)(6) Deposition)).

As may be seen in the attached graphic (Exhibit C) (Department's Exhibit 4 to the 30(B)(6) Deposition), crude petroleum comes into refineries in the United States where it is processed into gasoline, diesel, jet fuel and other products, which are then transported by Colonial and others. (*Id.* at p. 109) Colonial receives products from refineries and other third parties. Colonial does not buy or sell petroleum products in the ordinary course of business (*Id.* at p. 109). Colonial receives products from approximately 30 refineries in the Gulf Coast region of the United States (*Id.* at p. 116). Colonial takes "all the refinery fuel and … move[s] it together fungibly. And then our processes have to ensure that the quality of product that you get out the other end is the same thing that came into the pipe." (*Id.* at p. 117) As a fungible product, "[s]hippers will receive equivalent product but may not be the actual product shipped." (*Id.* at p. 119) Specifically, in South Carolina, Colonial ships ultra low sulfur diesel, heating oil, marine diesel, jet fuel, and kerosene (*Id.* at p. 99). Ultra low sulfur diesel and jet fuel are shipped as finished products.

Notwithstanding this process, the characterization of Colonial as a mere transporter ignores the substantial technical and industrial nature of Colonial's activities, which are required to ensure each delivery occurs. Petitioner is constantly interacting with the transported product to facilitate the transportation process. For example, as Colonial moves product through its system, product comes into contact with each other, e.g. regular gasoline and premium gasoline.

Gasoline can come into contact with ultra low sulfur diesel, and can cause specification issues, affect the product's octane, or hurt the gasoline's distillation point, thereby affecting the quality of the product. (*Id.* at 174) The mixture of these products is called transmix. Colonial has to turn the transmix back into the original products, which is a very controlled process. (*Id.* at p. 114) Colonial handles transmix through blending operations in South Carolina. This occurs primarily at tank farms, pump stations, and delivery facilities. (*Id.* at pp. 101, 105 & 190). Colonial has "to isolate that product and then re-inject and manage that and basically support the removal and disposal of that product, or inject it and blend it into gasoline." (*Id.* at p. 173)

Colonial also adds Drag Resisting Agents ("DRA") to the product as it is transported, which reduces the amount of friction loss as products move through the line. (*Id.* at p. 127) Colonial also has to remove the water that accumulates in and around the transported product through its process, referred to as "sting." (*Id.* at p. 190). In addition to transporting and storing fuel in South Carolina, Colonial also regrades fuel in this state. "Regrade" is a process by which Colonial "change[s] a label of the product, the product's grade." Examples include regular/premium gasoline and heating oil and diesel. (*Id.* at p. 189)

Petitioner must constantly measure gravity, pressures, and temperature of the products that it transports to ensure safety and quality control. (*Id.* at p. 130) Equipment is also used to measure for and detect leaks. (*Id.* at p. 200) As a result of its operations, Petitioner is regulated by the Federal Energy Regulatory Commission (FERC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA) (*Id.* at p. 186).

F. Detailed Description of Facilities

As may be seen in the attached Affidavit and maps (Exhibit D), Colonial's operations in South Carolina are comprised of 515 miles of pipeline, two tank farms, three main line booster stations, and one delivery facility spanning 11 counties in the State. Of the 515 pipeline miles in

the State, 203 are mainline miles (L01/40-inch and L02/36-inch pipes), 74 are stub line miles (L29/16-inch pipes), and 15 miles are delivery lines. Colonial has two main pipelines in South Carolina, Line 1 and Line 2. Lines 1 and 2 run from Pasadena, Texas to Greensboro, North Carolina. Line 1 transports gasoline and Line 2 transports distillate, which includes jet fuel and ultra low sulfur diesel. (*Id.* at p. 103) Line 29, which is a stub line, goes from Belton to North Augusta, which is the major delivery facility in South Carolina. (*Id.*) The pipes move product at a very high velocity, and typically deliver to "breakout tankage" or tank farms in Belton and Spartanburg. (*Id.* at p. 102) An additional 96 miles are currently out of service/idle.

Colonial also operates two tank farms in South Carolina. The two tank farms receive petroleum products from Lines 1 and 2 "into tankage and then that product is delivered out from that tankage to multiple delivery lines to customers." (*Id.* at p. 191) Belton Junction is a 130-acre above ground breakout and delivery facility located in Anderson County. The facility is staffed by an Operator 24/7. The tank farm is comprised of 20 tanks. Belton Junction also serves as the origination for Line 29, which terminates at the North Augusta Delivery Facility. All the tank farms have sting systems that remove water off the tank. (*Id.* at p. 202) Tanks are drained of sting water at least daily. (*Id.* at p. 203) Colonial also is required to do tank maintenance on all the tanks as well as pipeline integrity checks. (*Id.* at p. 205) These facilities also have utility tanks, which are used to drain product so that Colonial can work on the facility. (*Id.* at p. 197) The tanks are summarized below:

Gasoline	12 Tanks
Distillate	7 Tanks
Transmix	1 Tank

Three main line booster stations are located in South Carolina at Anderson, Simpsonville and Gaffney as summarized in the following table.

Facility	Line 1	Line 2	Notes
Anderson	X	X	Line 2 launching and receiving traps
Simpsonville		X	

Gaffney	X	X	

Spartanburg Delivery is a 74-acre above ground breakout and delivery facility in Spartanburg, SC. The facility is staffed as Operation's schedule dictates with a minimum of one operator on shift during all product receipts and delivery operations. The tank farm is comprised of 22 tanks as summarized below:

Gasoline	13 Tanks
Distillate	6 Tanks
Out of Service	3 Tanks (2 gas, 1 oil)

Colonial has to use multiple pumps to maintain the flow on both its main and delivery lines. There are three pump stations in South Carolina on Lines 1 and 2, *Id.* at 102-03, typically with four to five pumps per station, and there are pumps at the tank farms. Pumps range from 1500 horsepower to 5,000 horsepower. (*Id.* at pp. 192-94) Belton and Spartanburg both have booster pumps, which put up low pressure at a very high flow rate. (*Id.* at p 194) Also, most of the facilities have oil/water separators to make sure that in the case of an emergency, Colonial is able to protect the environment. (*Id.* at p. 204)

Colonial also provides support to its customers. For example, Colonial provides petroleum storage services at its Belton and Spartanburg facilities for third parties. (*Id.* at p. 108) Additionally, truck terminals, which are owned by third parties, are strategically located close to the tank farm facilities in Belton and Spartanburg to ensure timely transmission. (*Id.* at p. 104)

These expansive operations require substantial manpower. The Charlotte/South Carolina Operations Team has 32 team members consisting of the following: 1 Operations Manager, 2 Lead Operators, 6 Senior Operators, 8 A-Operators, 1 Operator, 2 Lead Technicians, 2 Senior Technicians, 5 Technicians, 3 ROW Inspectors, 1 Planner, and 1 Administrative Assistant. These team members are based out of the Belton, Spartanburg, and Charlotte facilities and support all operations in South Carolina. Also based at these facilities are Southeast District support

personnel consisting of a 1 Senior Field Project Manager, 1 Field Project Manager, 6 Project Inspectors, 2 Corrosion Technicians, 1 Environmental Specialist, and a Safety Specialist. Colonial also utilizes a number of independent contractors. The number of independent contractors typically outnumber the number of Colonial employees. (*Id.* at p. 208)

III. LAW

A. Standard of Review

This Court's Rules of Procedure provide "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." ALC Rule 68. Rule 56(c) of the South Carolina Rules of Civil Procedure provides summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admission son file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." *See Bovain v. Canal Ins.,* 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri,* 345 SC 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.,* 367 SC 242, 250, 626 S.E.2d 1, 5 (2006). Summary judgment should be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *R.J. Hendricks, II v. Clemson Univ.,* 353 SC 449, 455, 578 S.E.2d 711, 714 (2003); Rule 56(c), SCRCP; see ALC Rule 68." *Dorn and Kate Smith v. Clarendon County Assessor*, 11 ALJ 17-0191 (2011).

B. Background

Petitioner disputes the Department of Revenue's ("Respondent or "Department") Determination that Petitioner is not entitled to the pollution control property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) for the 2017 and 2018 tax years.

The sole issue before this Court is whether the Automatic Shut-off Valves, Pipeline Cathodic Protection and Pipeline Coatings identified by Petitioner in its property tax refund claim are exempt from property tax under S.C. Const. Art. X, § 3(h) and § 12-37-220(A)(8) as pollution control property of an "industrial plant." The Department's Determination (Nov. 19, 2018) states, "To qualify for the pollution control exemption, the claimed property must be 1) facilities or equipment of industrial plants; 2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; 3) required by state or federal government; and 4) used in the conduct of their business. Here, the claimed property fails the first element because the claimed property is not a facility or equipment of an industrial plant. The Taxpayer is a pipeline company." Accordingly, the sole issue is whether Petitioner's facilities constitute an "industrial plant" in South Carolina, and thus are eligible for the property tax exemption.

Petitioner requests this Court determine that the property identified below is exempt from property tax under the pollution control exemption available under S.C. Const. Art. X, § 3(h) and § 12-37-220(A)(8). The constitutional provision exempts from property tax "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." That statute exempts:

> 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 the state or federal government and used in the conduct of their business.

C. Dictionary Definitions

Petitioner is not aware of any DOR Policy documents or South Carolina case law that define "industrial plant". Google defines the term "industrial plant" as "buildings for carrying on

industrial labor." Wikipedia does not have an independent definition for "industrial plant." However, the term "industrial plant" is encompassed within the definition of "physical plant," which is defined as follows: "Physical plant, mechanical plant, or industrial plant (and where context is given, often just plant) refers to the necessary infrastructure used in operation and maintenance of a given facility. The operation of these facilities, or the department of an organization which does so, is called "plant operations" or facility management. *Industrial plant should not be confused with "manufacturing plant" in the sense of "a factory."* (Emp. added).

There are also dictionary definitions. The definition of "industrial plant" by *Webster's Online Dictionary* is "Industrial plant – buildings for carrying on industrial labor." *MnemonicDictionary.com* defines industrial plant as "buildings for carrying on industrial labor." *The Free Dictionary* similarly states that industrial plants are, "buildings for carrying on industrial labor." It gives as an example, "gas system – facility (plant and equipment) for providing natural-gas service."

D. Environmental Regulatory References

The CFR's section on flammable liquids includes specific reference to the term "industrial plant." While the term is not directly defined, the section notes that industrial plants include areas where "The use of flammable liquids is incidental to the principal business" and "where flammable liquids are handled or used only in unit physical operations such as mixing, drying, evaporating, filtering, distillation, and similar operations which do not involve chemical reaction." *See* 29 C.F.R. § 1910.106.

The term "industrial plant" has been defined in federal law as "any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output." 42 U.S.C. § 6326(5).

In South Carolina's Pollution Control Act, Pollution is defined in SC Code §48-1-10 as follows: "Pollution means (1) the presence in the environment of any substance, including but

not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure of degraded…" Industrial waste is defined as follows: "Industrial waste means any liquid, gaseous, solid, or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development of any natural resources."

In the context of industrial revenue bonds authorized by statute under § 4-29-10 et seq., South Carolina Code defines a "Project" eligible for industrial revenue bonds as

> any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:
>
> (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;
>
> (b) *any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry*, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

Petitioner very clearly engages in the "commercial enterprise" of "storing, warehousing, distributing [and] transporting" petroleum, which is extracted or *mined* from the ground, so Petitioner very clearly would qualify for *industrial* revenue bonds.

Finally, Petitioner was issued environmental permits from SCDHEC and Spartanburg Water & Sewer Authority that are designated for "industrial activities" like petroleum bulk stations and terminals. Certain of these permits have expired or are no longer in place, Colonial had South Carolina Title V Air Permit for Belton, Spartanburg, North Augusta and Anderson; National Pollutant Discharge Elimination System ("NPDES") Hydrostatic Test Permit (statewide); two NPDES Permits for bulk Petroleum Storage for the two tank farms at

Spartanburg and Belton; NPDES Permit for the discharge of petroleum contaminated groundwater for Simpsonville; and Consent Order for the Discharge of Contaminated Groundwater (Gaffney) (30(B)(6) Deposition at. pp. 221-23). All are issued by DHEC. (*Id.* at p. 223).

The Permits are quite lengthy so Petitioner has attached as Exhibit E only the front page of the Permits listed below, along with just the relevant pages. The "NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, SCR 000000 (September 1, 2016)" Section 1.1.1, Facilities Covered, states, "To be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity." The permit specifically references "industrial plant" as follows, "Storm Water Discharges Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant."

The NPDES Permit provides a definition section which reference 'sludge' as an industrial substance. Sludge is defined as follows: "Sludge means industrial sludge. Industrial sludge is solid, semi-solid, or liquid residue generated during the treatment of industrial wastewater in a treatment works. Industrial sludge includes but is not limited to, industrial septage; scum or solids removed in primary, secondary, or advance wastewater treatment processes; and a material derived from industrial sludge."

Colonial Pipeline Company was issued the following permits which reference the term *industrial*:

In Colonial's NPDES General Permit for Discharges from Petroleum Contaminated Groundwater (Permit No. SCG830000), Part I Definitions explains, "X. 'Studge' means industrial sludge. Z. 'Wastewater' means industrial wastewater. "Industrial wastewater generated from a federal facility, commercial or industrial process, including waste and

wastewater from humans when generated at an industrial facility."

In section G of the NPDES General Permit for Discharges from Bulk Petroleum Storage Facilities (Permit No. SCG6340000), it states that "The Best Management Practices Plan requirement is applicable to dischargers with ancillary industrial activities who use, store, manufacture, handle or discharge any pollutant listed as toxic under Section 311 of the CWA." It contains the same definition of industrial wastewater and sludge as quoted above.

In the October 23, 2015, Reissued Permit/Authorization #090GW, Industrial Wastewater Discharge Authorization, for Colonial from Spartanburg Water, the permit states "Please read the permit/authorization in its entirety, along with the Spartanburg Sanitary Sewer District's Sewer Use Rules and Regulations for a thorough understanding of all the requirements for compliance with the Industrial Pretreatment Program."

The Certified Mail/Return Receipt Requested form (July 1, 2009) in response to Colonial's NPDES General Permit for Discharges From Bulk Petroleum Storage Facilities #SCG340020 states, "The regulatory requirements for no exposure are very specific to the industrial storm program and cannot simply be duplicated in this permit."

E. Case Law Definitions

The Supreme Court of Florida has interpreted "industrial plant" in several cases regarding tax issues. For instance in *Jacksonville Port Authority v. Florida* the court determined that a food distribution center for some 180 retail outlets constituted an industrial plant by referencing several cases and concluding that the legislature "intended the phrase to be liberally construed." See *State v. Jacksonville Port Auth.*, 305 2d 166, 168 (Fla. 1974). The court also held that a commercial laundry facility constituted an "industrial plant." The court considered several factors in reaching this conclusion such as whether the plant contributes to the prosperity of the state, the clientele, the size of the plant, and the number of employees. *Id.* Additionally, the court noted that the term "plant" applied to facilities that render services and process or distribute

products. Furthermore, in *Richards v. Jolley*, the North Carolina Court of Appeals turned to the common meaning of the word "plant" to relate it to the statute in question. The court stated that "in common usage a "plant" is defined as "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." *Richards v. Jolley*, 208 N.C. App. 436, 441, 703 S.E.2d 467, 470 (2010) *citing* Merriam-Webster's Collegiate Dictionary 948 (11th ed.2005).

Petitioner has not found any property tax cases dealing with petroleum shipping companies. There are several sales tax cases in which certain machinery and equipment used by companies which shipped gas (as opposed to extracting or refining gas) were held exempt under the state's sales tax exemption statute for manufacturers. *See Great Lakes Gas Transmission L.P. v. Commissioner of Revenue*, 638 N.W.2d 435 (Minn. Sup. Ct. 2002); *Southern Natural Gas Co. v. State*, 261 Ala. 222, 73 So.2d 731 (1954) and *State v. Alabama Gas Corp.*, 258 Ala. 356, 62 So.2d 454 (1952).

F. DOR Policy Documents

In Rev. Rul. # 91-8 and Rev. Proc. # 05-1, the DOR held that portions of waste water treatment facilities met the sales tax exemption for pollution control. Accordingly, the DOR (by definition) held that waste water facilities met the industrial plant requirement. The DOR noted that a portion of the water being treated came from manufacturers. Many of the petroleum products in the Colonial system come from refineries, which are treated as manufacturers.

G. The DOR has treated Colonial's facilities as an industrial plant.

The short answer to this dispute is that the DOR has treated Colonial's facilities as an "industrial plant." The DOR granted the exemption in 2017 and 2018 for wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs. By definition, under the DOR's own analysis, Colonial's facilities constitutes an industrial plant.

H. Ambiguities are resolved against the Government

In the context of a tax statute, it is a settled rule that ambiguities are resolved "against the government and in favor of the taxpayer." As the South Carolina Supreme Court stated in *Alltel Communications, Inc.*, 399 S.C. 313, 731 S.E.2d 869 (2012):

> Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001). However, "[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt." S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (citing Cooper River Bridge, Inc. v. S.C. Tax Comm'n, 182 S.C. 72, 188 S.E. 508 (1936)). " [W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor." Cooper River Bridge, Inc., 182 S.C. at 76, 188 S.E. at 509-510; see also SCANA Corp. v. S.C. Dep't of Revenue, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (2009) (Beatty, J., dissenting) (noting general rule that where substantial doubt exists as to the construction of tax statutes, the doubt must be resolved against the government). The existence of an ambiguity in section 12-20-100 raises substantial doubt regarding the section's application to Appellants. This doubt must be resolved in favor of Appellants. 731 S.E.2d at 873.

See also *Fairfield Waverly, LLC v. Dorchester Cnty. Assesor*, Docket No. 14-ALJ-17-0602-CC (filed February 1, 2017) (citing *Mead v. Beaufort Cnty. Assessor*, Docket No. 13-ALJ-17-0585-CC (filed Aug. 19, 2014)). And such ambiguity, especially in the case of general tax administration and not a credit or exemption, must be resolved in favor of the taxpayer. See *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 190 S.E. 249 (1937) (noting that "where a tax statute

is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, any substantial doubt must be resolved against the government in favor of the taxpayer"); *see also Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) ("Revenue laws are generally construed in favor of the taxpayer and against the taxing authority."); and, Sutherland Statutory Construction § 66:1 (6th ed.).

IV. Conclusion

As stated above, Petitioner operates a system of pipelines, tanks, valve manifolds, injection equipment, water management equipment, and pump and booster stations across the eastern seaboard. Petitioner's operations begin in the Gulf Coast and terminate in New York Harbor. In the geographical area at issue in this case (which covers small parts of Georgia and North Carolina, as well as South Carolina), Petitioner employees 30-35 operators and technicians on a full-time basis (including an equal number of independent contractors) to oversee operations, run its facilities, make repairs, and respond to issues as needed

While the Department characterizes Petitioner as a simple pipeline company, Petitioner's operations are far more complex and dynamic. For example, Petitioner also is involved in the blending of fuel on its pipeline at its North Carolina facility. Petitioner also blends transmix at its South Carolina operations. In addition, every 50-60 miles along its mainlines, Petitioner operates a booster station on the line that increases pressure in the pipeline system and allows for the movement of petroleum through the pipeline.

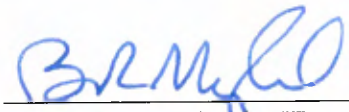
Petitioner also has a number of tank farms along the line, which strip and deliver product coming from the pipeline into the tanks for delivery to local truck terminals. Each of these tank farms has complex system of pumps, motors, valves, manifolds, injection equipment, control systems, and other industrial infrastructure necessary to move product. Petitioner also operates a number of smaller diameter lines commonly referred to as stub or delivery lines. Once such stub line originates at the Belton junction facility and terminates at the North Augusta delivery facility

which delivers to truck terminals in the North Augusta area. The delivery facility also contain complex infrastructure to ensure the proper transfer of product to customers, including meters, valves, tanks, injection equipment and control and equipment.

In addition, Petitioner has blending operations across the system. It also processes transmix in South Carolina to create salable product. Petitioner also blends/mixes products and additives along the line. For example, it injects DRA in South Carolina to the product to improve line efficiency. It also operates chillers along the line, which cool the product to ensure safe transportation. It also has significant butane and biodiesel blending operations in other states, including North Carolina. Throughout the transfer process, Petitioner has sophisticated infrastructure, which allows for the constant quality monitoring and testing of the product. As stated at length in the depositions, Petitioner filters and removes "sting water" at the Belton and Spartanburg facilities through the use of oil and water separators.

It clearly is an "industrial plant," and the DOR has conceded as much by previously granting a pollution control exemption for much of its property in 2017 and 2018.

Respectfully submitted,



December 11, 2019
Columbia, South Carolina

Burnet R. Maybank, III
Jim Rourke
Nexsen Pruet, LLC
PO Drawer 2426
Columbia, SC 29202
(803) 540-2048

Attorneys for Petitioner
Colonial Pipeline Company

Exhibit A

U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration

Pipeline Safety Stakeholder Communications
Pipeline Safety Connects Us All

Fact Sheet: Corrosion

Quick Facts:

- *Corrosion is the natural process of materials made from metal to their original state through a chemical reaction known as oxidation.*
- *Corrosion is one of the leading causes of pipeline leaks and ruptures.*
- *Improved technologies have led to better prevention, monitoring, detection, and mitigation of pipeline corrosion – even for old pipelines.*
- *New pipeline Integrity Management regulations will promote early identification of potentially corroded sections and their repair.*
- *Refer to other Fact Sheets for specific discussion of issues related to internal corrosion, external corrosion, selective seam corrosion, and stress corrosion cracking.*

What is corrosion and why does it occur?

Corrosion is the deterioration of metal that results from a reaction with the environment which changes the iron contained in pipe to iron oxide (rust). For example, if your car develops a rust spot, that is corrosion of metal. The same process can occur in various forms on pipelines. As is the case with your car, there are effective methods for preventing and arresting corrosion damage to pipelines.

- *External corrosion* occurs due to environmental conditions on the exterior surface of the steel pipe (e.g., from the natural chemical interaction between the exterior of the pipeline and the soil, air, or water surrounding it).
- *Internal corrosion* occurs due to chemical attack on the interior surface of the steel pipe from either the commodity transported or other materials carried along with the commodity transported within the pipeline.
- *Other, more specialized types of corrosion* such as stress corrosion cracking , microbial corrosion, and selective seam corrosion can also occur. These types of corrosion can be exacerbated by environmental conditions, manufacturing processes and applied stresses resulting from routine and normal pipeline operations.

What are the risks from corrosion?

Corrosion can result in the gradual reduction of the wall thickness of the pipe and a resulting loss of pipe strength. This loss of pipe strength could then result in leakage or rupture of the pipeline due to internal pressure stresses unless the corrosion is repaired, the affected pipeline section is replaced, or the operating pressure of the pipeline is reduced.

Pipeline corrosion creates weaknesses at points in the pipe, which in turn makes the pipe more susceptible to third party damage, overpressure events, etc. (i.e., corrosion doesn't necessarily need to cause the leak or rupture itself to increase risk).

Pipeline Failure Rates from Corrosion

Corrosion is one of the most prevalent causes of pipeline spills or failures. For the period 2002 through 2003, incidents attributable to corrosion have

represented 25% of the incidents reported to OPS for both Natural Gas Transmission Pipelines and Hazardous Liquid Transmission Pipelines.

Over this same period, approximately 1 percent of the incidents reported to OPS for Gas Distribution Pipelines were due to corrosion.

What is being done to prevent/mitigate corrosion?

- Modern manufacturing processes for steel pipe and their protective coatings are subject to rigorous fabrication and installation standards and quality control to reduce the occurrence of defects that can lead to corrosion-induced failures.
- Operators use coatings, cathodic protection systems, pipe cleaning techniques, product quality controls, and other approaches to protect pipelines from corrosion.
- The Office of Pipeline Safety has implemented new Pipeline Integrity Management ("IM") regulations that require all pipeline operators to inspect and assess all of their pipelines that could affect areas of high consequence such as populated areas or environmentally sensitive areas. The operators are required to inspect and assess their pipelines for integrity issues, such as corrosion, and repair or replace affected pipe.
- By implementing the requirements of the regulations and through responsible maintenance programs, pipeline operators continuously inspect their pipelines for corrosion damage and potential susceptibility.

Corrosion: What more can be done

- *Public*: Be aware of pipelines located near you. Be observant for signs of pipeline damage, leakage, or security concerns. Report any concerns you have regarding pipeline safety to the pipeline operator immediately. Always respect the pipeline right-of-way. Do not dig or build on a pipeline right-of-way without first contacting the pipeline operator or your state one-call center.
- *Industry*: Pipeline operators and industry stakeholders can continue to develop and implement improved corrosion detection and prevention technologies. Operators must continue to implement corrosion protection effectively and strengthen pipeline integrity management programs. Operators must mitigate the effects of corrosion when it is detected.
- *Regulators*: OPS and state regulators must continue to inspect pipeline operators to ensure they effectively implement required integrity management and corrosion control programs to ensure that risks to pipelines are identified and mitigated at the earliest possible time. Better coordination is needed between local permitting agencies and pipeline operators to facilitate expeditious granting of permits when public safety is potentially threatened.

Date of Revision: 12012011

U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration

Pipeline Safety Stakeholder Communications
Pipeline Safety Connects Us All

Fact Sheet: Pipe Coatings

Overview:

Pipelines are usually buried underground to protect them from damage, and keep them from interfering with the movement of traffic. Underground, the exterior of the pipe is exposed to conditions that can lead to corrosion. It should be noted that the interior of pipelines can also be attacked by corrosive products, such as hydrogen sulfides, CO^2 and water, that might be contained in products transported in the pipeline.

History of Corrosion Protection

The earliest pipelines were buried without any external coatings. To prevent corrosion, pipeline manufacturers and operators began applying coatings to the exterior of pipe at the time it was being installed. This required the exterior surface of the pipe to be cleaned, usually by wire-brushing, and then application of a coating to the surface. These early pipe coatings were tape wraps and coal tars.

These coatings are susceptible to disbonding, however, and pipeline operators eventually determined that coatings alone would not provide complete corrosion protection.

Disbonding refers to a condition in which the pipe coating becomes separated from the exterior pipe wall. This allows water to come into contact with the pipe wall, setting up conditions that can lead to corrosion. Pipe coatings can also be damaged by equipment, and by rocks left in the backfill during installation, as well as by subsequent excavation activities.

To enhance protection, operators began installing cathodic protection (CP) systems. By taking periodic measurements of pipe-to-soil electrical potentials along the pipeline, CP systems can detect disbondment, and the operator can make necessary repairs to the pipe coating.

Today pipe coatings are applied by the pipe manufacturer at the time the pipe is manufactured. This has obvious advantages. The coating can be applied in a consistent manner, the exterior of the pipe is clean, and application conditions can be better controlled. Exterior pipe coatings still need to be applied during construction in the field at the girth welds when pipe sections are joined together.

The most widely used pipe coating today is Fusion Bonded Epoxy (FBE). FBE is applied to hot rotating pipe that is electrostatically charged. FBE is resistant to high temperature, can withstand high stress, and provides good protection against corrosion.

Coatings are also used to protect the interior surfaces of some pipe, but their use in that application is not pervasive in the oil and gas industries. Oil and gas pipeline operators prefer to treat their products through dewatering and the use of chemical additives to reduce corrosion, rather than using internal pipe coatings. Internal coatings may be used in pipelines were pretreatment is not

feasible, such as gathering lines. Epoxy, cement, and ceramics can be used as internal coatings.

Conclusion

Pipe coatings protect pipelines from corrosion-related defects. They are just one element of the total package operators employ to ensure their pipelines are well protected. Cathodic protection and integrity assessments are also used to prevent corrosion, and to detect any defects that may result from corrosion.

Date of Revision: 12012011

U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration
Pipeline Safety Stakeholder Communications
Pipeline Safety Connects Us All

Fact Sheet: Cathodic Protection

Quick Facts:

- *Virtually all hazardous liquid and natural gas transmission pipe in service today is made from steel. This steel – when not otherwise protected and exposed to oxygen and/or water – can corrode. Corrosion can result in small holes in the pipe, or loss of pressure-carrying capacity.*
- *Corrosion is the electro-chemical reaction of a metallic material with its environment. Pipe environments include soil, water, air, and even the contents of the pipe itself.*
- *In all electrolytes (the ground, rain water, river or sea water, moisture in the air or transported product), metal atoms from the pipe go into solution as electrically charged ions. The movement of the ions causes a flow of electrical current from the metal pipe to the electrolyte (ground or water). This process causes loss of metal from the metal surface, and is commonly recognized as rust.*
- *Cathodic Protection (CP) systems help prevent corrosion from occurring on the exterior of pipes, by substituting a new source of electrons, commonly referred to as either a "sacrificial anode" or "impressed current anode". Both systems operate by imparting a direct current onto the buried pipeline, using devices called rectifiers. As long as the current is sufficient, corrosion is prevented, or at least mitigated and held in check.*
- *In most cases, coatings on the exterior of a pipe are used in conjunction with CP. Coatings have a high dielectric strength, which prevents the flow of electrons to the pipe's surroundings, thus interrupting the electro-chemical reaction of the metal with its environment.*

Where is cathodic protection used?

CP protects buried pipelines, ship hulls, underground tanks, offshore platforms and any other metal surfaces which may come in contact with the ground or with water. It is not used to prevent atmospheric corrosion, or corrosion that may occur inside the pipe due to its contents. Other corrosion-control measures are used in these cases.

What are the regulatory requirements for cathodic protection on a pipeline?

- Gas pipelines installed after July 31, 1971, and hazardous liquid interstate pipelines installed after March 31, 1970, must be properly coated and have CP. Effective dates for other categories of pipelines apply.
- CP is required on any pipeline installed before these dates if the pipeline is coated, or where areas of active corrosion are present if the line is bare or ineffectively coated.
- Performance of CP Systems must be monitored regularly with tests performed at least once per year. Records must be maintained for the life of the pipeline.
- Where CP systems utilize rectifiers, each rectifier must be checked six times a year, with a maximum interval between checks of 2 ½ months.
- Each pipeline must have sufficient test points for electrical measurement to determine CP adequacy. Test points should be shown on CP system maps.

- Operators must maintain records or maps of their CP systems. Records of all tests, surveys, or inspections required by the regulations must be maintained.
- Pipelines that are found to have deficient CP must be remediated in a timely manner (usually within 12 to 18 months after discovery).
- More stringent requirements apply to gas pipelines operating under an alternative (higher) MAOP.
- More detailed information on the regulatory requirements pertaining to cathodic protection can be found in 49 CFR 192 Subpart I and 49 CFR 195 Subpart H.

Date of Revision: 12012011

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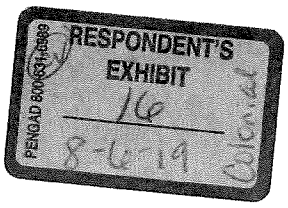
Exhibit B

dhec
Healthy People. Healthy Communities.
David E. Wilson, Jr., Acting Director

Trey D. Antley, Esq.
South Carolina Department of Revenue
Office of General Counsel
300 A Outlet Pointe Blvd.
Columbia, SC 29210



August 27, 2018

Re: Colonial Pipeline 2017 and 2018 application for pollution control property tax exemption

Dear Mr. Antley:

Per your request, our office has reviewed Colonial Pipeline's property tax exemption application for 2017 and 2018, and offers this letter consistent with the requirements of S.C. Code §12-37-220 to clarify our determination regarding Colonial's "pollution control equipment." As previously noted, there are no promulgated South Carolina laws or regulations regulating petroleum pipeline operations, and the South Carolina Department of Health and Environmental Control (SCDHEC) lacks the authority to permit pipeline operations, or to inspect or enforce any operational aspect of the pipeline conveying petroleum products. Interstate petroleum pipeline operations are regulated exclusively by federal agencies, including the U.S. Department of Transportation, and the Department is unable to speak for those agencies with regard to the purpose of any specific requirements promulgated by those agencies.

Nonetheless, SCDHEC does regulate underground storage tank (UST) systems under state law and regulations, and many of the technologies utilized by petroleum pipelines and USTs are similar in design and purpose.

Colonial has specifically listed three items purported to be pollution control equipment that remain at issue in the 2017 and 2018 property tax determination: (1) pipeline cathodic protection, (2) pipeline coatings, and (3) automatic shut-off valves. In the context of USTs, each of these technologies would be characterized by the Department as pollution control equipment. USTs are designed to store petroleum products, and corrosion protection is required for all UST systems to prevent petroleum releases into the environment. Cathodic protection is one method to meet the corrosion protection standard for USTs. Shear valves (considered an automatic shut-off valve) are installed to prevent, or limit the extent of, a petroleum release into the environment. Pipeline coatings are designed to isolate the pipeline to prevent corrosion. While releases from petroleum pipelines would not generally be directly to "water" but more likely to the ground surface, any release of sufficient size from a petroleum pipeline is likely to impact groundwater and may under certain conditions contribute contamination to surface waters via overland flow or groundwater

S.C. Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201 (803) 898-3432 www.scdhec.gov

seeps. Therefore, the Department believes the listed technologies can be fairly described as pollution control equipment.

Please do not hesitate to contact us if you need any further information.

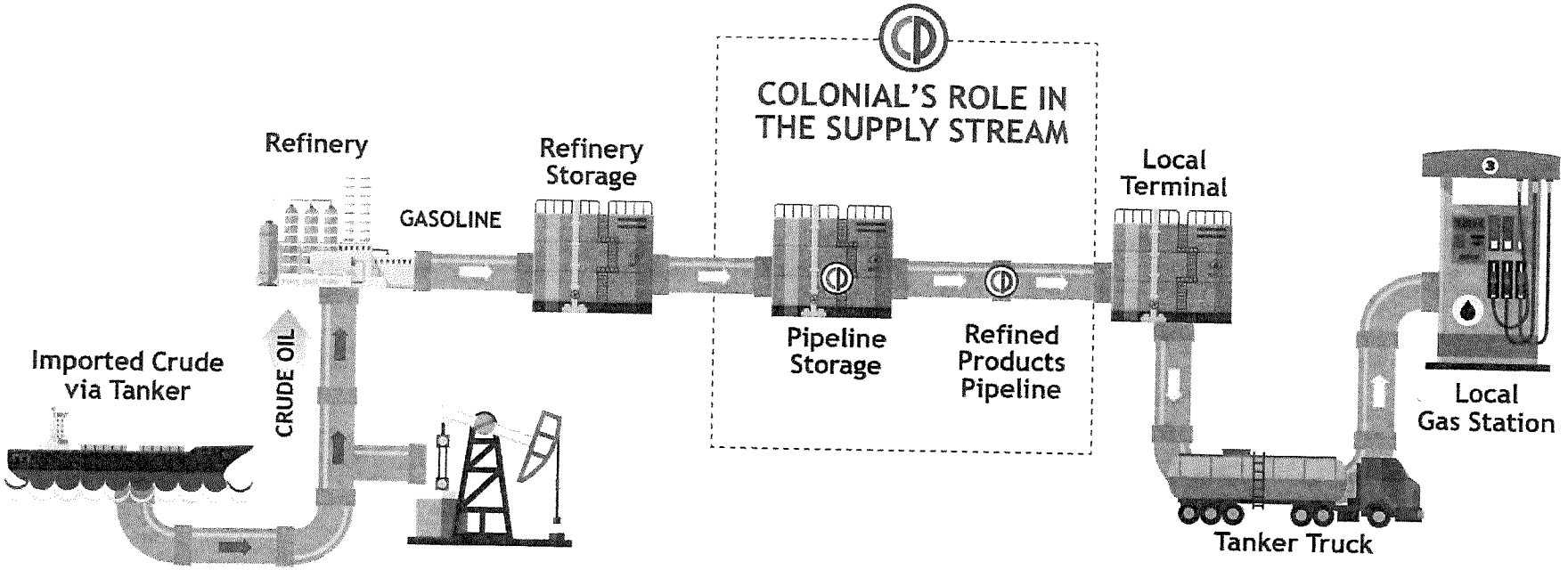
Sincerely,

M P Mehta

Mihir Mehta, P.E.
Director, UST Management Division

Exhibit C

Colonial Pipeline - How Fuel Gets to You



Source: Colonial Pipeline Company

DOR 1293

ROA 0277

Exhibit D

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC **AFFIDAVIT OF JIM E. BROWN**

PERSONALLY appeared before me, Jim E. Brown, who being duly sworn, deposes and states as follows:

1. Colonial Pipeline operations in South Carolina is comprised of 515 miles of pipeline, two tank farms, three main line booster stations, and one delivery facility spanning 11 counties in the State as shown in the figure below. Of the 515 pipeline miles, 203 are mainline miles (L01/40-inch and L02/36-inch pipes), 74 are stub line miles (L29/16-inch pipes), and 15 miles are delivery lines. An additional 96 miles are currently out of service/idle.

2. Two tank farms are located in South Carolina. Belton Junction is a 130-acre above ground breakout and delivery facility located in Anderson County. The facility is staffed by an Operator 24/7. The tank farm is comprised of 20 tanks with a total working capacity of approximately 488,000 barrels handling an average of 139,000 barrels per day. Belton Junction also serves as the origination for Line 29 (16-inch) which terminates at the North Augusta, SC Delivery Facility. The tanks are summarized below:

Gasoline	12 Tanks	289,529
Distillate	7 Tanks	171,105
Transmix	1 Tank	27,370

3. Three main line booster stations are located in South Carolina at Anderson, Simpsonville and Gaffney as summarized in the following table.

Facility	Line 1	Line 2	Notes
Anderson	X	X	Line 2 launching and receiving traps
Simpsonville		X	
Gaffney	X	X	

4. Spartanburg Delivery is a 74-acre above ground breakout and delivery facility in Spartanburg, SC. The facility is staffed as Operation's schedule dictates with a minimum of one operator on shift during all product receipts and delivery operations. The tank farm is comprised of 22 tanks with a total working capacity of approximately 493,500 barrels handling an average of 45,552 barrels per day using the tanks summarized below

Gasoline	13 Tanks	307,841
Distillate	6 Tanks	185,683
Out of Service	3 Tanks (2 gas, 1 oil)	----

5. The Charlotte/South Carolina Operations Team has 32 team members consisting of the following: 1 Operations Manager, 2 Lead Operators, 6 Senior Operators, 8 A-Operators, 1 Operator, 2 Lead Technicians, 2 Senior Technicians, 5 Technicians, 3 ROW Inspectors, 1 Planner, and 1 Administrative Assistant. These team members are based out of the Belton, Spartanburg, and Charlotte facilities and support all operations in South Carolina. Also based at these facilities are Southeast District support personnel consisting of a 1 Senior Field Project Manager, 1 Field Project Manager, 6 Project Inspectors, 2 Corrosion Technicians, 1 Environmental Specialist, and a Safety Specialist.

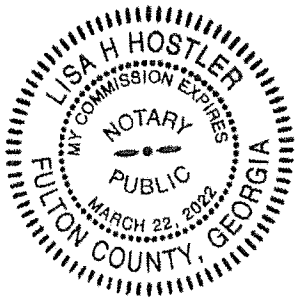
The attached Operations Fact Sheet accurately describes Colonial's Operations in South Carolina.

FURTHER AFFIANT SAYETH NOT.

Jim E. Brown

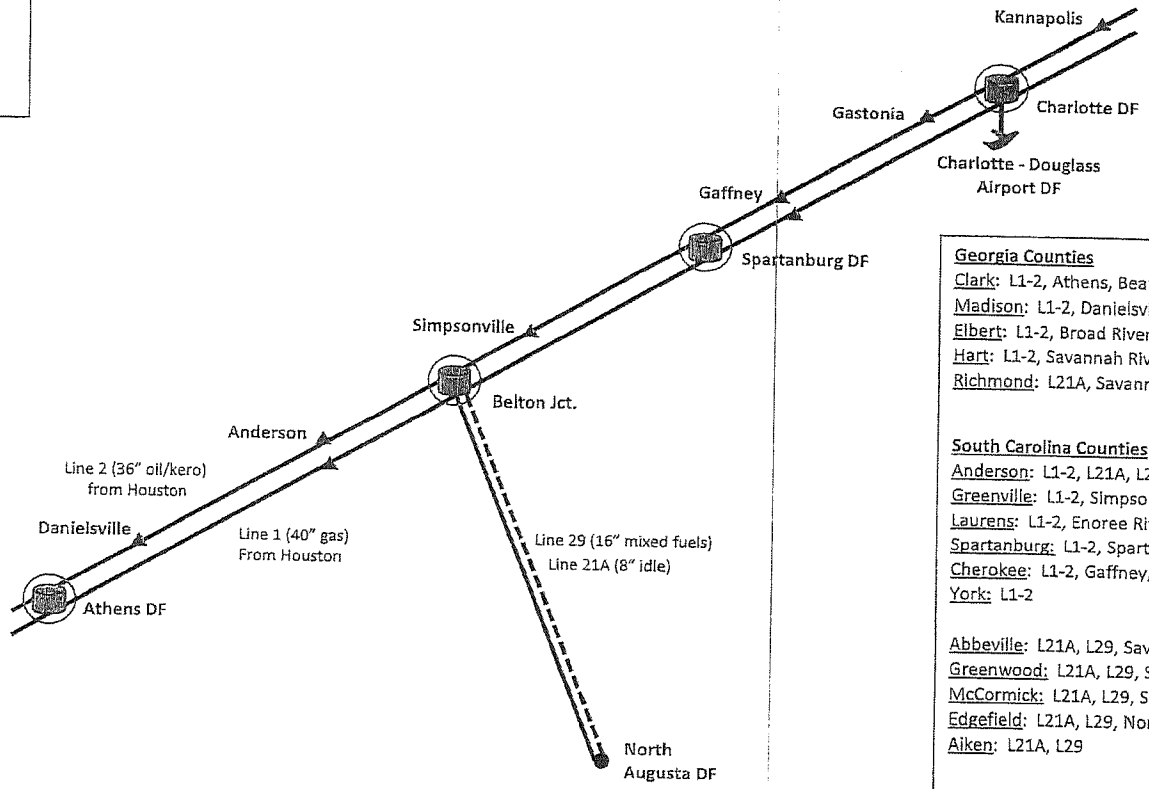
SWORN and subscribed to before me
this 12 day of NOVEMBER, 2019

Notary Public for ~~South Carolina~~ GEORGIA
My commission expires: MARCH 22, 2022



Charlotte / South Carolina Operating Area

Lines
L1: 40", gas, ~52K bph
L2: 36", oil/kero, ~42K bph
L21A: 8", idle
L29: 16", mixed fuels



Colonial 0537

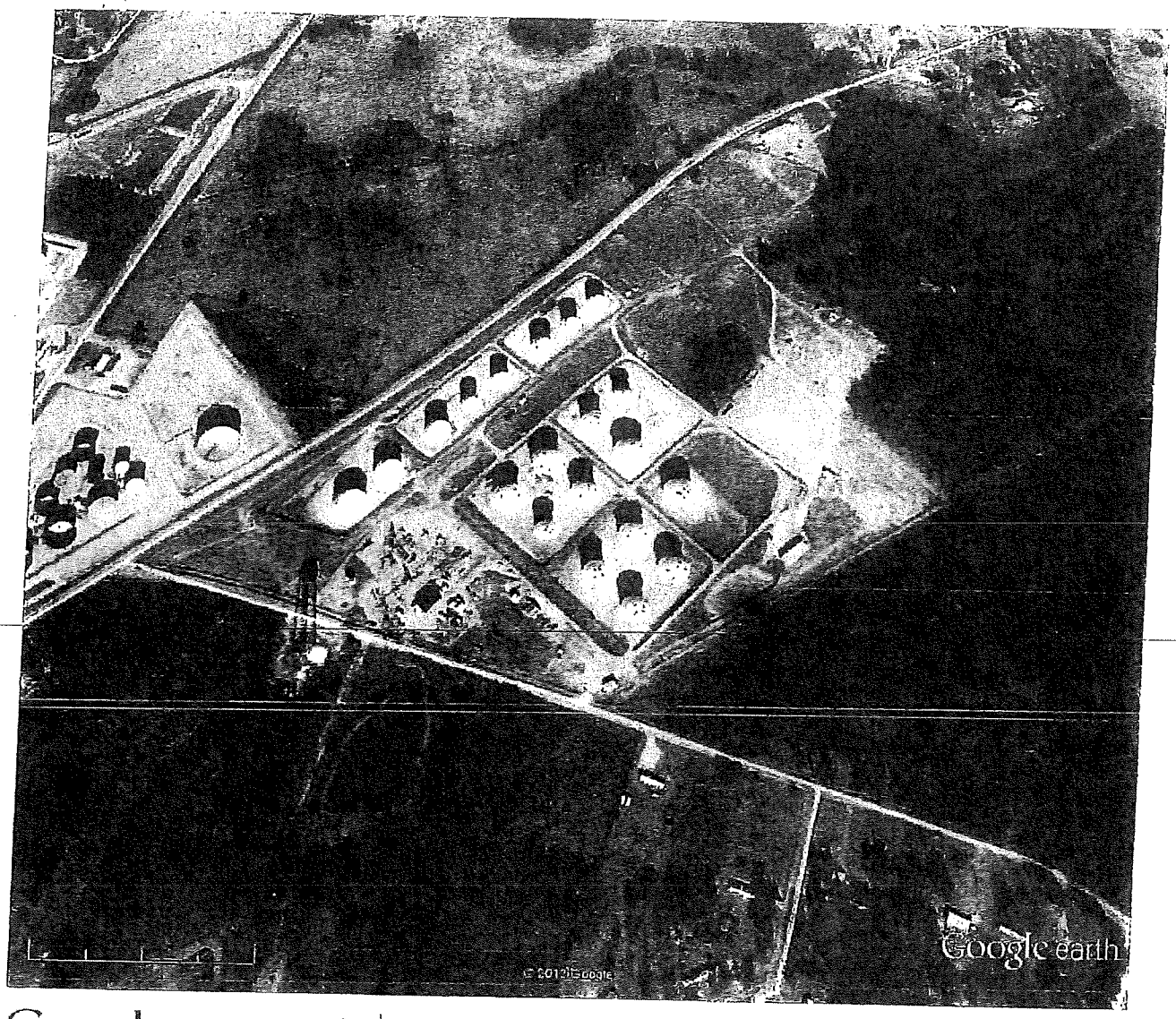
Georgia Counties
Clark: L1-2, Athens, Bear Creek/Oconee River
Madison: L1-2, Danielsville, Broad River
Elbert: L1-2, Broad River
Hart: L1-2, Savannah River
Richmond: L21A, Savannah River

South Carolina Counties
Anderson: L1-2, L21A, L29, Anderson, Belton, Savannah River, Saluda River
Greenville: L1-2, Simpsonville, Saluda River, Reedy River
Laurens: L1-2, Enoree River
Spartanburg: L1-2, Spartanburg, Enoree River
Cherokee: L1-2, Gaffney, Broad River
York: L1-2

Abbeville: L21A, L29, Savannah River tribs.
Greenwood: L21A, L29, Savannah River tribs.
McCormick: L21A, L29, Savannah River tribs.
Edgefield: L21A, L29, North Savannah River tribs.
Aiken: L21A, L29

North Carolina Counties
Cleveland: L1-2
Gaston: L1-2, Gastonia, Catawba River
Mecklenburg: L1-2, Charlotte, Catawba River
Cabarrus: L1-2, Kannapolis
Rowan: L1-2, Yadkin River

PENGAD 800-631-6989
RESPONDENT'S EXHIBIT
18
8-6-19



Google earth

feet 1000
meters 300

RESPONDENT'S EXHIBIT
17
8-6-19
Colonial
PENGAD 800-631-6989

Exhibit E

S.C. Department of Health and Environmental Control

NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES (EXCEPT CONSTRUCTION)

In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq.*) and the South Carolina Pollution Control Act, (S.C. Code 48-1-10, et seq.), operators of storm water discharges associated with industrial activity located in South Carolina are authorized to discharge to waters of the State and the United States in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in this permit. This permit consists of general requirements that apply to all facilities, found in Parts 1 through 7, and industry-sector-specific requirements, found in Part 8. Appendices (A through K), contain additional permit conditions that apply to all operators covered under this permit.

Jill C. Stewart

Jill C. Stewart, P.E., Director
Dam Safety and Stormwater Permitting Division
Bureau of Water

Permit No.: SCR000000 **Issued:** September 1, 2016

Effective: October 1, 2016 **Expires:** September 30, 2021

NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (IGP) (Except Construction) SCR000000

1. Coverage under this Permit.

1.1 Eligibility.

1.1.1 Facilities Covered.

To be eligible to discharge under this permit, you must (1) have a storm water discharge associated with industrial activity from your primary industrial activity, as defined in Appendix A, provided your primary industrial activity is included in Appendix D, or (2) be notified by the Department that you are eligible for coverage under Sector AD of this permit. This permit also authorizes storm water discharges from any industrial activity designated by the Department where the designation is based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Waters of the State.

1.1.2 Allowable Storm Water Discharges.

Unless otherwise made ineligible under Part 1.1.4, the following discharges are eligible for coverage under this permit:

1.1.2.1 Storm water discharges associated with industrial activity for any primary industrial activity and co-located industrial activities, as defined in Appendix A;

1.1.2.2 Discharges designated by the Department as needing a storm water permit as provided in Part 8 Sector AD;

1.1.2.3 Discharges that are not otherwise required to obtain NPDES permit authorization but are commingled with discharges that are authorized under this permit;

1.1.2.4 Discharges subject to any of the national storm water-specific effluent limitations guidelines listed in Table 1-1; and

Table 1-1. Storm Water-specific Effluent Limitations Guidelines

Regulated Discharge	40 CFR Section	Part 8 Sector	New Source Performance Standard (NSPS)	New Source Date
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	Part 429, Subpart I	A	Yes	1/26/81
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Part 418, Subpart A	C	Yes	4/8/74

Reportable Quantity Release – a release of a hazardous substance at or above the established legal threshold that requires emergency notification. Refer to 40 CFR Parts 110, 117, and 302 for complete definitions and reportable quantities for which notification is required.

Runoff Coefficient – the fraction of total rainfall that will appear at the conveyance as runoff. See S.C. Reg. 61-9.122.26(b)(11).

Significant Materials – includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges. See S.C. Reg. 61-9.122.26(b)(12).

Special Aquatic Sites – sites identified in 40 CFR 230 Subpart E. These are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.

Storm Water – storm water runoff, snow melt runoff, and surface runoff and drainage. See S.C. Reg. 61-9.122.26(b)(13).

Storm Water Discharges Associated with Construction Activity – a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavating), construction materials, or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located. See S.C. Reg. 61-9. 122.26(b)(14)(x) and (15).

Storm Water Discharges Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate

South Carolina Industrial Storm Water General NPDES Permit - SCR000000

Appendix D
Activities Covered

Appendix D. Facilities and Activities Covered

Your permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity summarized in Table D-1. These sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. References to "sectors" in this permit (e.g., sector-specific monitoring requirements) refer to these groupings.

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
SECTOR A: TIMBER PRODUCTS		
A1	2421	General Sawmills and Planing Mills
A2	2491	Wood Preserving
A3	2411	Log Storage and Handling
A4	2426	Hardwood Dimension and Flooring Mills
	2429	Special Product Sawmills, Not Elsewhere Classified
	2431-2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood (see Sector W)
	2448	Wood Pallets and Skids
	2449	Wood Containers, Not Elsewhere Classified
	2451, 2452	Wood Buildings and Mobile Homes
	2493	Reconstituted Wood Products
	2499	Wood Products, Not Elsewhere Classified
A5	2441	Nailed and Lock Corner Wood Boxes and Shook
SECTOR B: PAPER AND ALLIED PRODUCTS		
B1	2631	Paperboard Mills
B2	2611	Pulp Mills
	2621	Paper Mills
	2652-2657	Paperboard Containers and Boxes
	2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes
SECTOR C: CHEMICALS AND ALLIED PRODUCTS		
C1	2873-2879	Agricultural Chemicals
C2	2812-2819	Industrial Inorganic Chemicals

Table D-1. Sectors of Industrial Activity Covered by This Permit		
Subsector (May be subject to more than one sector/subsector)	**SIC Code or Activity Code[1]**	**Activity Represented**
	1021	Copper Ores
	1031	Lead and Zinc Ores
	1041, 1044	Gold and Silver Ores
	1061	Ferroalloy Ores, Except Vanadium
	1081	Metal Mining Services
	1094, 1099	Miscellaneous Metal Ores
SECTOR H: [Reserved.] COAL MINES AND COAL MINING-RELATED FACILITIES		
SECTOR I: [Reserved.] OIL AND GAS EXTRACTION AND REFINING		
SECTOR J: [Reserved.] MINERAL MINING AND DRESSING		
SECTOR K: HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES		
K1	HZ	Hazardous Waste Treatment, Storage, or Disposal Facilities, including those that are operating under interim status or a permit under subtitle C of RCRA
SECTOR L: LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS		
L1	LF	All Landfill, Land Application Sites and Open Dumps
L2	LF	All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60
SECTOR M: AUTOMOBILE SALVAGE YARDS		
M1	5015	Automobile Salvage Yards
SECTOR N: SCRAP RECYCLING FACILITIES		
N1	5093	Scrap Recycling and Waste Recycling Facilities except Source-Separated Recycling
N2	5093	Source-separated Recycling Facility
SECTOR O: STEAM ELECTRIC GENERATING FACILITIES		
O1	SE	Steam Electric Generating Facilities, including coal handling sites
SECTOR P: LAND TRANSPORTATION AND WAREHOUSING		
P1	4011, 4013	Railroad Transportation
	4111-4173	Local and Highway Passenger Transportation
	4212-4231	Motor Freight Transportation and Warehousing
	4311	United States Postal Service
	5171	Petroleum Bulk Stations and Terminals
SECTOR Q: WATER TRANSPORTATION		
Q1	4412-4499	Water Transportation Facilities

National Pollutant Discharge Elimination System Permit

(for Discharge to Surface Waters)

NPDES GENERAL PERMIT

FOR

DISCHARGES FROM

PETROLEUM CONTAMINATED GROUNDWATER

in accordance with limitations, monitoring requirements and other conditions set forth herein. This permit is issued in accordance with the provisions of the Pollution Control Act of South Carolina (S.C. Code Sections 48-1-10 *et seq.*, 1976), Regulation 61-9 and with the provisions of the Federal Clean Water Act (PL 92-500), as amended, 33 U.S.C. 1251 *et seq.*, the "Act."

Jeffrey P. deBessonet, P.E., Director
Water Facilities Permitting Division

Issue Date:	**October 27, 2016**	***Expiration Date[1]:***	**December 31, 2021**
Effective Date:	**January 1, 2017**	***Permit No.:***	**SCG830000**

[1] This permit will continue to be in effect beyond the expiration date if a complete timely re-application is received pursuant to Regulation 61-9.122.6 and signed per Regulation 61-9.122.22.

dhec

S.C. Department of Health and Environmental Control

T. The "practical quantitation limit" (PQL) is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. It is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specific sample weights, volumes, and processing steps have been followed. It is also referred to as the reporting limit.

U. "Quarter" is defined as the first three calendar months beginning with the month that this permit becomes effective and each group of three calendar months thereafter.

V. "Quarterly average" is the arithmetic mean of all samples collected in a quarter.

W. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

X. "Sludge" means industrial sludge. Industrial sludge is a solid, semi-solid, or liquid residue generated during the treatment of industrial wastewater in a treatment works. Industrial sludge includes, but is not limited to, industrial septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from industrial sludge. Industrial sludge does not include ash generated during the firing of industrial sludge in an industrial sludge incinerator or grit and screenings generated during preliminary treatment of industrial wastewater in a treatment works. Industrial sludge by definition does not include sludge covered under 40 CFR Part 503 or R.61-9.503.

Y. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Z. "Wastewater" means industrial wastewater. Industrial wastewater is wastewater generated from a federal facility, commercial or industrial process, including waste and wastewater from humans when generated at an industrial facility.

D H E C

PROMOTE PROTECT PROSPER

South Carolina Department of Health
and Environmental Control

National Pollutant Discharge Elimination System Permit

for Discharge to Surface Waters

NPDES GENERAL PERMIT

FOR

DISCHARGES FROM

BULK PETROLEUM STORAGE FACILITIES

This permit authorizes the discharge of facility wastewater and contaminated stormwater from bulk petroleum storage facilities to waters of the State of South Carolina in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein. This permit is issued in accordance with the provisions of the Pollution Control Act of South Carolina (S.C. Code Sections 48-1-10 *et seq.*, 1976), Regulation 61-9 and with the provisions of the Federal Clean Water Act (PL 92-500), as amended, 33 U.S.C. 1251 *et seq.*, the "Act."

Jeffrey P. deBessonet, P.E., Director
Water Facilities Permitting Division

Issue Date: July 1, 2009

Expiration Date: July 31, 2014

Effective Date: August 1, 2009

Permit No.: SCG340000

BB. "Quarter" is defined as the first three calendar months beginning with the month that this permit becomes effective and each group of three calendar months thereafter.

CC. "Residual fuel oils" are residual fuel oils #4, #5 and #6 (Bunker C), lubricating oils, and hydraulic fluids.

DD. "Saltwater" means Class SA and SB as classified by R.61-69 or as defined as tidal saltwaters in R.61-68.

EE. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

FF. "Significant materials" includes, but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); any chemical the facility is required to report pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

GG. "Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

HH. "Sludge" means industrial sludge. Industrial sludge is a solid, semi-solid, or liquid residue generated during the treatment of industrial wastewater in a treatment works. Industrial sludge includes, but is not limited to, industrial septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from industrial sludge. Industrial sludge does not include ash generated during the firing of industrial sludge in an industrial sludge incinerator or grit and screenings generated during preliminary treatment of industrial wastewater in a treatment works. Industrial sludge by definition does not include sludge covered under 40 CFR Part 503 or R.61-9.503. Tank bottoms are not industrial sludge per this definition.

II. "Storm Water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

JJ. "Tank Bottom Water" means free water that has settled to the bottom of a storage tank; may also be referred to as "Drawoff Water".

KK. "Tank Truck" means a motor driven vehicle with a completely enclosed storage vessel used to transport liquid, solid or gaseous materials over roads and highways. The storage vessel or tank may be detachable, as with tank trailers, or permanently attached. The commodities or cargos transported come in direct contact with the tank interior. A tank truck may have one or more storage

compartments. There are no maximum or minimum vessel or tank volumes. Tank trucks are also commonly referred to as cargo tanks or tankers.

LL. "TRC" means Total Residual Chlorine.

MM. "Unleaded Gasoline" means aviation gasoline, regular, mid-grade and premium unleaded fuels or any fuels containing MTBE.

NN. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

OO. "Utility Water" is defined as

1. "Once-through non-contact cooling water " is water that has a single pass through cooling coil(s) or jacket(s) that is used to reduce temperature and does not come in direct contact with ~~any raw material, intermediate product, a waste product or a finished product.~~

2. "Recirculated non-contact cooling water" is water that makes multiple passes through cooling coil(s) or jacket(s) that is used to reduce temperature and does not come in direct contact with any raw material, intermediate product, a waste product or a finished product. The water being discharged is "blowdown" or removal of some of the recirculated water that has accumulated impurities that make it unsuitable for continued use in the cooling system.

3. "Boiler blowdown" is water discharged from a power or steam boiler for the purpose of reducing the dissolved solids concentration.

4. "Steam condensate" is water condensed from steam used for heating or other power-production purposes and having had no contact with any process materials.

PP. "Wastewater" means industrial wastewater. Industrial wastewater is wastewater generated from a federal facility, commercial or industrial process, including waste and wastewater from humans when generated at an industrial facility.

PART II. Permit Coverage

A. Permit Area

The permit covers all areas of South Carolina.

B. Eligibility

1. This permit may cover all new and existing point source discharges to surface waters of South Carolina, as identified in this section below, except for discharges identified under Part II.B.3.

PART VIII. Storm Water Pollution Prevention Requirements

A. A storm water pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit that discharges storm water associated with industrial activity. The plan shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the SWPPP as a condition of this permit.

B. The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team: The plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the SWPPP and assisting the facility or plant manager in its implementation, maintenance, and revision.

2. Description of Potential Pollutant Sources: The plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. The plan shall identify all activities and significant materials which may potentially be significant pollutant sources.

   a. Drainage.

      (1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

      (2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

   b. Spills and Leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a

h. Management of Runoff - The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, shall be made and retained as part of the plan for at least one year after coverage under this permit terminates. The report shall be signed in accordance with Part IV.K (Signatory Requirements) of this permit.

5. The permittee shall update its SWPPP to address the storage and potential for spills of denatured ethanol, as applicable to a given facility. The plan shall include special provisions for containing and treating ethanol, giving consideration to the fact that oil/water separation does not provide adequate treatment.

Part IX. Other Requirements

A. Facilities Required to Monitor. All facilities covered by this permit are required to conduct sampling of their discharges as required in Part VII of this permit.

B. A facility with multiple NPDES outfalls discharging substantially identical NPDES permitted effluents may collect and analyze an effluent sample from one of those outfalls and report that the data also apply to the other substantially identical outfalls. The permittee's SWPPP shall explain why the outfalls are expected to contain substantially identical effluents.

C. The permittee shall maintain an all weather access road to the wastewater treatment systems and appurtenances at all times.

D. There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall the effluent cause a visible sheen on the receiving waters.

E. Approval from the Department must be obtained prior to chemical addition or other types of treatment to maintain compliance with this permit. A determination will be made by the Department as to whether the discharge can still be covered under the permit. A construction permit may be required for any type of treatment system. The discharge of chemicals into wastewater for reasons other than maintaining compliance with the NPDES permit may be considered process wastewater and may need to be covered under an individual permit or, if available, an alternative general permit.

F. The discharge of hazardous substances or oil in the discharge(s) from a facility shall be prevented or minimized in accordance with the applicable Pollution Prevention Plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

1. The discharger is required to notify both the Department's Emergency Response Section at (803) 253-6488 and the National Response Center (NRC) (800-424-8802) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

2. The permittee shall submit, within 14 calendar days of knowledge of the release, a written description of the release, including the type and estimate of the amount of material released, the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with the SWPPP to both:

   Emergency Response Section
   SC Dept. of Health and Environmental Control
   2600 Bull Street
   Columbia, SC 29201 ; and

   EPA Region 4
   Atlanta Federal Center
   61 Forsyth Street SW
   Atlanta, GA 30303-3104

G. The Best Management Practices Plan (BMP) requirement is applicable to dischargers with ancillary industrial activities who use, store, manufacture, handle or discharge any pollutant listed as toxic under Section 311 of the CWA. These dischargers are subject to the requirements of this part for all activities which may result in significant amounts of those pollutants reaching waters of the State. The permittee shall develop and implement a Best Management Practices (BMP) Plan, or update and maintain an existing plan, to identify and control the discharge of significant amounts of oils and the hazardous and toxic substances listed in 40 CFR Part 117 and Tables II and III of Appendix D to 40 CFR Part 122. The plan shall include a listing of all potential sources of spills or leaks of these

materials, a method for containment, a description of training, inspection and security procedures, and emergency response measures to be taken in the event of a discharge to surface waters, or it shall include plans and/or procedures which constitute an equivalent BMP. Sources of such discharges may include materials storage areas; transfer and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas. The BMP plan shall be developed in accordance with good engineering practices, be documented in narrative form, and include any necessary plot plans, drawings, or maps.

H. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

I. Erosion Prevention

1. Appropriate erosion control measures shall be in place before discharging hydrostatic test water.

2. Where the discharge of hydrostatic test water will occur at an outfall permitted for storm water discharges covered by this permit, a sound estimate of the normal flow to the outfall during a 3-inch, 24-hour rainfall shall be obtained. This value shall be compared with the proposed discharge rate including the hydrostatic test water. The proposed rate should not exceed normal discharge flow rate by more than 50% or further evaluation, and possible erosion control or treatment measures, will be required.

J. Unless authorized elsewhere in this Permit, the permittee must meet the following requirements concerning maintenance chemicals for the following waste streams: once-through non-contact cooling water, recirculated cooling water, boiler blowdown water, and steam condensate. Maintenance chemicals shall be defined as any man-induced additives to the above-referenced waste streams.

1. The discharge, in detectable amounts, of any of the chemicals listed in Appendix D of 40 CFR 122, Tables II and III is prohibited, if the pollutants are present due to the use of maintenance chemicals.

2. Slimicides, algicides, and biocides are to be used in accordance with registration requirements of the Federal Insecticide, Fungicide and Rodenticide Act.

3. The use of maintenance chemicals containing bis(tributyltin) oxide is prohibited unless written approval is obtained from SCDHEC.

4. Any maintenance chemicals added to the above-referenced waste streams must degrade rapidly, either due to hydrolytic decomposition or biodegradation.

5. Discharges of maintenance chemicals added to waste streams must be limited to concentrations which protect indigenous aquatic populations in the receiving stream.

6. The permittee must keep sufficient documentation on-site to show that the above requirements are being met. The information shall be made available for on-site review by Department personnel during normal working hours.

THE COMMISSION OF PUBLIC WORKS
OF THE CITY OF SPARTANBURG, SC

Linda P. Bilanchone
Horace C. Littlejohn, Jr.
John D. Montgomery

Sue G. Schneider, Chief Executive Officer
Rebecca F. West, Chief Operating Officer
G. Newton Pressley, Chief Financial Officer

Spartanburg Water

SPARTANBURG SANITARY SEWER
DISTRICT COMMISSION

Barbara J. Barnes
Linda P. Bilanchone
Louie W. Blanton
Horace C. Littlejohn, Jr.
A. Manning Lynch, Jr.
John D. Montgomery
Junie White

OCTOBER 23, 2015

John Culbreth
Colonial Pipeline
PO Box 87
Paw Creek NC 28130

RE: REISSUED PERMIT/AUTHORIZATION # 090GW

Mr. Culbreth:

Enclosed is a revised permit/authorization for Colonial Pipeline.

Please read the permit/authorization in its entirety, along with the Spartanburg Sanitary Sewer District's Sewer Use Rules and Regulations for a thorough understanding of all the requirements for compliance with the Industrial Pretreatment Program.

This revised permit/authorization reflects changes to the effective and expiration dates only. As stated in the June 26, 2015 letter, the effective time period for the duration of the permit/authorization is for a shorter time period (January 1, 2016 through December 31, 2017).

You have a 30-day comment period to submit any concerns regarding this document to my attention.

Thank you for your cooperation.

Respectfully,

SPARTANBURG WATER

Angela Y. Moore

Angela Y. Moore
Industrial Pretreatment Coordinator

Enclosures: Permit/Authorization# 090GW

cc: file

P.O. Box 251 • Spartanburg, SC 29304
200 Commerce Street • (864) 583-7361 (Business Office) • (864) 585-9142 (Engineering) • (864) 582-6375 (Customer Service)
Equal Opportunity Employer • www.spartanburgwater.org

SPARTANBURG SANITARY SEWER DISTRICT
INDUSTRIAL WASTEWATER
DISCHARGE AUTHORIZATION NO. 090GW
SIC NO. (S) 4613

Issued in compliance with the existing provisions of the Spartanburg Sanitary Sewer District Rules and Regulations, the Federal Clean Water Act (PL 95-217) and the General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR Part 403), and any future supplements and/or changes thereto.

Colonial Pipeline Company	180 Keltner Road, Sptbg, SC 29301
(Industry Name)	(Mailing address)
John Culbreath (704) 399-5259	P.O. Box 87, Paw Creek, NC 28130
Lisa Henderson (864) 585-6929	180 Keltner Road, Sptbg., SC 29301
Contact person, name & Phone #	(Industry Address)

This Authorization grants permission to discharge wastewater into the wastewater treatment facilities of the Spartanburg Sanitary Sewer District either through District owned sewer lines or via the sewer collection system of the District's subdistrict. This Authorization does not grant permission to use the subdistrict's sewer system without prior subdistrict approval. (The subdistrict is Subdistrict B - "Metropolitan Subdistrict "B"). The District has allotted up to 5,000 gallons per day of flow to this discharge.

This Authorization is granted in accordance with:

a. The Industrial Wastewater Survey Questionnaire/Discharge Authorization Application, dated August 24, 2012.
b. Any plans, specifications, and/or other data submitted to and approved by the District and on file in the District's Offices, and
c. The effluent monitoring requirements and other conditions set forth in Parts I, and II hereof.

This Authorization shall become effective on January 1, 2016.

This Authorization to discharge shall expire at midnight on December 31, 2017, unless other conditions supersede, and thus, revoke or modify this expiration date.

10/19/15
Date

Joshua Smith
Reclaimed Water Treatment Manager

T. The "practical quantitation limit" (PQL) is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. It is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specific sample weights, volumes, and processing steps have been followed. It is also referred to as the reporting limit.

U. "Quarter" is defined as the first three calendar months beginning with the month that this permit becomes effective and each group of three calendar months thereafter.

V. "Quarterly average" is the arithmetic mean of all samples collected in a quarter.

W. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

X. "Sludge" means industrial sludge. Industrial sludge is a solid, semi-solid, or liquid residue generated during the treatment of industrial wastewater in a treatment works. Industrial sludge includes, but is not limited to, industrial septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from industrial sludge. Industrial sludge does not include ash generated during the firing of industrial sludge in an industrial sludge incinerator or grit and screenings generated during preliminary treatment of industrial wastewater in a treatment works. Industrial sludge by definition does not include sludge covered under 40 CFR Part 503 or R.61-9.503.

Y. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Z. "Wastewater" means industrial wastewater. Industrial wastewater is wastewater generated from a federal facility, commercial or industrial process, including waste and wastewater from humans when generated at an industrial facility.

BOARD:
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Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary

D H E C
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C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

July 01, 2009

John Culbreath
COLONIAL PIPELINE COMPANY
PO BOX 87
Paw Creek, NC 28130

Re: Department Decision
NPDES General Permit For Discharges From Bulk Petroleum Storage Facilities
NPDES Permit #SCG340020
COLONIAL PIPELINE/BELTON JUNCT

Dear Permittee:

~~Enclosed is the General National Pollutant Discharge Elimination system (NPDES) Permit referenced~~ above. Comments on the draft permit (see attached comment letters) and responses are included with the following changes to the draft permit that was placed on public notice.

Citgo comment: Request "no exposure" for storm water.
Marathon Comment 1: Request for "No Exposure Certification" for storm water
Marathon Comment 2: Concern with "potential for contact" wording. Sampling for flow, pH, TSS, GRO and copper when there is no exposure.
Marathon Comment 4: Do not require sampling of GRO for non-impacted storm water.
Marathon Comment 5: Concern with metals sampling when no contact with storm water.

Response: The regulatory requirements for no exposure are very specific to the industrial storm water program and cannot simply be duplicated in this permit. The facility also has the potential to discharge hydrostatic test waters that have to be permitted. In order to address your concern about monitoring for parameters that should have no exposure, I have added a new definition for "potential for contact with storm water" to clarify that the intent is basically the same as that for certifying no exposure of storm water to contaminants.

The Department agrees that when there is no potential for contact with storm water (no exposure) that sampling for GRO, copper and other metals is not necessary. A new footnote (#20) has been added to eliminate monitoring for GRO, copper, lead and zinc (footnote #2 has been copied from the WET limits page as requested) in the situations where there is no potential for contact with storm water. However, flow, pH and TSS will continue to be monitored for all discharges from bulk terminals, including just storm water with no exposure. The Department thinks the sampling requirements for metals are already clear when there is no potential for contact and does not plan to include these parameters on the DMR when there is a no exposure situation. For clarity, however, please note that GRO and copper will still be required to be sampled during a discharge of hydrostatic testing and lead and zinc sampling required based on the products stored in the tank to be tested.

To further identify for the Department those discharges that do not have the potential for pollutant contact with storm water, the Section K of the new NOI form includes space for you to write any additional information that you wish the Department to be made aware of.

Marathon Comment 3: Group hydrostatic test water conditions together separately from other parameters.

Response: Almost all of the currently permitted bulk terminals discharge hydrostatic test waters in addition to other wastewaters. Even if a separate list is included for hydrostatic testing water discharges, the permittee will still have to choose parameters to be sampled based on the products stored in the tank to be tested. The Department will narrow the list as much as possible when the DMRs are generated to only those parameters needed based on products that are stored at each site. For these reasons, there is not justification for changing the layout and, therefore, the hydrostatic test waters conditions will remain as drafted.

Several facilities sent comments related to the particular items stored and discharged at their individual facilities, but did not request a change in the draft permit. These changes will be reflected in each facility's DMR forms as they are developed in the near future.

The following summarizes changes to the proposed permit:

1. A definition of "potential for contact with storm water" has been added (Part I.Z) and the definitions reordered.
2. Footnote #20 has been added to the list of footnotes and has been footnoted for GRO, copper, lead and zinc on all outfalls.
3. For clarity, the statement related to parameters with no footnotes has been edited to add the italicized text as follows: "See footnotes on pages 31 and 32. All facilities are required to sample those parameters where no footnote is included *that relates to a specific waste stream.*"

In order that you understand your responsibilities included in the provisions of this permit, particular attention should be given to the following sections:

1. PART VII: This section contains all listings of effluent characteristics and discharge limitations.
2. PART IV.L.4: This section contains your responsibilities for reporting monitoring results. Preprinted Discharge Monitoring Report (DMR) forms will be provided at a later date by DHEC for reporting monitoring results.
3. PART IV.E: This section contains responsibilities for the proper operation and maintenance of your facility.
4. PART VIII and IX: These sections contain all the special requirements relative to your permit.

Please note the effective date on the permit. The issuance of this permit by the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department. This Department decision relies on the administrative record, which includes the permit rationale, and other supporting documentation contained in the permit file.

An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

The request for final review should include the following:

1. The grounds on which the Department's decision is challenged and the specific changes sought in the decision,
2. A statement of any significant issues or factors the Board should consider in deciding how to handle the matter, and
3. A copy of the Department's decision or action under review.

If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.

The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.

If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

If you have any questions about the technical aspects of this permit, please contact Melinda G Vickers at 803-898-4186. Information pertaining to adjudicatory matters may be obtained by contacting the Legal Office, SCDHEC, 2600 Bull Street, Columbia, SC 29201, or by calling them at (803)898-3350.

Sincerely,

Crystal D. Rippy

Crystal D. Rippy, Manager
Industrial Wastewater Permitting Section

Enclosures
cc w/encl: EPA Region 4
NPDES Permit Administration
Jaime Teraoka , BOW/WPC Enforcement
Adrienne Hayes, BOW/WPC Enforcement
All EQC districts
All EQC labs
Vernon Beaty, BOW
Brian Wisnewski, BOW

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

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December 11, 2019

The Honorable Ralph King Anderson III
Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Colonial Pipeline Company (Petitioner) vs. South Carolina Department of Revenue (Respondent) and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County (Intervenors)
Docket No.: 18-ALJ-17-0443-CC
DOR File Number: 180048

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's (Respondent's) **Motion for Summary Judgment** in connection with the above-referenced matter. Also enclosed is a Proof of Service.

If you have any concerns, please do not hesitate to contact me.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D. Antley, III

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Enclosure

c: Burnet R. Maybank, III, Esquire, James P. Rourke, Esquire, for Petitioner; Michael Kozlarek, Esquire for Intervenors (*Abbeville, Anderson, Greenville, and York*); Walter Cartin, Esquire, J. Evan Phillips, Esquire, and Madison Felder, Esquire for Intervenors (*Aiken and Laurens*)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC MOTION FOR SUMMARY JUDGMENT

TO: BURNET R. MAYBANK, III, ESQUIRE, AND JAMES P. ROURKE, ESQUIRE ATTORNEYS FOR THE PETITIONER; MICHAEL KOZLAREK, ESQUIRE ATTORNEY FOR ABBEVILLE, ANDERSON, GREENVILLE, AND YORK COUNTIES; WALTER H. CARTIN, ESQUIRE, J. EVAN PHILLIPS, ESQUIRE, AND MADISON FELDER, ESQUIRE, ATTORNEYS FOR AIKEN AND LAURENS COUNTIES.

PLEASE TAKE NOTICE that pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP) and Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court (SCALC), the Respondent, South Carolina Department of Revenue (Department), by and through its undersigned attorneys, will not sooner than ten days from the date of service of this Motion, or as soon thereafter as counsel may be heard, move for an order for summary judgment in the above-referenced matter. The Court should enter judgment in favor of the Department and against Colonial Pipeline Company (Petitioner) because there is no genuine issue as to any material fact, the material facts demonstrate that the Petitioner is not entitled to a property tax exemption

pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014), and the Department is entitled to judgment as a matter of law.

Rule 56(c), SCRCP, provides that a trial court shall grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Bovain v. Canal Ins., 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). As explained more fully in the Memorandum of Law included herewith, the material facts related to whether the Petitioner is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8) are not in dispute. Moreover, the Department is entitled to judgment as a matter of law on this issue and, therefore, summary judgment is appropriate.

WHEREFORE, the Department moves that the Court enter summary judgment in favor of the Department and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Columbia, South Carolina
December 11, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

The Respondent, South Carolina Department of Revenue (Department), submits this Memorandum in Support of its Motion for Summary Judgment. For the below reasons, the Administrative Law Court (ALC) should grant the Department's Motion because the material facts not in dispute demonstrate that the Petitioner Colonial Pipeline Company (Taxpayer) does not own or operate an industrial plant in South Carolina. Simply stated, pipelines are not industrial plants. Therefore, the property in dispute is not a facility or equipment of an industrial plant within the meaning of the *ad valorem* exemption statute in S.C. Code Ann. § 12-37-220(A)(8) (2014) (Pollution Control Exemption). Accordingly, the Petitioner is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8), and the Department is entitled to judgment as a matter of law.

FACTS AND PROCEDURAL HISTORY

For the purposes of this Motion, the parties have filed a joint Stipulation of Facts that are not in dispute. The Department incorporates by reference the Stipulation of Facts as if set forth fully herein. *See* Stipulation of Facts ("Stip. Facts"), attached as Exhibit 1. In addition, the Department deposed the Taxpayer pursuant to SCRCP 30(b)(6). *See* 30(b)(6) Deposition of Colonial Pipeline Company ("Colonial Depo."), cited portions attached as Exhibit 2. Based on the Stipulation and the Taxpayer's deposition, the following material facts are not in dispute:

The Taxpayer's physical structure/network

1. The Taxpayer is a transportation company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product"). (Stip. Facts, ¶ 1).

2. The Taxpayer has tank farms, delivery facilities, and booster stations in South Carolina. The Taxpayer has two tank farms in South Carolina—one in Belton and the other in Spartanburg. Those tank farms receive and store Refined Petroleum Products from the transmission pipeline and pump the product on additional lines to individual truck terminals. The Taxpayer's delivery stations in South Carolina are located at the tank farms and deliver Refined Petroleum Products on a small transmission line to a truck terminal. The Taxpayer has three booster stations in South Carolina—one in Anderson, one in Simpsonville, and another in Gaffney. The booster stations push Refined Petroleum Products through the pipeline. (Stip. Facts, ¶ 14).

3. The Taxpayer does not use the term plant to describe any of its property. *See* Colonial Depo. p. 141:20-25.

4. The Taxpayer's pipeline connects to a refinery's storage tank, which each contain a Refined Petroleum Product. (Stip. Facts, ¶ 11).

5. In addition to other counties, the property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Greenville, Laurens, and York (the "counties involved"). (Stip. Facts, ¶ 13).

The Taxpayer's services/process

6. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline, so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix." (Stip. Facts, ¶ 3).

7. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use. (Stip. Facts, ¶ 4).

8. The Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline. (Stip. Facts, ¶ 5).

9. If the Taxpayer transported a single Refined Petroleum Product, the Taxpayer would not create Transmix. (Stip. Facts, ¶ 6).

10. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product. (Stip. Facts, ¶ 7).

11. Throughout its pipeline and in South Carolina, the Taxpayer separates Transmix back into each Refined Petroleum Product. *See* Colonial Depo. pp. 101: 13-20; 113: 6-25; 114:1-9.

12. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's

transportation services and not charged to the customer. (Stip. Facts, ¶ 8).

13. The Taxpayer sometimes blends unfinished blendstocks to make finished fuel for a registered refinery, but that service does not occur in South Carolina. *See* Colonial Depo. pp. 99:22-25; 100:1-25; 101:1-12.

14. Blendstock products constitute less than ten percent of the products the Taxpayer transports. *See* Colonial Depo. pp. 126:15-20; 143:1-12.

15. The Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina, and does various inspections in this state. (Stip. Facts, ¶ 2).

16. The Taxpayer's activities ensure that the quality of Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that came into the pipeline. (Stip. Facts, ¶ 9).

17. Input into the pipeline effectively equals the output leaving the pipeline. *See* Colonial Depo. p. 122:4-16.

18. At least 90% of each Refined Petroleum Product transported by the Taxpayer is the same specification as it leaves the pipeline as when it enters the pipeline. (Stip. Facts, ¶ 10).

19. The Taxpayer is not a refiner. *See* Colonial Depo. p. 126:21-25.

20. The Taxpayer does not own the Refined Petroleum Products it transports. (Stip. Facts, ¶ 12).

The Department's review of the exemption request

21. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a Pollution Control Exemption for pipe

coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs. (Stip. Facts, ¶ 15).

22. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, the Government Services Division, based on its evaluation, issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves. (Stip. Facts, ¶ 16).

23. On September 7, 2017, the Taxpayer protested the Department's denial of the exemption for the pipe coatings, cathodic protection, and automatic shut-off valves. (Stip. Facts, ¶ 17).

24. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment. (Stip. Facts, ¶ 18).

25. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8). (Stip. Facts, ¶ 19).

26. On December 18, 2017, DHEC submitted a letter to the Department in response to the

Department's request to investigate the property to determine the portion of the pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations. (Stip. Facts, ¶ 20).

27. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the Pollution Control Exemption under § 12-37-220(A)(8). (Stip. Facts, ¶ 21).

28. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return. (Stip. Facts, ¶ 22).

29. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detailed listing of the property that qualifies as pollution control property. (Stip. Facts, ¶ 23).

30. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution

control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018. (Stip. Facts, ¶ 24).

31. The Government Services Division received correspondence postmarked August 13, 2018 from the Taxpayer protesting the proposed assessment for property tax year 2018. (Stip. Facts, ¶ 25).

32. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8). (Stip. Facts, ¶ 26).

33. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations. (Stip. Facts, ¶ 27).

34. The Department issued its Determination in this matter on November 19, 2018. (Stip. Facts, ¶ 28).

35. The Petitioner timely requested a contested case hearing on December 5, 2018. (Stip. Facts, ¶ 29).

36. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same

property as pollution control property for 2019 as it did for 2017 and 2018. The Taxpayer timely protested the 2019 exemption denial on August 6, 2019. (Stip. Facts, ¶ 30).

37. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption. (Stip. Facts, ¶ 31).

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 649 S.E.2d 488 (2007); *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007); *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any genuine issue as to any material fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007); *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Moore v. Weinberg*, 373 S.C. 209, 216, 644 S.E.2d 740, 743 (Ct. App. 2007); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C.

440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

The material facts listed above are not in dispute, and those facts viewed in the light most favorable to the Petitioner establish that the property claimed as exempt under § 12-37-220(A)(8) by the Petitioner is not a facility or equipment of industrials plants. Therefore, the Petitioner is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8), and the Court should grant the Department's Motion for Summary Judgment.

Resolution of the issues in this case depends upon the rules of statutory construction and when construing a statute, the cardinal rule is to ascertain the intent of the Legislature. *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* at 23, 579 S.E.2d at 336. The words of the statute "must be given their plain and ordinary meaning without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted). Also, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting *Dunton*

v. S.C. Bd. of Examin'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); *see also Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) (recognizing that where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason).

ARGUMENT

I. The Taxpayer bears the burden of proving it is entitled to a property tax exemption.

When a taxpayer timely files an exemption application, the Department must determine whether the property qualifies for the exemption. S.C. Code Ann. § 12-4-710 (2014). In order to make this determination, the Department has to conduct a proper investigation. S.C. Code Ann. § 12-4-730 (2014). In South Carolina, an exemption of private property is strictly construed – taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920). Taxpayers also bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 262 S.E.2d 33 (1980); *S. Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 167 S.E.2d 311 (1969); *S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945).

II. The Pollution Control Exemption only applies to the facilities or equipment of industrial plants.

South Carolina law provides for a tax on "[a]ll real and personal property in this State..." S.C. Code Ann. § 12-37-210 (2014). The General Assembly created limited exemptions from this tax, including § 12-37-220(A)(8), which states:

> (A) [T]here 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 the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the Department of Health and Environmental Control 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 Department of Health and Environmental Control 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...

The exemption listed in this subsection is generally referred to as the Pollution Control Exemption. To qualify for the Pollution Control Exemption, the claimed property must meet four elements: 1) facilities or equipment of industrial plants; 2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; 3) required by state or federal government; and 4) used in the conduct of their business.

III. The Taxpayer's pipeline is not an industrial plant.

All property which the Taxpayer claimed is exempt from property tax under the Pollution Control Exemption (e.g. pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank

internal/external floating roofs)[1] is taxable because the property is not a facility[2] or equipment of an industrial plant. The Taxpayer is a pipeline company, and all property the Taxpayer submitted as exempt under § 12-37-220(A)(8) is connected to its pipeline, not an industrial plant.

A. The dictionary definition of "industrial plant" relates to manufacturing.

The General Assembly does not define "industrial plant," so the term must be given its plain and ordinary meaning. *See Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). The common usage of the term "industrial" is "of or relating to industry." *See Merriam-Webster* (September 9, 2019, 4:51 PM), https://www.merriam-webster.com/dictionary/industrial. A standard definition of "plant" is "a factory or workshop for the manufacture of a particular product." *See Merriam-Webster* (June 14, 2019, 9:36 AM), https://merriam-webster.com/dictionary/plant. Therefore, an industrial plant is a factory or workshop for the manufacture of a particular product of or relating to industry. The Taxpayer does not own or operate a factory or workshop, nor does it manufacture or produce a particular product. Instead, the Taxpayer is simply the transportation company that transports a product from

[1] Although the Government Services Division initially granted the Pollution Control Exemption for some of the Taxpayer's property, their analysis was limited to whether the property was used for pollution control, and they did not consider whether the property satisfied the first element of being facilities or equipment of industrial plants.

[2] S.C. Code Ann. Regs. 117-1700.5 defines a, facility as "generally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met."

the manufacturer/refiner to the end-user/customer. Although the Taxpayer's pipeline system may be complex, all its activities and equipment in South Carolina are related to transportation and are unrelated to manufacturing, producing, or outputting. The Taxpayer may be of or relating to industry[3], but it is not a factory or workshop for the manufacture of a particular product.

B. The General Assembly distinguishes transportation companies from manufacturers and utilities.

Although § 12-37-220(A)(8) does not define the term industrial plant, the exemption is for the "property of any *manufacturer* or company, eligible for the exemption." (emphasis added). Although the statute does not define "or company," the plain language of the statute indicates that exemption is limited to manufacturers or other similar companies that own and operate industrial plants. Because the entire property tax scheme typically treats transportation companies (like the Taxpayer) differently from manufacturers, the only other category of companies that likely would qualify for the exemption is utilities.

Both S.C. Const. art. X, § 1 and S.C. Code Ann. § 12-43-220 (2014) generally treat manufacturers and utilities similarly for property tax assessment purposes while distinguishing them from transportation companies like the Taxpayer. Specifically, S.C. Const. art. X, § 1(1) and

[3] The Taxpayer wants to focus the Court's attention on the word "industrial." The two South Carolina statutes cited by the Taxpayer in its Prehearing Statement, S.C. Code Ann. §§ 48-1-10(5) and 4-29-10, are not related to property taxes and use the terms "industrial waste" and "industrial revenue bonds," not "industrial plant." While waste from the Taxpayer's pipeline may be industrial waste because it ultimately comes from an industrial plant—i.e. the refinery—this does not make the Taxpayer's pipeline an industrial plant. Moreover, the only statute or regulation that mentions "plants" in connection with industrial revenue bonds is S.C. Code Ann. Regs. 117-1820 (2012), which addresses "how *manufacturing plants* that are subject to the Industrial Revenue Act are to be treated" for property tax purposes. (Emphasis added). Interestingly, not all the claimed assets are even in areas zoned for industrial use. *See* Colonial Depo. pp. 59:16-20.

§ 12-43-220(a) provide an assessment ratio for manufacturers of 10.5%, while S.C. Const. art. X, § 1(2) and § 12-43-220(g) provide an assessment ratio for transportation companies of 9.5%. Therefore, for purposes of the property tax assessment ratio, transportation companies and manufacturing/utility companies are mutually exclusive.[4]

Under South Carolina law, pipeline companies are transportation companies. S.C. Code Ann. Regs. 117-1700.4 (2012) defines "transportation companies" to include "(1) Railroad companies; (2) *Pipeline companies*; and (3) Express companies." (emphasis added). The Taxpayer is a pipeline company, so it is a transportation company. Although South Carolina statutes and regulations do not define "industrial plant," the property tax regulations define "plant site." S.C. Code Ann. Regs. 117-1700.7 (2012) provides "[a] plant site shall consist of all land contiguous to a plant which is related to the overall *manufacturing* operation..." (emphasis added). Because the Taxpayer is transporting the product rather than manufacturing it, the Taxpayer does not have a plant site for an industrial plant. An industrial plant must manufacture, produce, or output, and the Taxpayer does none of these.

C. DHEC does not regulate pipelines.

Pursuant to § 12-37-220(A)(8), the Department requested that DHEC investigate the claimed property to determine if it was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution—i.e. the second element of the Pollution Control Exemption. Regardless of DHEC's determination of whether the property

[4] The Department appraises the property of pipelines similarly to utilities, but this is for valuation purposes only. As authorized by S.C. Code Ann. § 12-4-540 (2014), the Department uses unit valuation for certain companies including pipelines, railroads, and utilities to consider a taxpayer's operations as a whole.

controls pollution, the Taxpayer fails the first element of the Pollution Control Exemption because none of the property is facilities or equipment of industrial plants. The Department did not request and § 12-37-220(A)(8) does not require that DHEC decide whether the claimed property is a facility or equipment of an industrial plant.[5] In its responses to the Department, DHEC noted that it does not regulate pipelines, but instead federal agencies, including USDOT, regulate interstate petroleum pipelines. Further, the federal regulations the Taxpayer cites as requiring the claimed property fall under USDOT.[6] The fact that USDOT regulates pipelines emphasizes that pipelines are transportation systems and not industrial plants.

D. The Federal definition of "industrial plant" relates to production or output.

Federal law defines "industrial plant" as "any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial *production* or *output*." (Emphasis added) 42 U.S.C.A. § 6326 (West). Despite not producing anything in South Carolina, the Taxpayer actually cites this statute in its Prehearing Statement to support its position. Almost always, its output equals its input. Only in rare instances with a particular customer does the Taxpayer provide blending services where it blends products to make new product. This occurs outside of South Carolina and involves none of the property at issue. In South Carolina, the Taxpayer merely transports the product from one location to another. The process for transporting

[5] Again focusing on the word "industrial," the Taxpayer points to DHEC permits to support its position. However, the Taxpayer is unaware of any DHEC permit that uses the term "industrial plant." *See* Colonial Depo. p. 225:8-12.

[6] The Taxpayer cited the following federal regulations: 49 C.F.R. § 195.557(a) (requires pipeline coatings); 49 C.F.R. § 195.563(a) (requires cathodic protection); and 49 C.F.R. § 195.260(c) (requires automatic shut-off valves).

that product may be sophisticated, but like a railroad or an express company, the Taxpayer is a transportation company. The Taxpayer's pipeline is separate and distinct from the industrial production or output. All the Taxpayer's activities in South Carolina relate to transportation. Therefore, even if the above federal definition of "industrial plant" controlled, the Taxpayer fails to meet it.

Additionally, the standard used by federal agencies in classifying businesses, the North American Industry Classification System (NAICS), classifies pipeline transportation under NAICS Code 486 whereas manufacturing is under NAICS Code 31-33. While a petroleum refinery may qualify as an industrial plant, the Taxpayer's pipeline is separate and distinct from any refinery and transports, rather than produces or manufactures, the product. *See* 40 C.F.R. § 60.41b ("Petroleum refinery means industrial plants as classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.[7]");

CONCLUSION

The Taxpayer's South Carolina pipeline is not subject to the Pollution Control Exemption because the exemption only applies to facilities or equipment of industrial plants. The Taxpayer's pipeline and the equipment and facilities that support it are not part of an industrial plant.

As discussed above, the General Assembly distinguishes transportation companies from manufacturers and utilities in a number of instances. It is reasonable to think the General Assembly provided an exemption to manufacturers and utilities while not providing that exemption to transportation companies like the Taxpayer because, as noted above, manufacturers and utilities have a higher assessment ratio. Because exemption statutes are narrowly construed

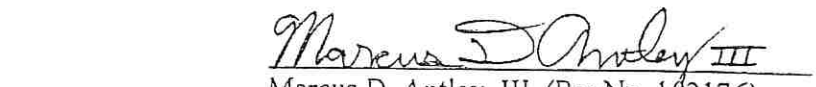
[7]SIC was replaced by NAICS.

against taxpayers, the Taxpayer has not brought itself squarely within the parameters of the statute granting the exemption.

As the material facts not in dispute demonstrate, the property that the Taxpayer claims as exempt under § 12-37-220(A)(8) is not a facility or equipment of industrials plants. The only legal authority related to property taxes equates industrial plants to plants of manufacturers or at least a company that produces or outputs a product. Mere transportation of a product is not enough to constitute an industrial plant. In short, pipelines are not industrial plants, and therefore, the claimed property is not facilities or equipment of an industrial plant. As such, the Petitioner is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8).

WHEREFORE, the Department asks that this Court enter an order finding that the Petitioner is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8), and that the Department's Motion for Summary Judgment is granted.

Respectfully submitted,



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Columbia, South Carolina
December 11, 2019

Exhibit 1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC STIPULATION OF FACTS

Pursuant to S.C. Code Ann. § 12-60-3320 (2014), the Parties do hereby stipulate to the following:

A. Taxpayer:

Colonial Pipeline Company
1185 Sanctuary Parkway, Suite 100
Alpharetta, GA 30009

B. Periods Involved:

2017 Property Tax Year
2018 Property Tax Year

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FILED
DEC 05 2019
SC ADMIN LAW COURT

C. Assessment:

Assessment in Dispute[1]:

Tax Year	Property Tax Assessment (without exemption)	Property Tax Assessment (with exemption)	Portion of Assessment Claimed as Pollution Control Property
2017	$12,697,930.00	$11,088,410.00	$1,609,520.00
2018	$13,757,290.00	$12,200,710.00	$1,556,580.00

D. Relevant Facts:

1. The Taxpayer is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

2. Taxpayer injects drag reducing agents to reduce friction on the lines in South Carolina, and does various inspections in this state.

3. Refined Petroleum Products are all present in the pipeline simultaneously. There are no physical barriers between each Refined Petroleum Product in the pipeline, so the Refined Petroleum Products interface with one another in the pipeline. When one Refined Petroleum Product interfaces with another Refined Petroleum Product, they mix to create a fluid called "Transmix."

4. Transmix is a fluid that does not meet the specifications for a fuel that can be used or sold for use.

5. Taxpayer could elect to transport a single Refined Petroleum Product at one time in the pipeline.

6. If the Taxpayer transported a single Refined Petroleum Product, then the Taxpayer would not create Transmix.

7. Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product.

8. Separating Transmix back into each Refined Petroleum Product is part of the Taxpayer's transportation services and is not charged to the customer.

---

[1]The Taxpayer does not dispute the valuation of the property nor does it dispute the valuation method; rather, the Taxpayer argues that the property in dispute is exempt from ad valorem taxation pursuant to § 12-37-220(A)(8).

9. The Taxpayer's activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline.

10. At least 90% of each Refined Petroleum Product transported by the Taxpayer is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline.

11. The Taxpayer's pipeline connects to a refinery's storage tanks, which each contain a Refined Petroleum Product.

12. The Taxpayer does not own the Refined Petroleum Products it transports.

13. In addition to other counties, the property at issue in this matter is located in the following South Carolina counties: Anderson, Abbeville, Aiken, Greenville, Laurens, and York (the "counties involved").

14. The Taxpayer has tank farms, delivery facilities, and booster stations in South Carolina. The Taxpayer has two tank farms in South Carolina—one in Belton and the other in Spartanburg. Those tank farms receive and store Refined Petroleum Products from the transmission pipeline and pump the product to individual truck terminals. The Taxpayer's delivery stations in South Carolina are located at the tank farms and deliver Refined Petroleum Products on a transmission line to a truck terminal. The Taxpayer has three booster stations in South Carolina—one in Anderson, one in Simpsonville, and another in Gaffney. The booster stations push Refined Petroleum Products through the pipeline..

15. On April 19, 2017, the Department's Government Services Division received a 2017 application for an ad valorem tax exemption based on § 12-37-220(A)(8). In its letter and accompanying application, the Taxpayer reported a pollution control exemption on pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs.

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, the Taxpayer protested the proposed assessment for 2017. Exhibit A is a true and accurate copy of the protest that the Taxpayer submitted to the Department.

18. On September 20, 2017, the Government Services Division notified the county auditors for the counties involved of the Taxpayer's appeal of the 2017 assessment.

19. On October 19, 2017, the Government Services Division forwarded the 2017 exemption application information to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Taxpayer's claimed property, specifically, pipe coatings, cathodic protection, and automatic shut-off valves qualified as pollution control property, pursuant to § 12-37-220(A)(8).

20. On December 18, 2017, DHEC submitted a letter to the Department in response to the Department's request to investigate the property to determine the portion of pipe coatings, cathodic protection, and automatic shut-off valves that qualifies as pollution control property for 2017. DHEC noted that federal agencies, like the United States Department of Transportation ("USDOT"), regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

21. On or around April 11, 2018, the Government Services Division forwarded the file to the Department's Office of General Counsel for Litigation for further analysis of whether the pipe coatings, cathodic protection, and automatic shut-off valves qualified for the pollution control exemption under § 12-37-220(A)(8).

22. On April 23, 2018, the Government Services Division received a 2018 application for an ad valorem tax exemption based on § 12-37-220(A)(8). The Taxpayer claimed the same property as pollution control property on its 2017 and 2018 property tax return.

23. On April 26, 2018, the Department's Office of General Counsel mailed DHEC a letter requesting that DHEC investigate the property of Colonial Pipeline Company to determine the portion of the property that qualifies as pollution control property pursuant to S.C. Code Ann. § 12-37-220(A)(8). The letter further requested that DHEC furnish the Department of Revenue with a detail listing of the property that qualifies as pollution control property.

24. On July 27, 2018, the Government Services Division issued a Property Assessment Notice denying the Taxpayer's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves but granting the exemption application as to wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2018.

25. The Government Services Division received correspondence postmarked August 13, 2018, from the Taxpayer protesting the proposed assessment for property tax year 2018.

26. On August 14, 2018, the Department's Office of General Counsel forwarded the 2018 exemption application for pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs to DHEC for investigation into whether the Taxpayer's claimed property qualified as pollution control property, pursuant to § 12-37-220(A)(8).

27. DHEC submitted a letter dated August 27, 2018 to the Department's Office of General Counsel clarifying that the pipe coatings, cathodic protection, and automatic shut-off valves for property tax years 2017 and 2018 can be described as pollution control

equipment. DHEC again noted that federal agencies, like USDOT, regulate pipelines, and DHEC lacks authority to permit, inspect, or enforce pipeline operations.

28. The Department issued its Determination in this matter on November 19, 2018.

29. The Taxpayer timely requested a contested case hearing on December 5, 2018.

30. The Government Services Division denied the Taxpayer's 2019 application for an ad valorem tax exemption based on § 12-37-220(A)(8) as to all claimed property. The Taxpayer claimed the same property as pollution control property for 2019 as it did for 2017 and 2018. On August 6, 2019, the Taxpayer timely protested the 2019 exemption denial.

31. On September 4, 2019, the Department clarified through its Second Amended Prehearing Statement that Taxpayer does not qualify for an ad valorem property tax exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for *any* of its claimed property—including property for which the Department initially granted the exemption.

32. Attached as Exhibit B is the Colonial Pipeline System Map. Attached as Exhibit C is a map of the Colonial Charlotte/South Carolina Operating Area. Attached as Exhibit D is Management's Discussion and Analysis of Financial Conditions and Results of Operations. Attached as Exhibit E is the DOR Proposed Assessment for the 2017 Tax year and 2018 Tax year as well as the Colonial Pipeline 2017 and 2018 Property Tax Returns.

33. Petitioner has environmental permits, including air, NPS, groundwater and solid waste disposal. A list of the environmental permits is attached as Exhibit F.

The Parties so stipulate.

[SIGNATURE PAGES FOLLOW]
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_____, 2019
Columbia, South Carolina

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Columbia, South Carolina

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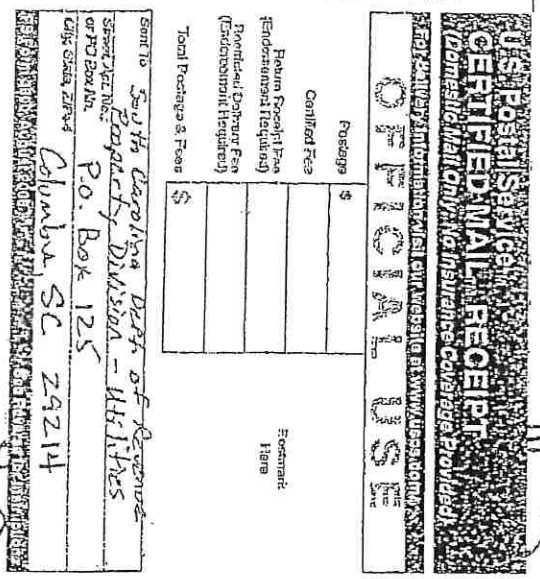
December 2, 2019
Columbia, South Carolina

Exhibit A

; Company
WA
y, Suite 100
30009

7011 3500 0000 4627 4404

7011 3500 0000 4627 4404



Sc EPT. OF Revenue
P Utilities
P.O. Box 125
Columbia, SC 29214

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

South Carolina Dept. of Revenue
Property Division - Utilities
P.O. Box 125
Columbia, SC 29214

9590 9402 1345 5285 1621 27

2. Article Number (Transfer from service label)

7011 3500 0000 4627 4404

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

Colonial Oaks mailed 9/7/17 BTH

Colonial Pipeline Company

J. Keith Fuqua
Indirect Tax Manager

Phone: 678-762-2276
Fax: 770-825-7617
E-mail: kfuqua@colpipe.com

September 7, 2017

South Carolina Department of Revenue
Property Division - Utilities
P.O. Box 125
Columbia, SC 29214

RE: Colonial Pipeline Company Proposed 2017 Assessment

Director of Assessments:

Please accept this as notice we wish to appeal our Tax year 2017 proposed assessment. The taxpayer is:

Colonial Pipeline Company
1185 Sanctuary Parkway – Suite 100
Alpharetta, GA 30009-4765
FEIN: [redacted]

The sole issue is the denial of certain pollution control property exemptions as claimed in our 2017 return. In particular the items under Transmission Pipeline – Water Pollution Control Facilities with a NBV of $16,133,333. These items are further broken down into three categories. Automatic shut-off valves, Pipeline Cathodic Protection, and Pipeline Coatings.

Attached to this notice you will find additional information about each of these three groups of assets and the applicable law that we believe makes them exempt for property tax purposes. These include a letter from our consultant (Duff & Phelps), and appendix referenced by their letter, a Power Point presentation previously provided to the department, and a court case in SC that we feel is on point.

Please review this information as soon as possible. If you need any additional information please contact me directly at 678-762-2276 or by email at kfuqua@colpipe.com.

Sincerely,

J. Keith Fuqua
Indirect Tax Manager
Colonial Pipeline Company

Via Certified Mail: 7011 3500 0000 4627 4404

DUFF & PHELPS

Mr. Taylor Ingram
Utility Assessment Coordinator
South Carolina Department of Revenue
2 South Park Circle, Suite 100
Charleston, SC 29407-4600

September 7, 2017

Re: S.C. Code Ann. § 12-37-220, Tax Treatment of Pollution Control Equipment
Colonial Pipeline Company

Dear Mr. Ingram:

Colonial Pipeline Company, ("Colonial") in response to the denial of eligibility of certain installations on its Petroleum Pipeline (the "Pipeline") to be classified as tax exempt Pollution Control Equipment (the "subject installations") for property tax purposes in the State of South Carolina, has asked Duff & Phelps, LLC ("Duff & Phelps") to prepare documentation to be shared in a request for reconsideration of this decision by the South Carolina Department of Revenue("SC DOR"),

Duff & Phelps has prepared the information enclosed in support of the subject installations' eligibility to be classified as Pollution Control Equipment, exempt from ad valorem taxation. After consideration of the materials enclosed, we respectfully request that you reconsider your current eligibility determinations regarding the subject installations.

1. Background

Colonial, with assistance from Duff & Phelps, prepared *Form: Schedule X - Pollution Control Equipment* ("Schedule X"), which was included with our PT-300: Property Return related to South Carolina property tax. Schedule X enumerates Pollution Control Equipment on the Colonial Pipeline System in the State of South Carolina. Copies of the schedule is attached for reference in Appendix A: **Form: Schedule X - Pollution Control Equipment.**

The South Carolina DOR, as required under S.C. Code Ann.§12-37-220, reviewed the schedule and did not grant the Pollution Control exemption.

Table 1 below includes a summary of the Pollution Control Equipment described in the Schedule X and the South Carolina DOR's determinations of tax exemption eligibility as Pollution Control Equipment.

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www.duffandphelps.com

Table 1. Summary of Colonial Schedule X & South Carolina DOR Determinations

No.	Colonial Schedule X Filings	South Carolina DOR Determination
I. Transmission Pipeline		
A. Water Pollution Control Equipment		
1.	Pipeline Cathodic Protection	Denied
2.	Pipeline Coatings	Denied
3.	Automatic Shut-off Valves	Denied
II. Storage & Terminals		
A. Water Pollution Control Equipment		
4.	Waste Water Pollution Control Equipment	Approved
5.	Storm Water Pollution Control	Approved
6.	Secondary Containment	Approved
B. Air Pollution Control Equipment		
7.	Tank Internal/External Floating Roofs	Approved

II. South Carolina Statutory Analysis

Summarized below are the relevant South Carolina and federal statutes reviewed and utilized to identify the subject installations as Pollution Control Equipment. We respectfully present our interpretation and/or application of these statutes to the subject installations for your consideration.

Relevant South Carolina Property Tax Statutes

The South Carolina Property Tax Code sections below were utilized in the determination of eligible Pollution Control Equipment:

Per S.C. Code Ann. § 12-37-220:

> *"Pursuant to the provisions of Section 3 of Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation: ...*
>
> > *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 the state or*

federal government and used in the conduct of their business."[1] [emphasis added]

In reviewing this language, we concluded the subject installations placed in service on the Pipeline for corrosion control and pipeline leak detection/prevention on the Pipeline are:

1) Required for the protection and benefit of the environment by the U.S. Department of Transportation's Pipeline Hazardous Material Safety Administration ("PHMSA"), the federal regulatory authority for Petroleum pipelines.[2] The PHMSA has as its mission to *"protect people and the environment from the risks of hazardous materials transportation."*[3]

2) Designed for the prevention, abatement or control of water pollution.

Relevant South Carolina Environmental Statutes & Definitions

Per the South Carolina Code Title 48 - Environmental Protection and Conservation § 48-1-10, leaked Petroleum is a pollutant that can cause pollution as defined:

"'Pollution means (1) the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded..."" [emphasis added]

"Industrial waste means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development of any natural resources" [emphasis added]

"Waters means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction." [emphasis added]

---

[1] *South Carolina Code of Laws Unannotated Section 12-4-720. http://www.scstatehouse.gov/code/t12c037.php*
[2] *U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration. http://www.phmsa.dot.gov/about/mission*
[3] *Ibid.*

Leaked Petroleum is unrecoverable and ceases to retain its monetary value once released from the Pipeline. As a fugitive liquid or gaseous substance upon an unintended release from the Pipeline, it becomes an industrial waste, and therefore, a "Pollutant", when such a release occurs during Pipeline operations.

Given the statutory definitions and language within the South Carolina South Carolina Code of Laws § 12-37-220 (8) Cited above, we have concluded that the subject installations are designed for the elimination, mitigation, and prevention of a release of water pollution (leaked refined petroleum products).

Relevant U.S. Environmental Statutes & Definitions

As noted earlier, environmental oversight responsibility for Petroleum pipelines in the United States falls to the U.S. Department of Transportation's PHMSA. Specifically, the PHMSA's environmental goal is:

> *"to advance environmentally sustainable policies and investments that reduce carbon and other harmful emissions from transportation sources. We protect the natural environment, focusing especially on unusually sensitive areas."*[4]

The PHMSA's standards for Petroleum pipelines are outlined in Title 49, Code of Federal Regulations §192 ("49 CFR §192"). Table 3 summarizes 49 CFR §192 requirements, as well as the analogous South Carolina requirements, for each of the subject installations.

Table 3: 49 CFR §195 Requirements by Pollution Control Facility

No.	Pollution Control Facility	49 CFR §195 Reference	SC Statute Reference
1.	Cathodic Protection	49 CFR §195.563(a): Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.	"Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property taxation." [Constitution of S.C. §3(h); S.C. Code Ann. §12-37-220(A)(8) .]
2.	Cathodic Protection	49 CFR §195.557(A): Except bottoms of aboveground breakout tanks, each buried or submerged pipeline must have an external coating for external corrosion control if the pipeline is— Constructed, relocated, replaced, or	"Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property

[4] Strategic Plan for 2012 -2016 - PHMSA - Department of Transportation.

		otherwise changed after the applicable date in §195.401(c), not including the movement of pipe covered by §195.424	taxation." [Constitution of S.C. §3(h); S.C. Code Ann. §12-37-220(A)(8) .]
3.	Automatic Shut-off Valves	49 CFR §195.260(a): "A valve must be installed at each of the following locations: (a) On the suction end and the discharge end of a pump station in a manner that permits isolation of the pump station equipment in the event of an emergency."	"Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property taxation." [Constitution of S.C. §3(h); S.C. Code Ann. §12-37-220(A)(8) .]

In consideration of these federal and State statutory requirements, we have concluded that it is appropriate to classify the subject installations as Pollution Control Equipment, eligible for property tax exemption, per S.C. Code Ann. § 12-37-220.

III. Technical Justification for Pollution Control Facility Classification

Petroleum can cause severe environmental issues and contamination if leaked into the land and waters of the State of South Carolina. Therefore, Petroleum pipeline operators are required to install and maintain certain systems and equipment on their pipelines for the express purpose of abating or eliminating the risk of leaks or spills, which would cause or constitute pollution.[5] The subject installations included in Colonial's Schedule X provide the technical means for the Pipeline to prevent or eliminate leaks or spills from the Pipeline during operations. Further technical information regarding each of these installations' purpose and function are respectfully presented for your consideration.

Pipeline Water Pollution Control Installations - Corrosion Controls

Metal pipelines such as steel pipelines placed on or below ground are subject to the harmful effects of corrosion, potentially leading to pipeline failure; leakage or rupture. Corrosion Controls are put in place on pipelines to maintain the soundness and integrity of transportation pipelines and to prevent the unintended release/escape of Petroleum due to underground corrosion mechanisms. As noted by the National Association of Corrosion Engineers ("NACE") International:

> *"If a structure is free of corrosion, the risk of harmful leakage or an explosion is significantly reduced. Corrosion control offers proven, cost effective ways to reduce*

[5] Briefing: Safety Responsibilities of Pipeline Operators. Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration. http://primis.phmsa.dot.gov/comm/SafetyResponsibilities.htm?nocache=4660

> *the premature deterioration of materials and protect both the public and the environment in the process."* [5]

Corrosion Control Equipment installed to prevent and/or eliminate risk of water pollution consists of:

- Corrosion Mitigation Coatings (FBE Coatings); and
- Cathodic Protection ("CP") Systems.

The application of Pipe Coatings and Cathodic Protection ("CP") are two of the primary methods for controlling corrosion on underground pipelines.[7] As excerpted from *Pipeline Corrosion: Final Report Submitted to U.S. Department of Transportation*, the following description provides a process overview of the subject Pipe Coatings' and Cathodic Protection's function and environmental purpose:

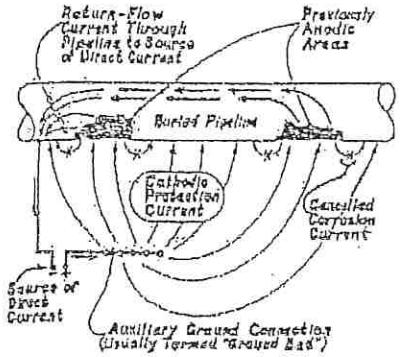
> *"Pipe Coatings and Cathodic Protection are the primary method of preventing or mitigating external corrosion on buried pipelines. Cathodic Protection applies a current to the underground pipeline through the soil from an external source and thus overriding the local anodes, rendering the entire exposed pipeline surface cathodic. Coatings function to separate the steel from the electrolyte, and thus preventing corrosion..."* [8]

Cathodic Protection

Cathodic protection, whether it is affected using local anodes or impressed current systems, is effective by offering a sacrificial metal, being much more anodic in the "corrosion cell" than the metal being protected. These systems are designed to force the corrosion cell current flow onto the structure being protected, the pipe, by forcing it to be cathodic. In the case of the sacrificial anode type, the electrical current is natural as opposed to the impressed current or groundbed type systems where it is externally applied.

[5] *White Papers: Corrosion Control and Environmental Protection.* Public Affairs – White Papers. NACE International. 2000-2012.
[7] Briefing: Safety Responsibilities of Pipeline Operators. Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration. http://primis.phmsa.dot.gov/comm/SafetyResponsibilities.htm?nocache=4660
[8] *Pipeline Corrosion: Final Report.* Michael Baker Jr., Inc. 11/2006.

Figure 1



Source: Pipeline Corrosion: Final Report. Michael Baker Jr., Inc. 11/2008.

There are two types of cathodic protection systems:

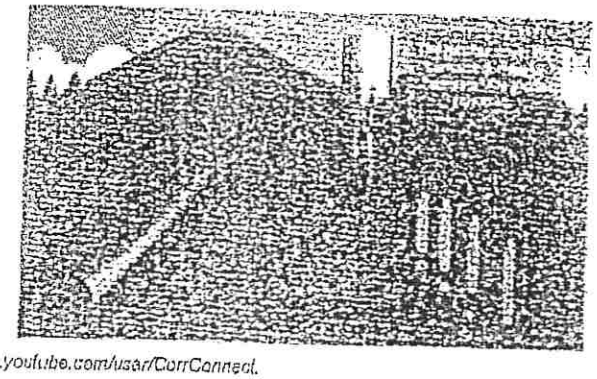
- sacrificial anode; and
- impressed current anode. [9]

Sacrificial anode systems utilize an externally connected sacrificial metal with a relative activity value greater than steel (iron) and thereby protect steel from corrosion. Alloys of zinc and magnesium are the sacrificial metals most commonly employed. The sacrificial anode is connected to the pipeline via a wire and placed some distance from the pipeline. The current flows from the anode into the surrounding soil (electrolyte) and is picked up by the pipeline at coating gaps. The circuit is completed by a wire that connects the anode to the pipe. [10]

Impressed-current anode systems involve the application of direct-current voltage between an anode and the pipeline. Impressed-current anodes can be made from graphite, high-silicon cast iron, lead-silver alloys, precious metals, mixed-metal oxides, or steel. Figure 2 below illustrates impressed-current cathodic protection on a buried pipeline. [11]

[9] *Pipeline Corrosion: Final Report.* Michael Baker Jr., Inc. 11/2008.
[10] *Ibid.*
[11] *Ibid.*

Figure 2



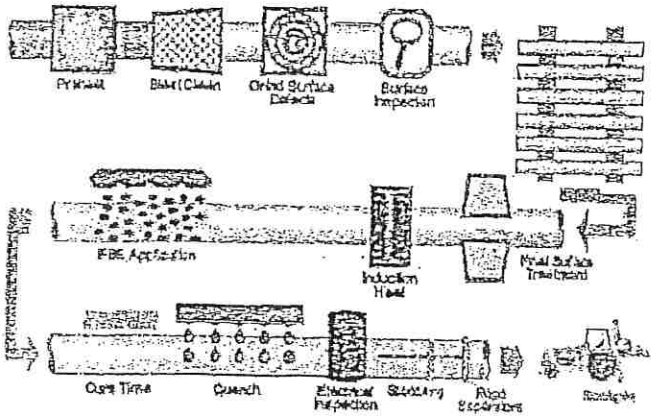
Source : https://www.youtube.com/user/CorrConnect.
Pipe Coatings

Cathodic Protection to protect against corrosion alone is impractical, so Pipe Coatings are needed to minimize the exposed area of the pipeline and to reduce the amount of cathodic protection current needed. [12]

Fusion-bonded epoxy ("FBE") coating, sometimes called thin-film epoxy, is an epoxy-based powder coating that is currently widely used to protect pipelines. FBE coatings are thermoset polymer coatings. The name is derived from resin cross-linking and method of application, which is different from that of a conventional liquid paint. FBE coatings are made from dry powder. The resin and hardener parts of the dry powder remain unreacted at normal storage conditions. At typical coating application temperatures, usually in the range of 180° C to 250 °C (350° F to 480 °F), the contents of the powder melt and transform to a liquid. The liquid FBE film flows onto and wets the steel surface and, assisted by heating, soon becomes a solid coating by chemical cross-linking. This process is known as "fusion bonding." The chemical cross-linking reaction that takes place in this case is irreversible, which means that, once the curing takes place, the coating cannot be converted back to its original form by any means. The pipeline coating process is illustrated in Figure 3. [13]

[12] *Pipeline Corrosion: Final Report*. Michael Baker Jr., Inc. 11/2008.
[13] *Ibid*

Figure 3



Source: Pipeline Corrosion: Final Report. Michael Baker Jr., Inc. *11/2008.*

As excerpted from *Coatings Used in Conjunction with Cathodic Protection – Shielding vs Non-Shielding Pipeline Coatings* the following presents a discussion of the coordinated environmental protection benefits provided by pipeline Coatings used in conjunction with Cathodic Protection:

Coatings Used in Conjunction with Cathodic Protection

Pipe Coatings and Cathodic Protection are both reliant upon one another in the protection of the pipeline from corrosion. To adequately protect underground pipelines, a coating must conduct CP current when disbondment occurs. When disbondment or blistering occurs, most coating types divert current from its intended path, therefore, CP current cannot adequately protect the external surfaces of a pipe. These are called "shielding" pipeline coatings. There are certain types of pipeline coatings that will allow the CP current to effectively protect the pipe if disbondment occurs and water penetrates between the coating and the pipe. These are called "non-shielding" pipeline coatings. This paper will discuss the differences in the two types of coating systems and how CP works with these coatings. [14]

Additional information on the negative effects of pipeline corrosion; the need for Pipe Coatings; and the need for Cathodic Protection are further detailed in the following *"PHMSA Fact Sheets"*:

- Fact Sheet: Corrosion;
- Fact Sheet: Pipe Coatings; and

[14] *Coatings Used in Conjunction with Cathodic Protection – Shielding vs Non-Shielding Pipeline Coatings.* Norsworthy, Richard. 2009

- Fact Sheet: Cathodic Protection.

Copies of these fact sheets are supplied in Appendices B-1 through B-3.

Pipeline Water Pollution Control Equipment - Leak Detection/Prevention

Leak Detection/Prevention equipment and practices are proven, successful methods of abating or removing the risk of pipeline leakage. Leak Detection/Prevention investments are put in place on pipelines to prevent the unintended release/escape of Petroleum from the pipeline due to pipeline metal damage or corrosion during pipeline operations. Early detection of pipeline leaks and identification of leak location(s) using best available technologies allow time for safe pipeline shutdown and rapid dispatch of assessment and/or cleanup crews.[15]

Pipeline Leak Prevention facilities installed to prevent and/or eliminate the risk of water pollution consists of the following:

- Automatic Shut-off Valves.

As excerpted from "*Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves on Hazardous Liquids and Natural Gas Pipelines with Respect to Public and Environmental Safety*", the following gives a process overview of Automatic Shut-off Valves' function and environmental purpose:

> Automatic Shut-off Valves
>
> An (RCV) in a pipeline is a block valve equipped with an electric, pneumatic, or Petroleum-powered actuator capable of closing the valve based on a signal from a remote location such as a control room. These valves also include a communications link between the sensors, which are located near the RCV and at various points along the pipeline, and the remote location. The communications link generally involves telemetry which is a highly-automated communications process by which data are collected from instruments located at remote or inaccessible points and transmitted to receiving equipment for measurement, monitoring, display, and recording. Transmission of the information may be over wires (telephone lines or fiber optic cables), or, more commonly, by wireless communication.[16]

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[15] Technical Review of Leak Detection Technologies. Volume I: Crude Oil Transmission Pipelines. Alaska Department of Environmental Conservation. Preamble.

[16] *Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves on Hazardous Liquids and Natural Gas Pipelines with Respect to Public and Environmental Safety*. Oak Ridge National Laboratory. October 31, 2012.

Automatic Shut-off Valves provide emergency shut off/shut down of Pipeline product flow in sections of the Pipelines in the event of a pipeline leak and/or spill, preventing further environmental damage from occurring.

IV Conclusion

Based upon the statutory and technical information outlined, Duff & Phelps and Colonial have concluded that the subject installations are used to prevent, abate, or control water pollution by preventing the potential for the pollutant, leaked Petroleum, to reach the land and waters of the State of South Carolina. Therefore, the subject installations are eligible for classification as Pollution Control Equipment, eligible for exemption from property tax, per S.C. Code Ann. § 12-37-220.

We respectfully request that you reconsider your current eligibility determinations regarding the subject installations and approve their classification as Pollution Control Equipment for property tax purposes. If you have immediate questions related to the information and conclusions provided, or require additional information to evaluate our request, please contact me at (469)-547-8660.

Very truly yours,

Toby Reese
Managing Director
Property Tax

cc: Keith Fuqua (Colonial Pipeline Company)
Kathryn Tronsberg Macciocca (Duff & Phelps – Philadelphia)

Appendix A

Colonial Pipeline Company
SC 1120U: Public Utility Tax Return
Form: Schedule X - Pollution Control Equipment

PC Control Facility Type	Loop Asset Description	Federal Environmental Requirement	State Environmental Requirement	Asset ID	In Service	Age	Cost	Depreciated Value	Assessed Value
1. Automatic Shut-off Valves									
Automatic Shut-off Valves	Add Upstream Isolation Valve At Gentry Station	49 CFR §195.260(e): A valve must be installed at each of the following locations: (e) On the station end and the discharge end of a pump station that parallels pipe of the pump station equipment in the event of an emergency.	Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state governments and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(H)] S.C. Code Ann. §12-37-220(A)(9).]	15056	02/01/11	6.00	$ 529,000	$ 454,394	42,188
Subtotal - Automatic Shut-off Valves							$ 529,000	$ 454,394	42,188
2. Pipeline Cathodic Protection									
Pipeline Cathodic Protection	703 Double B Mile Road Linear Anode System	49 CFR §195.563(a): Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.	Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state governments and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(H)] S.C. Code Ann. §12-37-220(A)(9).]	15059	06/01/10	11.00	$ 528,000	$ 454,393	43,*
Pipeline Cathodic Protection	702 Bullman Road Linear Anode System	See Above	See Above						
Pipeline Cathodic Protection	703-Bottleberry Road Linear Anode System	See Above	See Above						
Pipeline Cathodic Protection	701 Cathodic Protection Systems	See Above	See Above						
Pipeline Cathodic Protection	Remote Monitor Installations In South Carolina (105)	See Above	See Above	15060	06/01/10	11.00	$ 95,000	$ 72,144	6,954
Pipeline Cathodic Protection	Su Cp Mitigation Project	See Above	See Above						
Pipeline Cathodic Protection	South Carolina Cp Mitigation Project Part 5	See Above	See Above	13319	06/01/06	11.00	78,748	50,371	5,258
Pipeline Cathodic Protection	2011 Rectifier Replacement Program Sites	See Above	See Above	13348	12/01/06	11.00	149,177	113,295	10,702
Pipeline Cathodic Protection	2021 Sc Cp Upgrade Project	See Above	See Above	13960	04/01/08	8.00	1,299,582	1,020,364	97,237
Pipeline Cathodic Protection	07Cp04 4 Southaven Road	See Above	See Above	14539	12/31/09	6.00	364,172	287,505	24,213
Pipeline Cathodic Protection	3e Mitigation Monitoring Project	See Above	See Above	14913	12/01/09	6.00	1,080,674	834,278	69,905
Pipeline Cathodic Protection	2015 Sc Mainline Delivery Line Cp Upgrades	See Above	See Above	15356	03/01/11	6.00	1,860,051	1,253,668	231,427
Subtotal - Pipeline Cathodic Protection				13356	12/01/11	6.00	172,221	144,899	14,124
3. Pipeline Coatings				15498	07/31/12	5.00	797,526	705,073	60,042
Pipeline Coatings	Recoat Loc 701 Line 2 Vidalia	49 CFR §195.557(a): Except buildings at atmospheric breakout tanks, each buried or submerged pipeline must have an external coating for external corrosion control if the pipeline is: Constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c), not including the movement of pipe covered by §195.424	Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state governments and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(H)] S.C. Code Ann. §12-37-220(A)(9).]	16065	12/31/14	3.00	453,936	433,843	49,814
Pipeline Coatings	Line 700-7 And 700-8 Recoat Project	See Above	See Above	16324	12/31/15	2.00	367,229	50,733	6,*
Pipeline Coatings	703 Recoat	See Above	See Above				$ 6,719,254	$ 5,373,148	600,8
Pipeline Coatings	Line 02 Location 702 Recoat	See Above	See Above	13413	08/01/06	11.00	$ 97,484	$ 74,015	7,021
Pipeline Coatings	2011 Sc Nonattainment Project - Recoats	See Above	See Above						
Pipeline Coatings	Recoat - West Penny Road Mainline Crack Loo	See Above	See Above	14009	01/01/09	9.00	96,378	74,571	7,1*
Pipeline Coatings	Horse Road Recoat Of Line 01 And 02	See Above	See Above	14601	05/01/09	8.00	1,063,799	1,243,780	118,128
Pipeline Coatings	2013 South Carolina Recoats On Line 02 Loc 701 To 703	See Above	See Above	15087	12/01/10	7.00	701,956	84,315	8,006
Pipeline Coatings	2016 Kings Mountain South Carolina Line 02 Recoat	See Above	See Above	16003	01/01/12	5.00	909,209	710,941	68,109
Subtotal - Pipeline Coatings				16015	12/31/14	3.00	133,941	123,813	12,068
Subtotal - Transmission Pipeline				16026	12/31/15	2.00	1,512,009	1,403,109	134,066
				16025	05/01/10	1.00	3,704,193	3,704,193	301,836
				16027	05/01/10	1.00	2,500,000	2,500,321	278,7*
							$ 10,681,333	$ 10,408,734	$
							$ 18,250,210	$ 16,136,333	$ 1,322,057

Colonial 0950

R&A 0350

Taylor Ingram
South Carolina Department of Revenue
August 22, 2017

Appendix B: PHMSA Fact Sheets

Taylor Ingram
South Carolina Department of Revenue
August 22, 2017

Appendix B contains the PHMSA Fact Sheets described below:

- B-1 Fact Sheet: Corrosion
- B-2 Fact Sheet: Pipe Coatings
- B-3 Fact Sheet: Pipeline Cathodic Protection

Taylor Ingram
South Carolina Department of Revenue
August 22, 2017

Appendix B-1
B-1 Fact Sheet: Corrosion

U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration
Pipeline Safety Stakeholder Communications
Pipeline Safety Connects Us All

Fact Sheet: Corrosion

Quick Facts:

- *Corrosion is the natural process of materials made from metal to their original state through a chemical reaction known as oxidation.*
- *Corrosion is one of the leading causes of pipeline leaks and ruptures.*
- *Improved technologies have led to better prevention, monitoring, detection, and mitigation of pipeline corrosion – even for old pipelines.*
- *New pipeline Integrity Management regulations will promote early identification of potentially corroded sections and their repair.*
- *Refer to other Fact Sheets for specific discussion of issues related to internal corrosion, external corrosion, selective seam corrosion, and stress corrosion cracking.*

What is corrosion and why does it occur?

Corrosion is the deterioration of metal that results from a reaction with the environment which changes the iron contained in pipe to iron oxide (rust). For example, if your car develops a rust spot, that is corrosion of metal. The same process can occur in various forms on pipelines. As is the case with your car, there are effective methods for preventing and arresting corrosion damage to pipelines.

- *External corrosion* occurs due to environmental conditions on the exterior surface of the steel pipe (e.g., from the natural chemical interaction between the exterior of the pipeline and the soil, air, or water surrounding it).
- *Internal corrosion* occurs due to chemical attack on the interior surface of the steel pipe from either the commodity transported or other materials carried along with the commodity transported within the pipeline.
- *Other, more specialized types of corrosion* such as stress corrosion cracking , microbial corrosion, and selective seam corrosion can also occur. These types of corrosion can be exacerbated by environmental conditions, manufacturing processes and applied stresses resulting from routine and normal pipeline operations.

What are the risks from corrosion?

Corrosion can result in the gradual reduction of the wall thickness of the pipe and a resulting loss of pipe strength. This loss of pipe strength could then result in leakage or rupture of the pipeline due to internal pressure stresses unless the corrosion is repaired, the affected pipeline section is replaced, or the operating pressure of the pipeline is reduced.

Pipeline corrosion creates weaknesses at points in the pipe, which in turn makes the pipe more susceptible to third party damage, overpressure events, etc. (i.e., corrosion doesn't necessarily need to cause the leak or rupture itself to increase risk).

Pipeline Failure Rates from Corrosion

Corrosion is one of the most prevalent causes of pipeline spills or failures. For the period 2002 through 2003, incidents attributable to corrosion have

represented 25% of the incidents reported to OPS for both Natural Gas Transmission Pipelines and Hazardous Liquid Transmission Pipelines.

Over this same period, approximately 1 percent of the incidents reported to OPS for Gas Distribution Pipelines were due to corrosion.

What is being done to prevent/mitigate corrosion?

- Modern manufacturing processes for steel pipe and their protective coatings are subject to rigorous fabrication and installation standards and quality control to reduce the occurrence of defects that can lead to corrosion-induced failures.
- Operators use coatings, cathodic protection systems, pipe cleaning techniques, product quality controls, and other approaches to protect pipelines from corrosion.
- The Office of Pipeline Safety has implemented new Pipeline Integrity Management ("IM") regulations that require all pipeline operators to inspect and assess all of their pipelines that could affect areas of high consequence such as populated areas or environmentally sensitive areas. The operators are required to inspect and assess their pipelines for integrity issues, such as corrosion, and repair or replace affected pipe.
- By implementing the requirements of the regulations and through responsible maintenance programs, pipeline operators continuously inspect their pipelines for corrosion damage and potential susceptibility.

Corrosion: What more can be done

- *Public*: Be aware of pipelines located near you. Be observant for signs of pipeline damage, leakage, or security concerns. Report any concerns you have regarding pipeline safety to the pipeline operator immediately. Always respect the pipeline right-of-way. Do not dig or build on a pipeline right-of-way without first contacting the pipeline operator or your state one-call center.
- *Industry*: Pipeline operators and industry stakeholders can continue to develop and implement improved corrosion detection and prevention technologies. Operators must continue to implement corrosion protection effectively and strengthen pipeline integrity management programs. Operators must mitigate the effects of corrosion when it is detected.
- *Regulators*: OPS and state regulators must continue to inspect pipeline operators to ensure they effectively implement required integrity management and corrosion control programs to ensure that risks to pipelines are identified and mitigated at the earliest possible time. Better coordination is needed between local permitting agencies and pipeline operators to facilitate expeditious granting of permits when public safety is potentially threatened.

Date of Revision: 12012011

Taylor Ingram
South Carolina Department of Revenue
August 22, 2017

Appendix B-2
B-2 Fact Sheet: Pipeline Coatings

U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration
Pipeline Safety Stakeholder Communications
Pipeline Safety Connects Us All

Fact Sheet: Pipe Coatings

Overview:

Pipelines are usually buried underground to protect them from damage, and keep them from interfering with the movement of traffic. Underground, the exterior of the pipe is exposed to conditions that can lead to corrosion. It should be noted that the interior of pipelines can also be attacked by corrosive products, such as hydrogen sulfides, CO^2 and water, that might be contained in products transported in the pipeline.

History of Corrosion Protection

The earliest pipelines were buried without any external coatings. To prevent corrosion, pipeline manufacturers and operators began applying coatings to the exterior of pipe at the time it was being installed. This required the exterior surface of the pipe to be cleaned, usually by wire-brushing, and then application of a coating to the surface. These early pipe coatings were tape wraps and coal tars.

These coatings are susceptible to disbonding, however, and pipeline operators eventually determined that coatings alone would not provide complete corrosion protection.

Disbonding refers to a condition in which the pipe coating becomes separated from the exterior pipe wall. This allows water to come into contact with the pipe wall, setting up conditions that can lead to corrosion. Pipe coatings can also be damaged by equipment, and by rocks left in the backfill during installation, as well as by subsequent excavation activities.

To enhance protection, operators began installing cathodic protection (CP) systems. By taking periodic measurements of pipe-to-soil electrical potentials along the pipeline, CP systems can detect disbondment, and the operator can make necessary repairs to the pipe coating.

Today pipe coatings are applied by the pipe manufacturer at the time the pipe is manufactured. This has obvious advantages. The coating can be applied in a consistent manner, the exterior of the pipe is clean, and application conditions can be better controlled. Exterior pipe coatings still need to be applied during construction in the field at the girth welds when pipe sections are joined together.

The most widely used pipe coating today is Fusion Bonded Epoxy (FBE). FBE is applied to hot rotating pipe that is electrostatically charged. FBE is resistant to high temperature, can withstand high stress, and provides good protection against corrosion.

Coatings are also used to protect the interior surfaces of some pipe, but their use in that application is not pervasive in the oil and gas industries. Oil and gas pipeline operators prefer to treat their products through dewatering and the use of chemical additives to reduce corrosion, rather than using internal pipe coatings. Internal coatings may be used in pipelines were pretreatment is not

feasible, such as gathering lines. Epoxy, cement, and ceramics can be used as internal coatings.

Conclusion

Pipe coatings protect pipelines from corrosion-related defects. They are just one element of the total package operators employ to ensure their pipelines are well protected. Cathodic protection and integrity assessments are also used to prevent corrosion, and to detect any defects that may result from corrosion.

Date of Revision: 12012011

Taylor Ingram
South Carolina Department of Revenue
August 22, 2017

Appendix B-3

B-3 Fact Sheet: Pipeline Cathodic Protection

U.S. Department of Transportation
Pipeline & Hazardous Materials Safety Administration

Pipeline Safety Stakeholder Communications
Pipeline Safety Connects Us All

Fact Sheet: Cathodic Protection

Quick Facts:

- *Virtually all hazardous liquid and natural gas transmission pipe in service today is made from steel. This steel – when not otherwise protected and exposed to oxygen and/or water -- can corrode. Corrosion can result in small holes in the pipe, or loss of pressure-carrying capacity.*
- *Corrosion is the electro-chemical reaction of a metallic material with its environment. Pipe environments include soil, water, air, and even the contents of the pipe itself.*
- *In all electrolytes (the ground, rain water, river or sea water, moisture in the air or transported product), metal atoms from the pipe go into solution as electrically charged ions. The movement of the ions causes a flow of electrical current from the metal pipe to the electrolyte (ground or water). This process causes loss of metal from the metal surface, and is commonly recognized as rust.*
- *Cathodic Protection (CP) systems help prevent corrosion from occurring on the exterior of pipes, by substituting a new source of electrons, commonly referred to as either a "sacrificial anode" or "impressed current anode". Both systems operate by imparting a direct current onto the buried pipeline, using devices called rectifiers. As long as the current is sufficient, corrosion is prevented, or at least mitigated and held in check.*
- *In most cases, coatings on the exterior of a pipe are used in conjunction with CP. Coatings have a high dielectric strength, which prevents the flow of electrons to the pipe's surroundings, thus interrupting the electro-chemical reaction of the metal with its environment.*

Where is cathodic protection used?

CP protects buried pipelines, ship hulls, underground tanks, offshore platforms and any other metal surfaces which may come in contact with the ground or with water. It is not used to prevent atmospheric corrosion, or corrosion that may occur inside the pipe due to its contents. Other corrosion-control measures are used in these cases.

What are the regulatory requirements for cathodic protection on a pipeline?

- Gas pipelines installed after July 31, 1971, and hazardous liquid interstate pipelines installed after March 31, 1970, must be properly coated and have CP. Effective dates for other categories of pipelines apply.
- CP is required on any pipeline installed before these dates if the pipeline is coated, or where areas of active corrosion are present if the line is bare or ineffectively coated.
- Performance of CP Systems must be monitored regularly with tests performed at least once per year. Records must be maintained for the life of the pipeline.
- Where CP systems utilize rectifiers, each rectifier must be checked six times a year, with a maximum interval between checks of 2 ½ months.
- Each pipeline must have sufficient test points for electrical measurement to determine CP adequacy. Test points should be shown on CP system maps.

- Operators must maintain records or maps of their CP systems. Records of all tests, surveys, or inspections required by the regulations must be maintained.
- Pipelines that are found to have deficient CP must be remediated in a timely manner (usually within 12 to 18 months after discovery).
- More stringent requirements apply to gas pipelines operating under an alternative (higher) MAOP.
- More detailed information on the regulatory requirements pertaining to cathodic protection can be found in 49 CFR 192 Subpart I and 49 CFR 195 Subpart H.

Date of Revision: 12012011

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DUFF & PHELPS

Pipeline Pollution Control Facilities – Equipment Eligible for SC Property Tax Exemption

July 2017

Colonial Pipeline Company

Colonial 0962

ROA 0362

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Appendix

A	Federal Requirements by Pollution Control Facility	15

Colonial 0963

ROA 0363

Issue & Pipeline Pollution Control Regulatory Oversight

Section No. 01

Issue & Pipeline Pollution Control Regulatory Oversight

Issue

- SC Assessor reviewed Colonial's Pollution Control Schedule X in PT-300 Return, which enumerates certain pollution control facilities on the Colonial Pipeline System
- Taxpayer contends property is eligible for 100% property tax exemption per S.C. Code Ann. § 12-37-220
- The assessor is not sure. He has asked the following:
  - How would FERC describe these assets; i.e. safety or pollution control property?
  - What FERC reference or contact can be provided as justification to classify the subject property as pollution control equipment?

Response

- Colonial Pipeline, a hazardous materials liquids transmission pipeline in South Carolina, is providing the following information in response to the assessors request

Colonial 0965

ROA 0365

Issue & Pipeline Pollution Control Regulatory Oversight

Issue #1: How would the Federal Energy Regulatory Commission ("FERC") describe these assets?

FERC: NO Environmental Regulatory Oversight for Colonial Pipeline System

- FERC's authority is limited to rates over hazardous materials & oil pipelines[1]
- FERC has no operational oversight/environmental protection responsibility for these pipelines

DOT – PHMSA: HAS Environmental Regulatory Oversight for Colonial Pipeline System

- The Department of Transportation ("DOT") regulates the **construction** and **operation** of hazardous materials & oil pipelines under the Hazardous Liquid Pipeline Safety Act of 1979

- The DOT's Pipeline and Hazardous Materials Safety Administration ("PHMSA") through the Office of Pipeline Safety ("OPS"), regulates the safety of natural gas, oil, and hazardous materials pipelines[1]

- PHMSA's safety enforcement authority of pipeline operations is defined as the protection of: 1) people, 2) property and 3) the **environment**[2]

[1] Pipeline Regulatory and Environmental Permits, William E. Bauer
[2] https://www.phmsa.dot.gov/about/faq

Colonial 0966

ROA 0366

Issue & Pipeline Pollution Control Regulatory Oversight

PHMSA's Job is to Protect People and the Environment from Pipeline Failures

- Pipeline failures can kill and injure people, damage property, harm the environment and disrupt energy supplies
- PHMSA administers safe pipeline operation through Pipeline Integrity Management
  - Pipeline Integrity Management:
    - » Encompasses the environment as well as the pipeline;
    - » Sets priorities for inspection and operations and maintenance based on whether people, property or the **environment** might be at risk should a pipeline failure occur;
    - » Regulations for Integrity Management of hazardous liquid pipelines have been in effect since 1987 (49 CFR 195.1) and amended in 2001 (49 CFR 195.450 and 195.452); and
    - » These regulations outline specific property installations for **safe and environmentally sound operation** of the pipeline.

[1] Pipeline Regulatory and Environmental Permits, William E. Bauer

Colonial 0967

ROA 0367

Section No. 02

Regulatory Requirements for Environmental Protection

Colonial 0063

ROA 0368

Regulatory Requirements for Environmental Protection

PHMSA Pipeline Oversight and Enforcement Authority

- 49 CFR § 190.1 prescribes "*procedures used by PHMSA in carrying out duties regarding pipeline safety under 49 U.S.C. 60101 et seq. (the pipeline safety laws) and 33 U.S.C. 1321 (the water pollution control laws)...*"

Installations Required for Safe and Environmentally Sound Operation of the Pipeline

- 49 CFR § 195.0, prescribes, "*...requirements for pipeline facilities used in the transportation of hazardous liquids...*"
  - The following pipeline installations are required environmental protection devices:

Colonial Installations	**Pipeline Integrity Statutory Requirement**
Pipeline Coatings	49 CFR § 195.557 (A)
Cathodic Protection	49 CFR § 195.563 (a)
Automatic Shut-Off Valves	49 CFR § 195.260 (a)
Colonial Installations	**Tank Floating Roof Statutory Requirement**
Tank Internal/External Floating Roofs	49 CFR § 63.1062 (a)

- See **Appendix A: Form: Schedule X - Pollution Control Equipment** for statutory requirements for listed Pollution Control Equipment

Colonial 0969

ROA 0369

Regulatory Requirements for Environmental Protection: Pipeline Integrity

What do they prevent?

- Pipeline Coatings, Cathodic Protection, & Automatic Shut-Off Valves are installed to prevent the unintended or fugitive release of petroleum products from the Pipeline

Why are they required?

- Pipeline Coatings per 49 CFR § 195.557(a):
  - *"...Each buried or submerged pipeline must have an external coating for external corrosion control..."*

- Pipeline Cathodic Protection per 49 CFR § 195.563(a):
  - *"Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed...must have cathodic protection."*

- Automatic Shut-Off Valves per 49 CFR § 195.260(c):
  - *"A valve must be installed at each of the following locations:...(c) On each mainline at locations along the pipeline system that will **minimize damage or pollution from accidental hazardous liquid discharge**..."*

Colonial 0970

ROA 0370

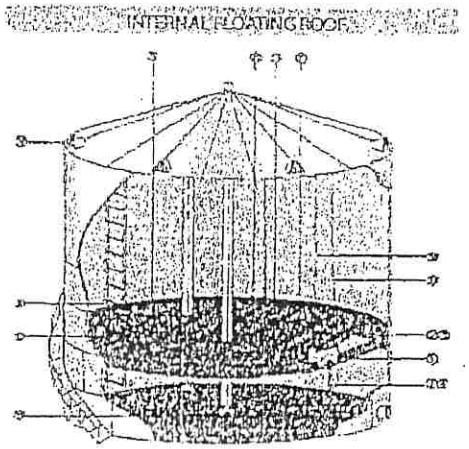
Regulatory Requirements for Environmental Protection: Tank Internal/External Floating Roofs

What do they prevent?

- Tank Internal/External Floating Roofs installed to prevent the unintended or fugitive release of volatile organic compound emissions ("VOCs") that may result from the storage of petroleum products

Why are they required?

- Per 49 CFR 63.1062 (a)
  - *"For each storage vessel to which this subpart applies, the owner or operator shall comply with one of the requirements listed in paragraphs (a)(1) through (a)(3) of this section. (1) Operate and maintain an IFR. (2) Operate and maintain an EFR..."*



Colonial 0971

ROA 0371

Regulatory Requirements for South Carolina Tax Exemption

Section No. 03

Regulatory Requirements for South Carolina Tax Exemption

SC: Constitution of S.C. § 3

- *"There shall be exempt from ad valorem taxation:..."*
  - *"**all facilities or equipment** of industrial plants[1] which are designed for the elimination, mitigation, **prevention**, treatment, abatement or control of **water**, **air** or noise pollution..." [emphasis added]*

S.C. Code Ann. § 12-37-220 General exemption from taxes

- *"Pursuant to the provisions of Section 3 of Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation:..."*
  - ***all facilities or equipment** of industrial plants[1] which are designed for the elimination, mitigation, **prevention**, treatment, abatement, or control of water, air, or noise pollution, both internal and external, **required by the** state or **federal government** and **used in the conduct of their business.**" [emphasis added]*

The subject installations are designed for the prevention of air and water pollution, required by the state and/or federal government, and used in the conduct of their business.

[1] Pipelines are subject to the pollution control equipment exemption, per Taylor R. Ingram, Utility Assessment Coordinator SC DOR in an email dated 2/9/2015.

Colonial 0973

ROA 0373

Regulatory Requirements for South Carolina Tax Exemption

South Carolina Code Title 48 - Environmental Protection and Conservation § 48-1-10

- *"**Pollution** means (1) the presence in the environment of any **substance**, including, but not limited to, sewage, **industrial waste**, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be **contaminated, unclean, noxious, odorous, impure** or **degraded**..." [emphasis added]*

- *"**Industrial waste** means any **liquid**, gaseous, solid or other waste substance or a combination thereof resulting from any process of **industry**, manufacturing, trade or business or from the **development of any natural resources**" [emphasis added]*

- *"**Waters** means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of **surface or underground water**, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction" [emphasis added]*

Colonial 0974

ROA 0374

Section No. 04

PHMSA Reference for Pollution Control Equipment Classification

PHMSA Reference for Pollution Control Facility Classification

Issue #2: What FERC reference or contact can be provided as justification to classify the subject property as pollution control equipment?

- Per conversations on July 19, 2017 with Mr. Tewabe Asebe, PHMSA Standards & Rulemaking Division, in regards to tax credits for certain pipeline equipment required to be installed:
  - PHMSA uses its regulatory oversight to ensure the safe operation of all pipeline without causing any harm to the environment;
  - Each rule developed and implemented by PHMSA undergoes an environmental analysis;
  - The environmental protection aspect of pipeline safety is a priority in PHMSA rulemaking; and
  - He is willing to entertain additional phone calls on the matter.

Colonial 0876

ROA 0376

Conclusion

Section No. 05

Conclusion

Duff & Phelps and Colonial have concluded:

- FERC has no environmental regulatory oversight for Colonial Pipeline System;
- DOT PHMSA **has** environmental regulatory oversight for Colonial Pipeline System;
- PHMSA's regulates Pipeline Safety, which encompasses 1) people, 2) property, and 3) **the environment;**
- The subject installations are installed for the elimination, mitigation, prevention, treatment, abatement, or control water/air pollution by preventing industrial water pollutants and leaked petroleum products/VOCs, to reach the waters/air of the State of South Carolina;
- PHMSA contact, Mr. Tewabe Asebe, confirms conclusions 2 & 3; and
- The subject installations are therefore eligible for classification as Pollution Control Equipment in South Carolina, exempt from property tax.

Colonial 0978

ROA 0378

Federal Requirements by Pollution Control Equipment

Appendix A

Federal Requirements by Pollution Control Facility

Colonial Pipeline Company
SC 1120U: Public Utility Tax Return
Form: Schedule X - Pollution Control Equipment

PC Control Facility Type	Federal Environmental Requirement	State Environmental Requirement
I. Transmission Pipeline		
A. Water Pollution Control Facilities		
1. Automatic Shut-off Valves		
Automatic Shut-off Valves	49 CFR §195.260(a): A valve must be installed at each of the following locations: (a) On the suction end and the discharge end of a pump station in a manner that permits isolation of the pump station equipment in the event of an emergency.	Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(h) ; S.C. Code Ann. §12-37-220(A)(6) .]
2. Pipeline Cathodic Protection		
Pipeline Cathodic Protection	49 CFR §195.563(a): Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.	Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(h) ; S.C. Code Ann. §12-37-220(A)(6) .]
3. Pipeline Coatings		
Pipeline Coatings	49 CFR §195.557(A): Except bottoms of aboveground breakout tanks, each buried or submerged pipeline must have an external coating for external corrosion control if the pipeline is— Constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c), not including the movement of pipe covered by §195.424	Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(h) ; S.C. Code Ann. §12-37-220(A)(6) .]
II. Storage & Terminals		
A. Air Pollution Control		
1. Tank Floating Roofs		
Tanks - Roofs	"49 CFR 63.1082 (a) "For each storage vessel to which this subpart applies, the owner or operator shall comply with one of the requirements listed in paragraphs (a)(1) through (a)(3) of this section. (1) Operate and maintain an IFR. (2) Operate and maintain an EFR..."	State Operating Permit No. 0260-0210 Facilities or equipment of industrial plants used as pollution control equipment as required by the federal or state government and used in the conduct of their business are exempt from property taxation. [Constitution of S.C. §3(h) ; S.C. Code Ann. §12-37-220(A)(6) .]

Colonial 0930

ROA 0380

CONFIDENTIAL

Exhibit B

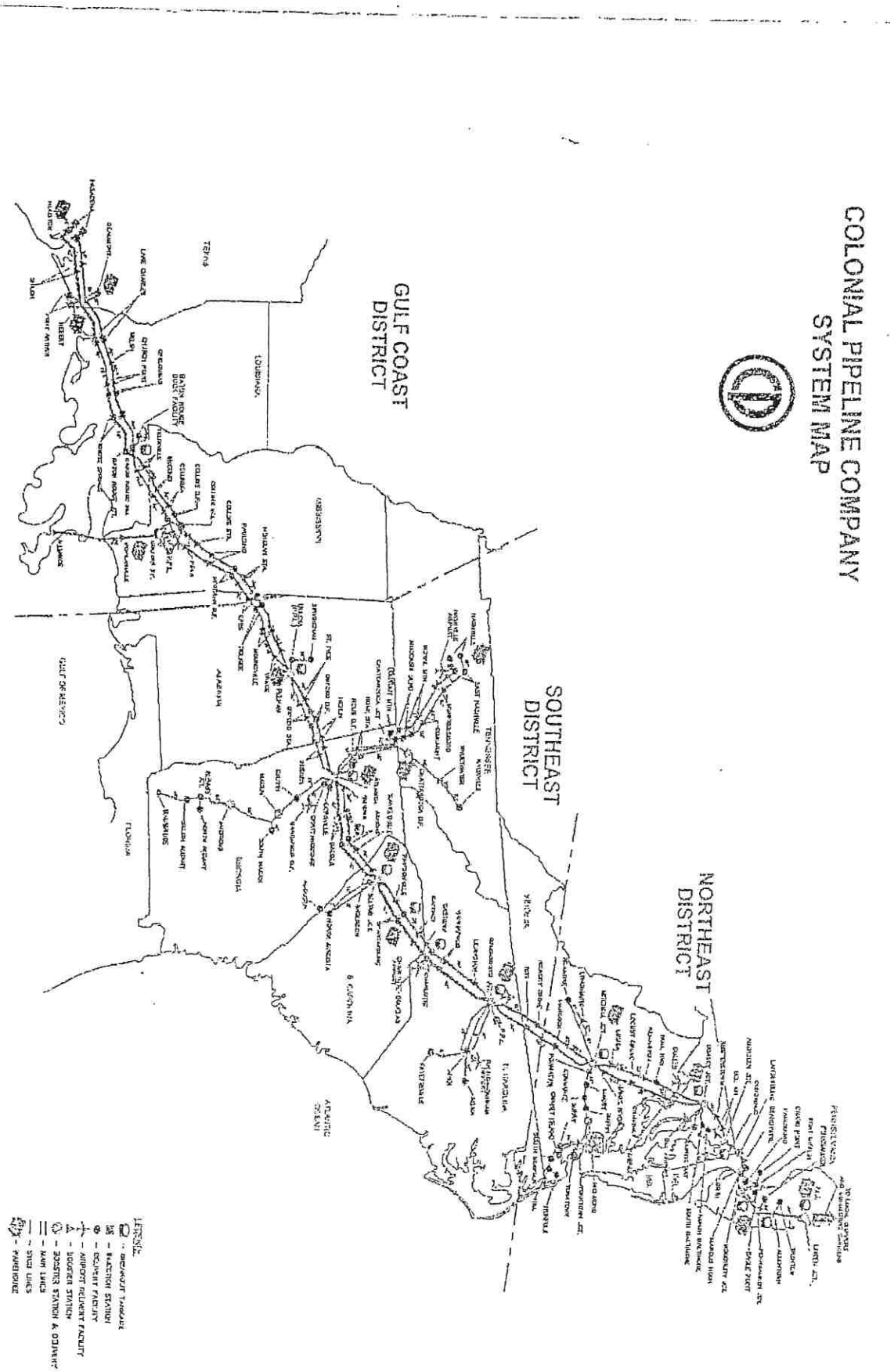
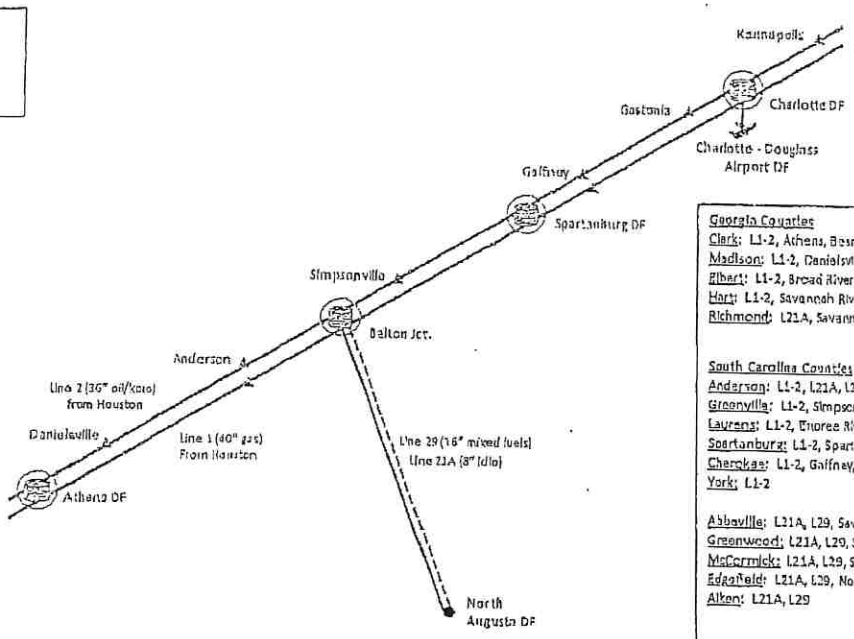

COLONIAL PIPELINE COMPANY
SYSTEM MAP
GULF COAST DISTRICT
SOUTHEAST DISTRICT
NORTHEAST DISTRICT
LEGEND

Exhibit C

Charlotte / South Carolina Operating Area

Lines
L1: 40", gas, ~52K bph
L2: 36", oil/kero, ~42K bph
L21A: 8", idle
L29: 16", mixed fuels



Georgia Counties
Clark: L1-2, Athens, Bear Creek/Oconee River
Madison: L1-2, Danielsville, Broad River
Elbert: L1-2, Broad River
Hart: L1-2, Savannah River
Richmond: L21A, Savannah River

South Carolina Counties
Anderson: L1-2, L21A, L29, Anderson, Belton, Savannah River, Saluda River
Greenville: L1-2, Simpsonville, Saluda River, Reedy River
Laurens: L1-2, Enoree River
Spartanburg: L1-2, Spartanburg, Enoree River
Cherokee: L1-2, Gaffney, Broad River
York: L1-2

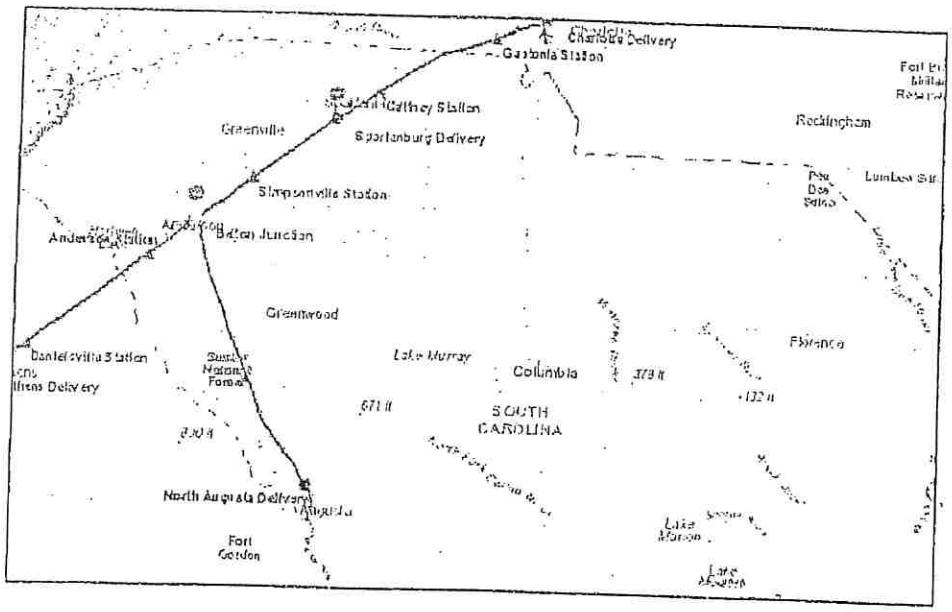
Abbeville: L21A, L29, Savannah River tribs.
Greenwood: L21A, L29, Savannah River tribs.
McCormick: L21A, L29, Savannah River tribs.
Edgefield: L21A, L29, North Savannah River tribs.
Aiken: L21A, L29

North Carolina Counties
Cleveland: L1-2
Gaston: L1-2, Gastonia, Catawba River
Mecklenburg: L1-2, Charlotte, Catawba River
Cabarrus: L1-2, Kannapolis
Rowan: L1-2, Yadkin River

Exhibit D

South Carolina Operations Fact Sheet

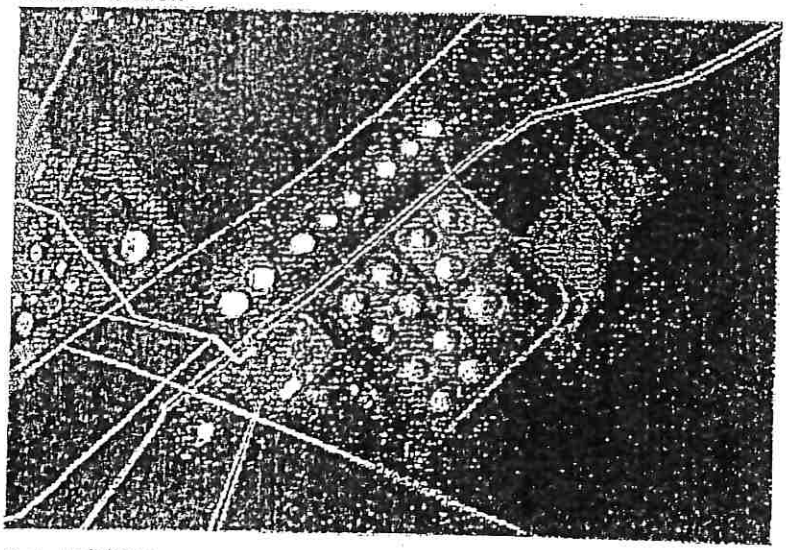
Colonial Pipeline operations in South Carolina is comprised of 515 miles of pipeline, two tank farms, three main line booster stations, and one delivery facility spanning 11 counties in the State as shown in the figure below. Of the 515 pipeline miles, 203 are mainline miles (L01/40-inch and L02/36-inch), 74 are stub line miles (L29/16-inch), and 15 miles are delivery lines. An additional 96 miles are currently out of service/idle.



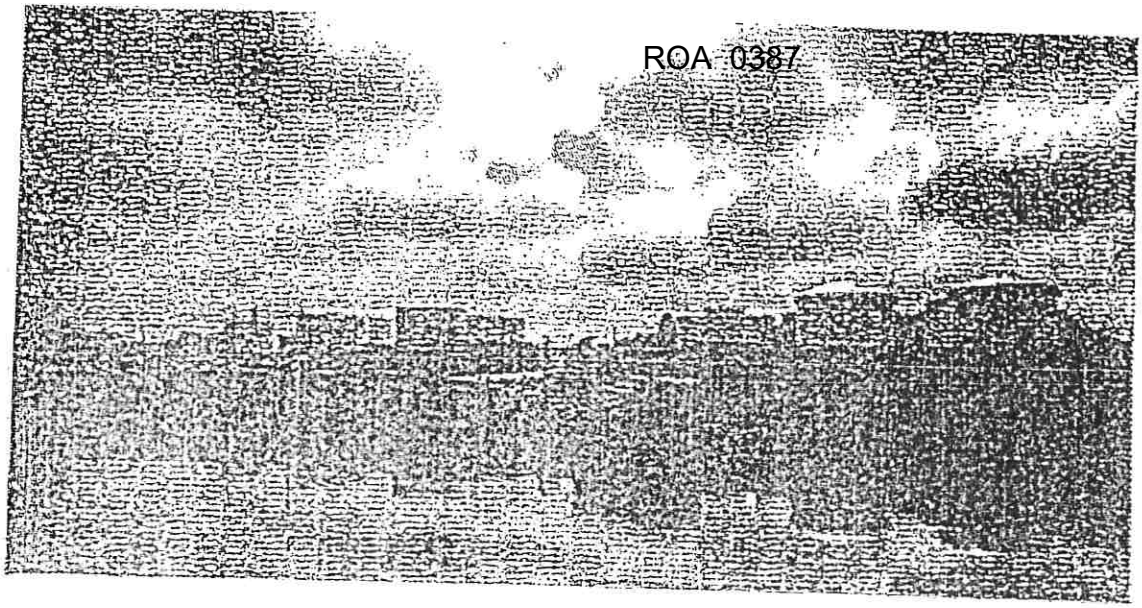
Two tank farms are located in South Carolina. Belton Junction is a 130-acre above ground breakout and delivery facility located in Anderson County. The facility is staffed by an Operator 24/7. The tank farm is comprised of 20 tanks with a total working capacity of approximately 488,000 barrels handling an average of 139,000 barrels per day. Belton Junction also serves as the origination for Line 29 (16-inch) which terminates at the North Augusta, SC Delivery Facility.

Gasoline	12 Tanks	289,529
Distillate	7 Tanks	171,105
Transmix	1 Tank	27,370

Belton Junction



Revised 8/3/2019



Three main line booster stations are located in South Carolina as summarized in the following table.

Facility	Line 1	Line 2	Notes
Anderson	X	X	Line 2 launching and receiving traps
Simpsonville		X	
Gaffney	X	X	

Critical information regarding the main lines, stub lines, and delivery lines within the operating area is summarized below.

Line Number	Size of Line	Length of Line	Delivery Areas	Shippers
Mainlines/Stub lines				
Line 1	40-inch	101.7 miles	Belton, Spartanburg, Charlotte, Greensboro	
Line 2	36-inch	101.6 miles	Belton, Spartanburg, Charlotte, Greensboro	
Line 29	16-inch	74.1 miles	North Augusta, SC	Buckeye, Kinder Morgan (2), Magellan (2)
Delivery Lines				
Belton				
762-01	6-inch	0.3 miles	Belton	Buckeye (gas)
762-02	6-inch	0.3 miles	Belton	Buckeye (oil)
762-03	6-inch	0.3 miles	Belton	Marathon (gas)
762-04	6-inch	0.3 miles	Belton	Marathon (oil)
Spartanburg				
760-03	12-inch	0.6 miles	Spartanburg	Motiva (gas)
760-04	12-inch	0.6 miles	Spartanburg	Motiva (oil)
760-05	12-inch	0.9 miles	Spartanburg	Magellan WTH (gas)
760-06	12-inch	0.9 miles	Spartanburg	Magellan WTH (oil)
760-07	12-inch	1.0 miles	Spartanburg	Kinder Morgan (gas)

760-08	12-inch	1.0 miles	Spartanburg	Kinder Morgan (oil)
760-09	12-inch	0.6 miles	Spartanburg	Magellan MTH (gas)
760-10	12-inch	0.6 miles	Spartanburg	Magellan MTH (oil)
760-13	12-inch	0.8 miles	Spartanburg	Buckeye (gas)
760-14	12-inch	0.8 miles	Spartanburg	Buckeye (oil)
760-15	10-inch	0.3 miles	Spartanburg	Citgo (gas)
760-16	10-inch	0.3 miles	Spartanburg	Citgo (oil)
760-20	12-inch	0.4 miles	Spartanburg	Transmontaigne (oil)
North Augusta				
761-01	8-inch	0.1 Miles	N. Augusta	Kinder Morgan 1 KME (Oil)
761-02	8-inch	0.1 Miles	N. Augusta	Kinder Morgan 1 KME (Gas)
761-03	8-inch	0.02 Miles	N. Augusta	Buckeye BET (Oil)
761-04	8-inch	0.02 Miles	N. Augusta	Buckeye BET (Gas)
761-05	8-inch	0.02 Miles	N. Augusta	Magellan MTH (Oil)
761-06	8-inch	0.02 Miles	N. Augusta	Magellan MTH (Gas)
761-07	8-inch	0.04 Miles	N. Augusta	Magellan WTH (Oil)
761-08	8-inch	0.04 Miles	N. Augusta	Magellan WTH (Gas)
760-10	16-inch	2.4 Miles	N. Augusta	Kinder Morgan KM2 (Gas/Oil)

The Charlotte/South Carolina Operations Team has 32 team members consisting of the following: 1 Operations Manager, 2 Lead Operators, 6 Senior Operators, 8 A-Operators, 1 Operator, 2 Lead Technicians, 2 Senior Technicians, 5 Technicians, 3 ROW Inspectors, 1 Planner, and 1 Administrative Assistant. These team members are based out of the Belton, Spartanburg, and Charlotte facilities and support all operations in South Carolina. Also based at these facilities are Southeast District support personnel consisting of a 1 Senior Field Project Manager, 1 Field Project Manager, 6 Project Inspectors, 2 Corrosion Technicians, 1 Environmental Specialist, and a Safety Specialist.

Exhibit E

12/31/16

Colonial Pipeline Company

Management's Discussion and Analysis of Financial Condition and Results of Operations

General

Colonial Pipeline Company (Colonial or the Company) is an interstate common carrier that delivers liquid petroleum products, including gasoline, kerosene, home-heating oil and jet fuel, to cities, airports and military installations throughout the Southeast, Mid-Atlantic and Northeast United States. The Company owns and operates the largest-volume refined liquid petroleum products pipeline in the United States, based on barrel-miles transported. Colonial's pipeline system spans over 5,500 miles and connects Gulf Coast refineries to approximately 270 marketing terminals located near major population centers throughout the above-mentioned regions. In 2016, Colonial transported an average of 106 million gallons of liquid petroleum products per day, representing approximately 50% of all refined liquid petroleum products consumed within the East Coast of the United States.

Shippers using Colonial's pipeline include major and independent oil companies (including the Company's stockholder companies and their related parties, as defined below), wholesale marketing companies, airlines, trading companies and the United States Department of Defense. The shippers own the petroleum products transported on Colonial's pipeline system and bear related commodity price risk. The Company neither buys nor sells petroleum products in the ordinary course of business. In 2016, more than 250 shippers transported product through Colonial's system, with the Company's stockholder companies and their related parties providing approximately 14% of Colonial's total revenues.

Colonial charges shippers tariff rates for transporting product through its system. Pursuant to a Federal Energy Regulatory Commission (FERC) approved rate adjustment methodology, a majority of the tariff rates are subject to annual adjustment based upon an index. Effective July 1, 2016, Colonial charges a $2.13 per barrel tariff to ship from Houston, Texas to Linden, New Jersey.

For the years ended December 31, 2016 and 2015, Colonial's total revenues were $1,263.0 million and $1,307.5 million, respectively, and earnings before interest expense and amortization of debt issuance costs, taxes and depreciation and amortization, or EBITDA (a non-GAAP financial measure), totaled $639.2 million and $711.5 million, respectively. Colonial's operations are only moderately seasonal, with fuel oil transportation slightly weighted toward winter demand.

Exhibit F

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

PO Box 12265
Columbia, SC 29211-9979

April 11, 2018

VIA US MAIL
Colonial Pipeline Company
1185 Sanctuary Parkway, Ste. 100
Alpharetta, GA 30009

Re: Colonial Pipeline Company – 2017 Property Tax

Dear Taxpayer,

Please be advised that the above-referenced matter has been forwarded to the South Carolina Department of Revenue's Office of General Counsel for Litigation. I am the attorney representing the Department in this matter going forward. In accordance with the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10 et seq., we will review this matter and issue a final agency determination. Should you disagree with the Department Determination, you may request a contested case hearing before the Administrative Law Court.

Please direct all future correspondence or communications regarding the above-referenced matter to me. I can be reached at 803-898-5623, Marcus.Antley@dor.sc.gov, or P.O. Box 12265, Columbia, SC 29211-9979. If you are represented by counsel, please provide a copy of this letter to them or provide me your attorney's name and contact information so that I may communicate directly with them.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D. Antley, III, Esquire
Counsel for Litigation
Marcus.Antley@dor.sc.gov
803-898-5623

MDA/lbc
Cc: Boze Brewer (via email only)

2017 Property Tax Year

Utility Appraisal Summary
Worksheet

Company: Colonial Pipeline Co.

				With Full Pollution Control Claim
Total System Value		2,350,000,000		2,350,000,000
South Carolina Allocation		5.76%		5.76%
South Carolina System Value		135,360,000		135,360,000
Adjustments:				
S.C. Licensed Vehicles (Net)	(151,330)			(151,330)
S.C. CWIP	(1,546,218)			(1,546,218)
S.C. Pollution Control (Net)	(808,966)			(16,942,299)
Other:				
		(2,506,514)		(18,639,847)
SOUTH CAROLINA TAXABLE VALUE		132,853,486		116,720,153
SOUTH CAROLINA ASSESSMENT RATIO		9.50%		9.50%
			80% Value as Billed	
SOUTH CAROLINA PROPOSED ASSESSMENT		12,621,080	10,096,864	11,088,410

As Assessed

As Billed

with full PC exemption

ROA 0393

PROPOSED ASSESSMENT

PT-422
(Rev. 5/4/04)
7032

2017 Tax Year

SOUTH CAROLINA DEPARTMENT OF REVENUE
PROPERTY DIVISION - UTILITIES
P.O. BOX 125
COLUMBIA, SOUTH CAROLINA 29214

Keith Fuqua
Colonial Pipeline Company
1185 Sanctuary Parkway, Ste 100
Alpharetta, GA 30009

The Department of Revenue has proposed a property tax assessment of $ 12,621,030 against your company for tax year 2017 .

* This is not a tax bill. This is a property tax assessment, and any tax bills relating to this assessment will be issued by the appropriate counties at a later date.

SEE REVERSE SIDE FOR APPEAL PROCEDURE

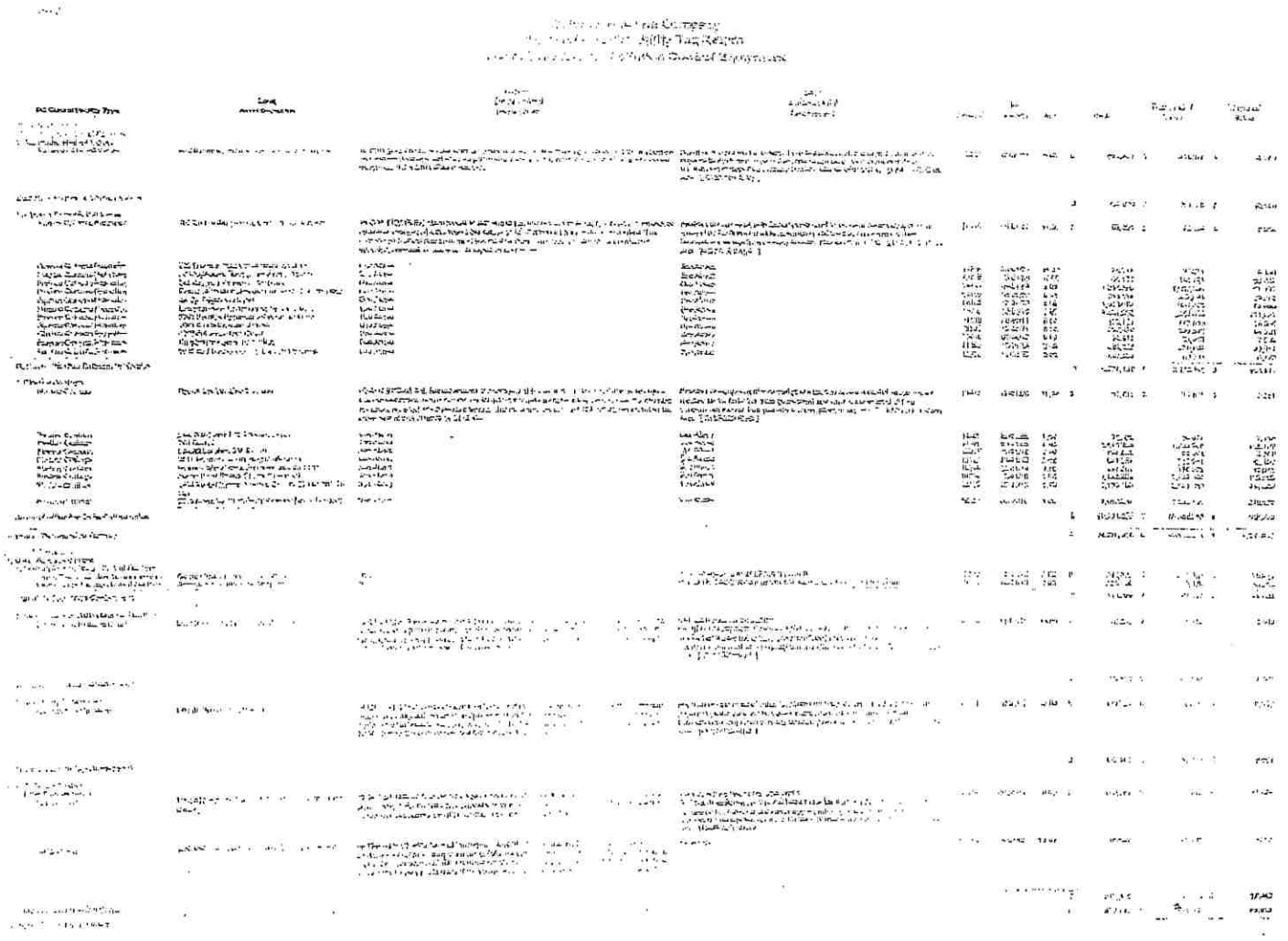
This demand is not applicable if you are currently in bankruptcy proceedings under Title 11 of the US code. Although you are liable for the stated amount, such will be claimed through the bankruptcy courts.

Date of Notice: August 15, 2017

By: Taylor Ingram

Utility Assessment Coordinator
(843) 953-8371

2017 Tax Yr.



Not Allowed
16,133,333

← Allowed
803,986

APPEAL PROCEDURES

Section 12-60-450.

(A) A taxpayer can appeal a proposed assessment by filing a written protest with the department within ninety days of the date of the proposed assessment. The department may extend the time for filing a protest at any time before the period has expired.

(B) The written protest must contain:
- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was proposed;
- (4) the nature and kind of tax in dispute;
- (5) a statement of facts supporting the taxpayer position;
- (6) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies; and
- (7) Any other relevant information the department may reasonably prescribe. The taxpayer does not need to provide legal or other authority, as provided in item (6), if the total amount of the proposed assessment is less than two thousand five hundred dollars, unless the taxpayer is a partnership, and "S" corporation, an exempt organization, or an employee plan and the proposed tax is imposed by Chapters 7, 11, or 13 of Title 12.

(C) The filing of an appeal of the proposed assessment as provided in subsection (A) extends the time for assessment as provided in Section 12-54-85)G).

(D) After the protest is filed and the taxpayer has completed or refused any other internal administrative appeals procedures provided by the department, the taxpayer and department representative shall stipulate the facts and issues upon which they can agree, and may attempt to settle the case. If the taxpayer fails to respond or participate in the process with the department representative, the department may view the appeal as abandoned and make a department determination using any information provided in accordance with Section 12-60-30(16)(c)(iii).

(E) (1) The department will make a department determination using the information provided by the taxpayer in accordance with Section 12-60-30(16)(c)(iii).
- (2) A department determination adverse to the taxpayer must be in writing and must:
  - (a) be sent by first class mail or delivered to the taxpayer,
  - (b) explain the basis for the departments determination;
  - (c) inform the taxpayer of his right to request a contested case hearing; and
  - (d) explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer requests a contested case hearing.

Section 12-60-2120.

(A) A property taxpayer may appeal a property tax assessment proposed by a division of the department by filing a written protest with the department.

(B) A property taxpayer may protest any denial of the tax exemption by the department for the property he believes is exempt from property tax by filing a written protest with the department.

(C) The protest of property taxes under this section must be mailed or delivered to either the director, or his designee, within the time limits provided in Section 12-60-450(B) and also the fair market value, special use value, if applicable, and property classification of the property the taxpayer believes is correct. If the protest claims the property is exempt, the protest must state the basis on which exemption is claimed.

(D) All appeals must be conducted as provided in Section 12-60-450(C through (E).

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2017

COLONIAL PIPELINE COMPANY
Kalth Fuqua
1185 Sanctuary Pkwy, Ste 100
Alpharetta, GA 30009

COUNTY	DISTRICT	GROSS INVESTMENT	ASSESSMENT
ABBEVILLE	County Wide	4,879,308	331,730
AIKEN	County Wide	518,399	35,250
ANDERSON	District #1	33,946,600	2,307,940
ANDERSON	District #2	9,304,473	632,590
ANDERSON	District #3	20,510,123	1,394,430
ANDERSON	District #5	3,326,759	226,180
CHEROKEE	District #11	25,270,826	1,718,100
CHEROKEE	District #27	9,520,774	647,290
EDGEFIELD	County Wide	8,405,816	571,490
GREENVILLE	District #46	6,604,634	449,040
GREENVILLE	District #52	5,234,962	355,910
GREENVILLE	District #65	5,652,435	384,290
GREENVILLE	District #391	1,923,298	130,760
GREENWOOD	District #02	1,196,890	81,370
LAURENS	County Wide	2,568,864	174,650
McCORMICK	County Wide	3,292,746	223,870
SPARTANBURG	3CPF	1,416,235	96,290
SPARTANBURG	3GF	3,431,317	233,290
SPARTANBURG	3SSGF	199,615	13,570
SPARTANBURG	4REF	3,545,493	241,050
SPARTANBURG	4WWPS	3,345,649	227,460
SPARTANBURG	6PSF	807,923	54,930
SPARTANBURG	6SSACF	1,625,372	110,510

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2017

SPARTANBURG	6SSRF		403,544	27,780
SPARTANBURG	6SSWWWF		1,216,784	82,730
SPARTANBURG	6WWPS		2,328,722	158,320
SPARTANBURG	6WWRF		1,425,785	96,940
SPARTANBURG	7SSCF		21,606,133	1,468,950
SPARTANBURG	7SSGF		1,425,754	96,930
YORK	Clover 2 Sch, Beth-Sant Fire		697,832	47,440
Company	Total		185,638,115	12,621,080

Colonial Pipeline Company

J. Keith Fuqua
Indirect Tax Manager

Phone: 678-762-2276
Fax: 770-825-7617
E-mail: kfuqua@colpipe.com

April 19, 2017

South Carolina Department of Revenue
Mr. Taylor Ingram
Utilities
Columbia, SC 29214-0306

RE: SC PT-427 Report - 2017

Dear Taylor,

Enclosed, for your information and file, is the 2017 annual property tax report for Colonial Pipeline Company.

For your use and convenience, the following documents are provided:

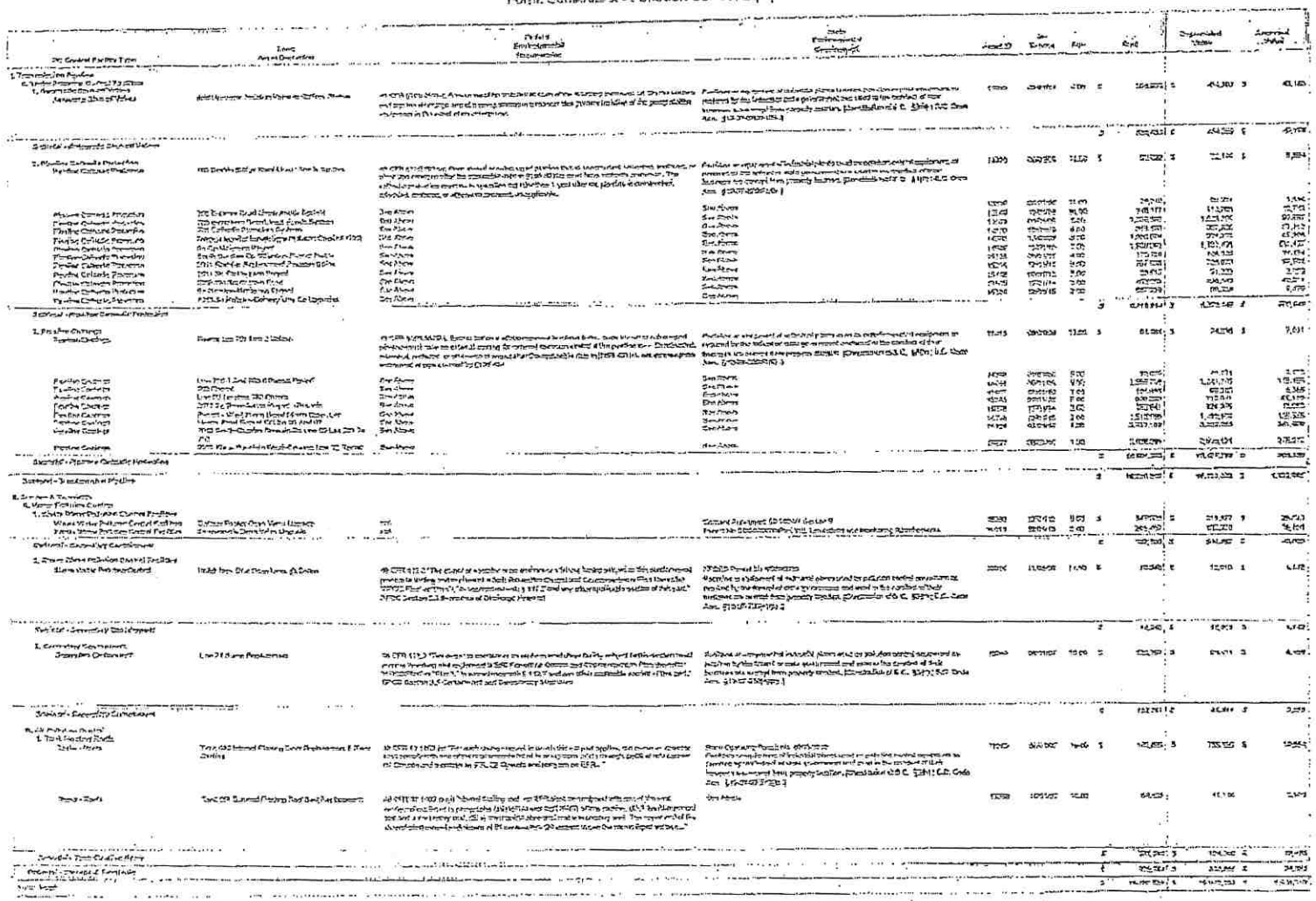
1. South Carolina Property Tax Report – PT 420 & 427
2. FERC Asset Reconciliation by State - 12-31-16
3. Cost of Capital Study – 2017
4. Delivered Barrels for 2016
5. Pollution Control Exemption Schedules

Please contact me if further information is needed or questions arise.

Best regards,

J. Keith Fuqua
Indirect Tax Manager
Colonial Pipeline Company

Colonial Pipeline Company
SC 1120U: Public Utility Tax Return
Form: Schedule X - Pollution Control Equipment



ROA 0400

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

UTILITY AND RAILROAD COMPANIES PROPERTY TAX RETURN

PT-420
(Rev. 8/15/13)
7029

TAX YEAR 2017

PTUTL 5570031000

COLONIAL PIPELINE COMPANY
1185 SANCTUARY PARKWAY, SUITE 100
ALPHARETTA GA 30009-4705

FILE NUMBER: [redacted]
TELEPHONE: 678-762-2276
FAX NUMBER: 770-825-7617

The following information, where applicable, must be submitted to the Department of Revenue on or before the last day of the fourth month after the close of the taxpayer's accounting period, after which an appropriate penalty will be applied as provided by law.

1) This form completed in detail including distribution information as to gross investment in each taxing district. Forms enclosed. SEE PT-427 ATTACHED

2) A copy of the annual report of Utility or Railroad filed with the South Carolina Public Service Commission, Annual Report of the Company (financial) or USDA-REA Financial and Statistical Report (Form 7). Not Available Yet

3) A certification of Pollution Control Equipment- gross investment and depreciation schedule. N/A

4) A list of licensed vehicles- investment and depreciation schedule. SEE ATTACHED

5) A complete explanation of the method used to determine exempt property when applicable. N/A

6) Attach a schedule of construction work in progress that was capitalized for South Carolina. A separate list between real and personal property is required. SEE ATTACHED

7) A detailed list of non-operating (non-utility) real property by tax map number. SEE ATTACHED

Interstate Companies- In addition to the above information, companies not operating solely in South Carolina should file the following:

1) A copy of the annual report to a Federal Regulating Board. FORM 6 DRAFT ATTACHED

2) Allocation Information

Total Revenues	SEE ATTACHED
South Carolina Revenues	SCHEDULE
Total Net Operating Income	
South Carolina Net Operating Income	
Total Gross Investment	
South Carolina Gross Investment	
Total Net Investment	
South Carolina Net Investment	

(over)

70271015

I declare that this return including any accompanying schedules and statements has been examined by me and to the best of my knowledge and belief is a true and complete return made in good faith pursuant to the 1976 Code of Laws and amendments.

Taxpayer's Signature	INDIRECT TAX MANAGER Title	4/19/17 Date
Accountant's Signature	Title	Date
J. KEITH FUQUA Contact Person	678-762-2276 Tax Preparer / Contact Phone Number	

Returns found incomplete or improper will be returned to the taxpayer for completion or amendment.

Mail completed returns to:

South Carolina Department of Revenue
Utilities
Columbia, SC 29214-0306

70292016

70421011

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

--DISTRIBUTION INFORMATION--

PT-427
(Rev. 6/01/10)
7042

Company Name _____ Tax Year _____

COUNTY	MUNICIPALITY OR TAX DISTRICT	REAL PROPERTY GROSS INVESTMENT	PERSONAL PROPERTY GROSS INVESTMENT	TOTAL REAL AND PERSONAL GROSS INVESTMENT
TOTALS				

1) Gross Investment - To include utility plant in service and material and supplies. Do NOT include licensed vehicles, construction in progress or non-operating property locally assessed.
2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

ROA 0403

Company Name Colonial Pipeline Company Tax Year 2017

PT-427
(10/89)
7042

--DISTRIBUTION INFORMATION--

COUNTY	MUNICIPALITY OR TAX DISTRICT	(1) GROSS INVESTMENT	FOR TAX COMMISSION USE ONLY (DO NOT WRITE IN THIS SPACE) DISTRIBUTION
Anderson	County total	67,088,477	
	District #1	33,947,122	
	District #2	9,304,473	
	District #5	20,510,123	
	District #5	3,326,759	
Abbeville	County Wide	4,879,308	
Aiken	County Wide	518,399	
Cherokee	County Wide	34,791,600	
	District #11	25,270,826	
	District #27	9,520,774	
Page Total		107,277,783	

1) Gross Investment - To include utility plant in service, non-utility property and material and supplies. Do NOT include licensed vehicles or construction in progress.

2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

TOTAL ASSESSMENT _____

ROA 0404

Company Name Colonial Pipeline Company

Tax Year 2017

PT-427
(10/89)
7942

–DISTRIBUTION INFORMATION–

COUNTY	MUNICIPALITY OR TAX DISTRICT	(1) GROSS INVESTMENT	FOR TAX COMMISSION USE ONLY (DO NOT WRITE IN THIS SPACE) DISTRIBUTION
Edgefield	County total	8,405,816	
Greenville	County total	19,415,379	
	District #46	6,604,684	
	District #891	1,923,298	
	District #52	5,234,962	
	District #65	5,652,435	
Greenwood	District #02	1,196,890	
Page Total		29,018,085	

1) Gross Investment - To include utility plant in service, non-utility property and material and supplies. Do NOT include licensed vehicles or construction in progress.

2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

TOTAL ASSESSMENT _____

ROA 0405

Company Name Colonial Pipeline Company | Tax Year 2017 | PT-427 (10/89) 7042

–DISTRIBUTION INFORMATION–

COUNTY	MUNICIPALITY OR TAX DISTRICT	(1) GROSS INVESTMENT	FOR TAX COMMISSION USE ONLY (DO NOT WRITE IN THIS SPACE) DISTRIBUTION
Laurens	County Wide	2,568,864	
McCormick	County Wide	3,292,746	
Spartanburg	County Total	42,783,326	
	S. District #3	5,047,168	
	S. District #4	6,891,142	
	S. District #6	4,762,017	
	S. District #7	1,425,754	
	Roebuck District (Fire)	3,051,113	
	Croft Fire District	21,606,133	
York	Clover 2 School, Bethany Santiago Fire	697,832	
Page Total		49,342,768	
Report Total		185,638,636	

1) Gross Investment - To include utility plant in service, non-utility property and material and supplies. Do NOT include licensed vehicles or construction in progress.

2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

TOTAL ASSESSMENT _____

ROA 0406

Colonial Pipeline Company
South Carolina Annual Report

SOUTH CAROLINA REPORT YEAR 2017

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Abbeville County				
County-Wide Schools	23.40	16 "	4,193,129	
	23.40	8 "	586,759	
Allocation of Capitalized Interest and Overhead			99,420	
		TOTAL	4,879,308	
Aiken County				
School District No. 6	1.59	16	234,918	
School District No. 6	8.89	8 "	222,918	
Allocation of Capitalized Interest and Overhead			10,563	
		TOTAL	518,399	
Greenwood County				
School District No. 2	5.74	16 "	1,028,571	
	5.74	8 "	143,931	
Allocation of Capitalized Interest and Overhead			24,388	
		TOTAL	1,196,890	
Laurens County				
Greenville School District	2.70	40 "	1,850,925	
No. 520	2.71	36 "	665,696	
Laurens Hospital District	(2.70)	40 "		
	(2.71)	36 "		
Allocation of Capitalized Interest and Overhead			52,343	
		TOTAL	2,568,864	
McCormick County				
County-Wide Schools	15.79	16 "	2,829,466	
	15.80	8 "	396,187	
Allocation of Capitalized Interest and Overhead			67,092	
		TOTAL	3,292,746	
York County				
School District	0.75	40 "	514,118	
	0.69	36 "	169,495	
Allocation of Capitalized Interest and Overhead			14,219	

		TOTAL	697,832	
PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Anderson County				
School District No. 1	4.89	40 "	3,352,050	
	4.89	36 "	1,201,200	
School District No. 2	7.40	40 "	5,072,633	
	7.40	36 "	1,817,767	
	10.89	16 "	1,951,416	
	10.89	8 "	273,068	
School District No. 3	12.03	40 "	8,246,455	
	11.97	36 "	2,940,361	
School District No. 5	3.50	40 "	2,399,218	
	3.50	36 "	859,755	
	TOTAL PIPELINE		28,113,927	

LAND AND BUILDINGS:

Description and Location:

Land: (Anderson Station) S. D. #3

Tax Map No. 101-00-03-012-000, District 031 — 6,847
7.01 Acres, 251 Chris De Lane, Purchased 4/16/75

Land: Belton Terminal S. D. #1

Tax Map No. 248-00-06-002-000, District 101 — 191,608
53 Acres, 1916 Camelot Forest, Purchased 10/3/62

Anderson County (cont'd)

	GROSS INVESTMENT	ASSESSED VALUE
Building: Anderson Station S. D. #3	204,051	
Control Building - Prefabricated Steel 34' - 9" x 56' - 1,975 sq. ft.		
Building: Belton Terminal S. C. #1		
Control Building - Prefabricated Steel 34' - 9" x 56' - 9" - 1,975 sq. ft. and Sample Building - Prefabricated Steel 10' - 6" x 12' - 6" - 131 sq. ft. Storage Building - Prefabricated Steel 100' x 50'		
TOTAL LAND & BUILDINGS	551,625	954,135

PERSONAL PROPERTY:

Description and location:

Anderson Station - Varenne Township, School District #3		
Tanks: 2-500 bbl.		63,818
Pump Equipment: 6 - 5,000 HP DVS, United Pump Units 2 - 2,000 HP DVS, United Pump Units		2,710,787
Other Station Facilities Including small sump tanks, utility motors and properties not otherwise listed.		
TOTAL ANDERSON STATION	5,919,393	8,694,498
Belton Junction - Belton Township, School District #1		
Tanks: 2 - 54,000 bbl. 4 - 43,000 bbl. 5 - 33,000 bbl. 5 - 24,000 bbl. 5 - 17,000 bbl.		9,370,706
Pump Equipment: 16" system to Augusta 1 - 300 HP JTC, Pacific Pump Unit (Stored In Place)		

Anderson County (cont'd)	GROSS INVESTMENT	ASSESSED VALUE
Pump Equipment (Local):	524,341	
1 - 50 HP - Union 4 x 6 HSB) Local		
1 - 60 HP - Union 4 x 6 HSB)		
1 - 75 HP - Bingham 6 x 8 14B CVA Booster		
1 - 500 HP - United 4 x 11 MSN (4/3 STG)		
1 - 1000 HP - United 4 x 11 MSN (6 STG)		
Other Station Facilities		
Including small sump tanks, utility meters and properties not otherwise listed.	18,063,837	
TOTAL BELTON JUNCTION	27,958,933	
Total Pipeline	28,113,927	
Total Land & Building	954,135	
Total Personal Property	36,663,431	
ANDERSON COUNTY	65,721,493	
Do not include CWIP		
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD	1,366,985	
TOTAL ANDERSON COUNTY	67,088,477	

TOTAL SCHOOL DISTRICTS

		% ALLOC.	ALLOCATION*	TOTAL
School District No. 1	33,255,421	50.6005%	691,701	33,947,122
School District No. 2	9,114,886	13.8690%	189,587	9,304,473
School District No. 3	20,092,212	30.5718%	417,911	20,510,123
School District No. 5	3,258,973	4.9588%	67,786	3,326,759
TOTAL	65,721,493	100.0000%	1,366,985	67,088,477

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Cherokee County				
School District #11	26.50	40 "	18,234,058	
	26.55	36 "	6,521,854	
Total Pipeline			24,755,912	
LAND AND BUILDINGS:				
Description and Location:				
Land: Gaffney Station S. D. #27			2,325	
28.89 acres in White Plains Township, S. D. #27, Cherokee County, South Carolina, known as a portion of Lot No. 1 of F. C. Phillip's Farm, more particularly described in deed from C. E. St. Amand and Victor S. Sarratt to Colonial Pipeline Company dated 9/28/52 and recorded in Volume 5N, Page 93, Cherokee County Records.				
Building: Gaffney Station S. D. #27			267,444	
Control Building - Prefabricated Steel 34' - 9" x 56' - 9" - 1,975 sq. ft.				
TOTAL LAND & BUILDINGS			269,769	
PERSONAL PROPERTY:				
Description and location:				
Gaffney Station - White Plains Township, S. D. #27				
Tanks: 2-500 bbl.			50,677	
Pump Equipment:				
6 - 5,000 HP DVS, United Pump Units				
2 - 2,000 HP DVS, United Pump Units			2,771,421	
Other Station Facilities				
Including small sump tanks, utility motors and properties not otherwise listed.			6,234,914	
TOTAL PERSONAL PROPERTY			9,057,011	
CHEROKEE COUNTY			34,082,692	
Do not include CWIP				
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD			708,908	
TOTAL CHEROKEE COUNTY			34,791,600	

TOTAL SCHOOL DISTRICTS		%ALLOC.	ALLOCATION	TOTAL
School District #11	24,755,912	72.6348%	514,914	25,270,826
School District #27	9,326,780	27.3652%	193,994	9,520,774
TOTAL	34,082,692	100.0000%	708,908	34,791,600

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Edgefield County				
County-Wide School	19.27	16 "	3,453,060	
	19.71	8 "	494,231	
	TOTAL PIPELINE		3,947,291	

LAND AND BUILDINGS:
Description and Location:

Land: *North Augusta Metering Site - North Augusta Outside*

0.965 acres purchased from Gulf Oil Corp. dated 6/18/63 by deed and recorded 7/9/64 in Deed Book 44, Page 587, Edgefield County Records. 693

Buildings: *North Augusta Metering Site - North Augusta Outside*

Control Building - Prefabricated Steel
Sample Building - Prefabricated Steel on concrete slab 187,174

TOTAL LAND & BUILDINGS 187,867

PERSONAL PROPERTY:
Description and location:

North Augusta Metering Site - North Augusta Outside
Tanks: 2-500 bbl.
1 - 2,000 bbl. 120,218

Other Station Facilities
Including small sump tanks, utility motors and properties not otherwise listed. 3,979,464

TOTAL PERSONAL PROPERTY 4,099,683

EDGEFIELD COUNTY 8,234,540
Do not include CWIP
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD ...171,276

TOTAL EDGEFIELD COUNTY 8,405,816

TOTAL SCHOOL DISTRICTS (COUNTY-WIDE) 8,405,816

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Greenville County				
Tax District No. 15	2.25	40 "	1,642,355	
	2.25	36 "	652,700	
Tax District No. 45	2.58	40 "	1,768,566	
	2.58	36 "	633,762	
Tax District No. 50	1.58	40 "	1,083,076	
	1.58	36 "	388,118	
Tax District No. 65	1.28	40 "	877,428	
	1.28	36 "	314,425	
Tax District No. 75	4.00	40 "	2,741,964	
	4.00	36 "	982,577	
Tax District No. 110	2.21	40 "	1,514,935	
	2.21	36 "	542,874	
Tax District No. 140	2.05	40 "	1,405,256	
	2.05	36 "	503,571	
Tax District No. 299	2.33	40 "	1,597,194	
	2.33	36 "	572,351	
	Total Pipeline		17,021,150	

LAND AND BUILDINGS:

Description and Location:

Land: Simpsonville Station S. D. #299 — 3,950

1.90 acres in Fairview Township, Greenville County, South Carolina, more particularly described in deed from Hugh Lee Gault, et al, dated 11/20/62 and recorded at Book 712, Page 3, Greenville County Records.

2.05 acres in Fairview Township, Greenville County, South Carolina, more particularly described in deed from Benjamin Hugh Gault, et al, dated 11/20/62 and recorded at Book 712, Page 25, Greenville County Records.

Building: Simpsonville Station S. D. #299 — 110,394

Control Building - Brick Veneer
23' x 43' - 989 sq. ft.

TOTAL LAND & BUILDINGS — 114,344

Greenville County (cont'd)

	GROSS INVESTMENT	ASSESSED VALUE
PERSONAL PROPERTY:		
Description and location:		
Simpsonville Station S. D. #299		
Tanks: 1 - 625 bbl. Transmix Tank	20,486	
Pump Equipment:		
6 - 5,000 HP DVS, United Pump Units		
2 - 2,000 HP DVS, United Pump Units	776,756	
Other Station Facilities:		
Including small sump tanks, utility motors and properties not otherwise listed.	1,087,039	
TOTAL PERSONAL PROPERTY	1,884,280	
GREENVILLE COUNTY	19,019,774	
Do not include CWIP		
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD	396,605	
TOTAL GREENVILLE COUNTY	19,415,379	

TOTAL SCHOOL DISTRICTS:		ALLOC. %	ALLOCATION*	TOTAL
District #46	6,470,108	34.0178%	134,576	6,604,684
District #901	1,884,109	9.9061%	39,189	1,923,298
District #52	5,128,295	26.9630%	106,667	5,234,962
District #65	5,537,262	29.1132%	115,173	5,652,435
TOTAL	19,019,774	100.0000%	395,605	19,415,379

PIPELINE		MILES OF PIPELINE	SIZE		GROSS INVESTMENT	ASSESSED VALUE
Spartanburg County						
School District No. 3	3SSGF	0.21	40	36	195,538	
	3GF	3.61	40	36	3,361,398	
	3CPF	1.49	40	36	1,397,391	
School District No. 4	4REF	3.73	40	36	3,473,134	
	4WWPSF	3.52	40	36	3,277,596	
School District No. 6	6PSF	0.85	40	36	791,465	
	6WWPSF	2.45	40	36	2,281,281	
	6SSACF	1.71	40	36	1,592,241	
School District No. 7	7SSGF	0.75	40	36	698,351	
	7SSGF	0.75	40	36	698,351	
Roebuck Fire District	6WWRF	1.50	40	36	1,396,703	
	6SSWWWF	1.28	40	36	1,191,853	
	6SSRF	0.43	40	36	400,388	
Croft Fire District	7SSCF	0.43	40	36	400,388	
	7SSCF	2.45	40	36	2,281,281	
	Total Pipeline				23,427,360	

LAND AND BUILDINGS:

Description and Location:

Land: *Spartanburg County*

2.22 acres, Tract No. 3 and .10 acres, Tract No. 4, in District 7 C.F.D. School District, Spartanburg County, South Carolina, more particularly described in deed from JOCO, Inc., to Colonial Pipeline Company dated 9/26/62 and recorded at Deed Vol. 28M, Page 514, Spartanburg County Records. 13,292

45.33 acres, Tract No. 2 in District 7 C.F.D. School District, Spartanburg County, South Carolina, more particularly described in deed from Johnson Oil Co., Inc., to Colonial Pipeline Company, dated 9/26/62 and recorded at Deed Volume 28M, Page 517, Spartanburg County Records. 60,623

Spartanburg County (cont'd)

	GROSS INVESTMENT	ASSESSED VALUE
Building: Spartanburg Terminal. S. D. #7 C.F.D.		
Control Building - Prefabricated Steel 34' - 9" x 56' - 9" - 1,975 sq. ft. and Warehouse and Office Building - Prefabricated Steel 62' x 30' - 1,860 sq. ft.	496,214	
TOTAL LAND & BUILDINGS		570,129
PERSONAL PROPERTY:		
Description and location:		
Spartanburg Terminal. S. D. #7 C.F.D.		
Tanks:		
1 - 55,000 bbl.		
1 - 54,000 bbl.		
3 - 43,000 bbl.		
8 - 33,000 bbl.		
6 - 24,000 bbl.		
3 - 17,000 bbl.		
22 TANKS TOTAL		6,692,709
Pump Equipment:		
4P HSH Bingham Pump Units		1,048,430
Other Station Facilities:		
Including small sump tanks, utility motors, fire protection system, materials and supplies; properties not otherwise listed.	9,676,297	
TOTAL PERSONAL PROPERTY		17,417,436
SPARTANBURG COUNTY		41,414,625
MATERIALS AND SUPPLIES Do not include CWIP		496,655
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD	871,746	
TOTAL SPARTANBURG COUNTY		42,783,326

TOTAL SCHOOL DISTRICTS		% ALLOC.	ALLOCATION*	TOTAL
School District No. 3	4,944,327	11.7970%	102,840	5,047,168
School District No. 4	6,750,730	16.1071%	140,413	6,891,142
School District No. 6	4,664,987	11.1305%	97,030	4,762,017
School District No. 7	1,396,703	3.3325%	29,051	1,425,754
Roebuck Fire District	2,988,944	7.1315%	62,169	3,051,113
Croft Fire District	21,165,889	50.5013%	440,243	21,606,133

			0	0
TOTAL	41,911,580	100.0000%	871,746	42,783,326

* NOTE: ALLOCATION CONSISTS OF ALLOCATION CAPITALIZED INTEREST AND OVERHEAD

SOUTH CAROLINA REPORT YEAR 2016
List of Non-Operating (Non-Utility) real property by tax map number

Anderson County

LAND AND BUILDINGS:

Description and Location:

Tax Map No. 248-09-01-010-000, District 001
3.44 Acres, Lots 2&3 Big Creek Road, Purchased 11/5/1993

Tax Map No. 248-09-01-008-000, Tax Dist 001
4.5 Acres, Lot 9, Purchased 5/9/1989

Tax Map No. 248-09-01-006-000, Tax Dist 001
4.8 Acres, Lot 11, Purchased 5/9/1989

Tax Map No. 248-09-01-001-000, Tax Dist 001
2.53 Acres, Lot 1 off Big Creek Road, Purchased 6/3/1988

Tax Map No. 248-09-01-002-000, Tax Dist 001
Lot 4 off Big Creek Road, Purchased 6/3/1988

Tax Map No. 248-09-01-005-000, Tax Dist 001
4.96 Acres, Lot 12 off Big Creek Road, Purchased 6/4/1988

Tax Map No. 248-09-01-004-000, Tax Dist 001
3.51 Acres, Lot 13 off Big Creek Road, Purchased 6/4/1988

Tax Map No. 248-09-01-003-000, Tax Dist 001
3.99 Acres, Lot 14 off Big Creek Road, Purchased 6/3/1988

Tax Map No. 248-00-07-013-000, Tax Dist 101
.61 Acre, Camelot Forest Rd, Purchased 12/19/1995

Tax Map No. 248-00-07-001-000, Tax Dist 101
18.85 Acres, Camelot Forest Rd, Purchased 12/19/1995

SOUTH CAROLINA REPORT YEAR 2016
List of Non-Operating (Non-Utility) real property by tax map number

Fee Right of Way S. D. #5

Lot 67, Block "D", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Albert L. Campbell to Colonial Pipeline Company dated 8/3/62 and recorded at Deed Book L, Page 162, Anderson County Records.

Lot No. 47, Block "C", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Francis R. Fant, Trustee, to Colonial Pipeline Company dated 8/1/62 and recorded at Deed Book L, Page 160, Anderson County Records, less .03 acre to State of South Carolina, Deed 4/10/67, recorded Book 15-G, Page 426, Anderson County Records.

Lot No. 12, Block "D", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Francis R. Fant, Trustee, dated 8/1/62 and recorded at Deed Book L, Page 160, Anderson County Records.

Lot 4, 4-a, and 5-a, Block "W", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Nevitt Forest, Inc., dated 8/1/62 and recorded at Deed Book L, Page 160, Anderson County Records.

Cherokee County

LAND AND BUILDINGS:
Description and Location:

Tax Map No. 067-00-00-012.000, tax district 11
3.4 acres, Old Racetrac Road, Purchased 11/8/2008

Tax Map No. 085-00-00-001.000, tax district 27
30 acres, Old Racetrac Road

Tax Map No. 137-00-00-051.000

SOUTH CAROLINA REPORT YEAR 2016
List of Non-Operating (Non-Utility) real property by tax map number

2.87 acres, River Road

SOUTH CAROLINA REPORT YEAR 2016
List of Non-Operating (Non-Utility) real property by tax map number

Greenville County

LAND AND BUILDINGS:
Description and Location:

Tax Map No. 057-601-01-01-010, Tax Dist 052
5.6 acres, Harrison Bridge, purchased 3/26/1997

Tax Map No. 033-100-010-05-02, Tax Dist 697
.567 acres, Interstate 385, purchased 7/7/2004

Spartanburg County

LAND AND BUILDINGS:
Description and Location:

Tax Map No. 7-21-04-003.00, tax dist 8500
1.2 acres, Lot 12 Block B, Purchased 11/1/62

Tax Map No. 4-17-00-004.22, tax dist 4T00 / WCF
7.89 acres, Lot A, Purchased 9/1/1998

Tax Map No. 7-21-04-034.02, tax dist 8500 / CF
1.77 acres, Lot 12

Tax Map No. 7-21-04-032.00, tax dist 8500 / CF
3.97 Acres, Lot 10 Block 1, Purchased 4/1/1963

Colonial Pipeline Company
South Carolina

VEHICLES - 12/31/2016

DESCRIPTION	Location	CO. NO.	AMOUNT
1999 FORD F-250	741	1438	20,067.55
2002 FORD F-250	721	1579	23,698.33
2010 FORD F-350		1656	
2011 FORD F-150	721	1920	45,217.12
2012 FORD F-150	721	1957	30,118.19
2012 FORD F-150	721	1963	30,126.38
2013 FORD F-150	741	1971	26,765.43
2015 FORD F-350	721	2041	28,746.84
2015 FORD F-350	721	2068	48,788.82
2016 FORD F-350	741	2095	50,041.18
2016 FORD F-350	741	2096	47,983.89
2015 FORD F-150	741	2105	48,418.89
2016 FORD Explorer	721	2106	35,236.04
	721		31,065.72

Total Vehicles - SC 466,294.38 Actual South Carolina Vehicles

466,294.38 GL Total for South Carolina

0.00 2016 SC Vehicle Adjustment

Colonial Pipeline Company
South Carolina CWIP Worksheet
As of 12/31/2016

County	Real	Personal
Anderson		1,005,715
Cherokee		-
Spartanburg		-
Total CWIP		1,005,715

Colonial Pipeline Company

Barrel Miles / Total by State / January 2016 through December 2016

State	2015		2016	2016
TX	33,298,992,531	3.78%	30,695,815,613	3.86%
LA	124,547,511,774	14.16%	115,750,269,082	14.07%
MS	149,142,961,076	16.95%	141,343,044,847	16.93%
AL	158,659,124,338	18.03%	150,236,029,275	18.04%
GA	122,429,352,936	13.92%	114,726,564,623	13.86%
TN	9,794,674,996	1.11%	9,722,016,724	1.15%
SC	58,498,015,011	6.65%	53,519,584,683	6.62%
NC	71,312,902,447	8.11%	64,221,058,725	8.10%
VA	95,239,315,626	10.83%	83,346,551,833	10.84%
MD	27,530,385,063	3.13%	22,984,962,025	3.14%
PA	7,406,853,050	0.84%	6,153,573,374	0.85%
DE	673,242,175	0.08%	567,879,197	0.08%
NJ	21,167,282,788	2.41%	17,944,366,642	2.44%
NY	75,689,816	0.01%	58,327,204	0.01%
Total	879,776,303,627	100%	811,270,043,847	100%

Colonial Pipeline Company

Schedule of Delivered Barrels - YTD 2016

All types of fuel

State	Delivered Barrels - 2016	Percent	Delivered Barrels - 2015	Percent
Texas	54,845,220	5.94%	45,913,349	4.78%
Louisiana	10,742,041	1.16%	11,503,732	1.20%
Mississippi	61,001,874	6.61%	62,146,602	6.46%
Alabama	31,119,595	3.37%	30,094,999	3.13%
Georgia	120,201,381	13.02%	114,793,381	11.94%
Tennessee	93,379,286	10.11%	94,694,229	9.85%
South Carolina	56,540,370	6.12%	55,132,392	5.74%
North Carolina	124,971,866	13.53%	121,207,494	12.61%
Virginia	105,120,920	11.38%	109,451,556	11.39%
Maryland	50,703,515	5.49%	57,854,460	6.02%
Pennsylvania	11,570,041	1.25%	18,776,465	1.95%
Delaware		0.00%		0.00%
New Jersey	169,972,869	18.41%	199,148,939	20.72%
New York	33,279,739	3.60%	40,583,233	4.22%
Total	923,448,717	100%	961,300,831	100%

ROA 0426

Colonial Pipeline Company
Investment - Carrier Property
As of December 31, 2016

State	Carrier Property	CWIP	Materials & Supplies	Intangibles including ROW	Non-Carrier Property	Total Investment	Percent of Total	Carrier Reserve for Depreciation	Intangibles Reserve for Depreciation	Non-Carrier Reserve for Depreciation	Total Reserve for Depreciation	Carrier Net Book	Percent of Total
Texas	235,448,281	5,572,152	189,362	42,143,287	14,629,279	297,982,362	8.66%	129,771,437	3,861,551	9,039,630	142,672,618	155,309,745	8.14%
Louisiana	373,044,957	4,729,477	926,206	42,433,178	2,211,438	423,345,256	12.31%	178,061,974	6,711,071	-	184,773,044	238,572,211	12.50%
Mississippi	249,571,339	(1,000,082)	313,493	91,525,005	23,880	340,433,634	9.90%	106,963,079	13,548,823	-	120,511,902	219,921,732	11.53%
Alabama	279,592,134	3,105,981	279,781	57,792,283	5,347,139	346,117,268	10.06%	117,392,986	4,477,304	-	121,870,270	224,246,998	11.75%
Tennessee	136,646,284	320,610	30,740	3,295,168	3,995,210	144,289,012	4.19%	65,813,981	2,894,167	123,987	227,206,262	287,082,991	15.05%
South Carolina	185,160,454	1,546,219	456,655	2,200,642	447,821	189,851,791	5.52%	98,936,954	865,434	-	86,679,416	77,609,596	4.07%
North Carolina	363,354,521	994,879	750,707	4,295,826	2,245,028	371,580,962	10.80%	184,140,234	537,634	-	99,468,588	90,383,203	4.74%
Virginia	329,231,839	1,312,745	525,770	11,617,530	2,294,226	344,982,109	10.03%	185,957,412	1,186,297	238,889	185,565,420	186,015,542	9.75%
Maryland	148,903,401	200,898	676,308	3,242,086	564,039	153,586,733	4.46%	79,761,774	2,977,192	229,354	186,163,959	155,818,150	8.17%
Pennsylvania	25,860,116	0	-	189,673	34,924	26,084,712	0.76%	13,237,126	1,032,026	392,209	87,186,610	72,400,123	3.79%
Delaware	10,926,245	0	-	210,538	-	11,138,783	0.32%	7,767,853	75,037	27,440	13,339,602	12,745,111	0.67%
New Jersey	190,460,589	72,240,891	753,773	3,216,882	2,352,169	269,024,303	7.82%	86,520,552	53,956	-	7,841,810	3,296,973	0.17%
New York	7,027,499	209,451	-	152,857	-	7,389,807	0.21%	3,707,913	969,706	943,633	68,033,890	180,990,413	9.49%
Wash, DC	48,931	0	-	6,050	-	54,981	0.00%	23,828	40,263	-	3,748,176	3,641,631	0.19%
									2,588	-	26,416	28,565	0.00%
Totals	3,022,574,870	100,069,252	6,413,830	269,537,459	41,563,555	3,440,158,967	100.00%	1,483,261,192	38,233,648	10,595,141	1,532,089,981	1,908,068,986	100.00%
Adjusted Form 6 Balance	3,122,644,123		6,413,830	269,537,459	41,563,555	3,440,158,967		1,483,261,192	38,233,648	10,595,141	1,532,089,981		
Actual Form 6 Balance	3,122,644,121		6,413,831	269,537,459	41,563,555	3,440,158,966		1,483,261,192	38,233,648	10,595,141			
	Page 110 line 28		Page 110 line 10	Page 111 line 37	Page 111 line 39			Page 111 line 30&31	Page 111 line 36	Page 111 line 34			
Difference	2	-	(1)	0	(0)	1		(0)	0	(0)			

ROA 0427

Supplement Information about Subsidiary Income

The income on Line 13, page 114 of Form 6 represents income from subsidiaries that are fully taxed for property tax purposes in their respective states of operation and Colonial feels that income should be removed from the net Income that is capitalized into value to avoid double taxation. The information included here takes that income by each year's effective tax rate and calculates the adjustment. This info is being provided as supplemental information to the current property tax return.

Year	Investment Income	Net Adjustment	Income Tax	Effective Rate
2012	16,475,435	10,476,729	6,237,366	0.37859
2013	18,420,863	11,656,400	6,868,736	0.37288
2014	20,863,682	13,118,252	7,745,430	0.37124
2015	36,787,208	22,312,112	14,475,096	0.39348
2016	39,146,866	24,323,141	14,823,725	0.37867

Notes:
Investment Income comes from Form 6 Page 114 Line 13
Net Adjustment = Investment Income - Income Tax
Income Tax = Investment Income x effective rate
Effective Rate = Income taxes from Form 6 Page 114 lines 16&17 divided by Taxable Income on Form 6 Page 114 line 16

Colonial Pipeline Company

J. Keith Fuqua
Indirect Tax Manager

Phone: 678-762-2276
Fax: 770-825-7617
E-mail: kfuqua@colpipe.com

April 23, 2018

South Carolina Department of Revenue
Mr. Taylor Ingram
Utilities
Columbia, SC 29214-0306

RE: SC PT-427 Report - 2018

Dear Taylor,

Enclosed, for your information and file, is the 2018 annual property tax report for Colonial Pipeline Company.

For your use and convenience, the following documents are provided:

1. South Carolina Property Tax Report – PT 420 & 427
2. FERC Asset Reconciliation by State - 12-31-17
3. Cost of Capital Study – 2018
4. Delivered Barrels for 2017
5. Pollution Control Exemption Schedules

Please contact me if further information is needed or questions arise.

Best regards,

J. Keith Fuqua
Indirect Tax Manager
Colonial Pipeline Company

Attachment A

Colonial Pipeline Company
SC 1120U: Public Utility Tax Return
Form: Schedule X – Pollution Control Equipment
TAX YEAR 2018

PC Control Facility Type	Facility Description	Federal Environmental Requirement	State Environmental Requirement	Asset ID	In Service Date	Life	Cost	Depreciable Basis	Amount Claimed
1. Mainline Pipeline									
Water Pollution Control Facilities									
1. Automatic Shut-off Valves									
Automatic Shutoff Valves	Pre-Engineered Automatic Valves on Cowpasture Section	40 CFR § 195.260(e)(3) & As an alternative to items 1 and 2 of the following locations (a) Onslow section, Onslow and Jones counties; (b) Section 1, Section 2, and Section 3, Onslow and Jones counties; (c) Section 1, Section 2, Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 16, Section 17, Section 18, Section 19, Section 20, Section 21, Section 22, Section 23, Section 24, Section 25, Section 26, Section 27, Section 28, Section 29, Section 30, Section 31, Section 32, Section 33, Section 34, Section 35, Section 36, Section 37, Section 38, Section 39, Section 40, Section 41, Section 42, Section 43, Section 44, Section 45, Section 46, Section 47, Section 48, Section 49, Section 50, Section 51, Section 52, Section 53, Section 54, Section 55, Section 56, Section 57, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 72, Section 73, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79, Section 80, Section 81, Section 82, Section 83, Section 84, Section 85, Section 86, Section 87, Section 88, Section 89, Section 90, Section 91, Section 92, Section 93, Section 94, Section 95, Section 96, Section 97, Section 98, Section 99, Section 100, Section 101, Section 102, Section 103, Section 104, Section 105, Section 106, Section 107, Section 108, Section 109, Section 110, Section 111, Section 112, Section 113, Section 114, Section 115, Section 116, Section 117, Section 118, Section 119, Section 120, Section 121, Section 122, Section 123, Section 124, Section 125, Section 126, Section 127, Section 128, Section 129, Section 130, Section 131, Section 132, Section 133, Section 134, Section 135, Section 136, Section 137, Section 138, Section 139, Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146, Section 147, Section 148, Section 149, Section 150, Section 151, Section 152, Section 153, Section 154, Section 155, Section 156, Section 157, Section 158, Section 159, Section 160, Section 161, Section 162, Section 163, Section 164, Section 165, Section 166, Section 167, Section 168, Section 169, Section 170, Section 171, Section 172, Section 173, Section 174, Section 175, Section 176, Section 177, Section 178, Section 179, Section 180, Section 181, Section 182, Section 183, Section 184, Section 185, Section 186, Section 187, Section 188, Section 189, Section 190, Section 191, Section 192, Section 193, Section 194, Section 195, Section 196, Section 197, Section 198, Section 199, Section 200, Section 201, Section 202, Section 203, Section 204, Section 205, Section 206, Section 207, Section 208, Section 209, Section 210, Section 211, Section 212, Section 213, Section 214, Section 215, Section 216, Section 217, Section 218, Section 219, Section 220, Section 221, Section 222, Section 223, Section 224, Section 225, Section 226, Section 227, Section 228, Section 229, Section 230, Section 231, Section 232, Section 233, Section 234, Section 235, Section 236, Section 237, Section 238, Section 239, Section 240, Section 241, Section 242, Section 243, Section 244, Section 245, Section 246, Section 247, Section 248, Section 249, Section 250, Section 251, Section 252, Section 253, Section 254, Section 255, Section 256, Section 257, Section 258, Section 259, Section 260, Section 261, Section 262, Section 263, Section 264, Section 265, Section 266, Section 267, Section 268, Section 269, Section 270, Section 271, Section 272, Section 273, Section 274, Section 275, Section 276, Section 277, Section 278, Section 279, Section 280, Section 281, Section 282, Section 283, Section 284, Section 285, Section 286, Section 287, Section 288, Section 289, Section 290, Section 291, Section 292, Section 293, Section 294, Section 295, Section 296, Section 297, Section 298, Section 299, Section 300, Section 301, Section 302, Section 303, Section 304, Section 305, Section 306, Section 307, Section 308, Section 309, Section 310, Section 311, Section 312, Section 313, Section 314, Section 315, Section 316, Section 317, Section 318, Section 319, Section 320, Section 321, Section 322, Section 323, Section 324, Section 325, Section 326, Section 327, Section 328, Section 329, Section 330, Section 331, Section 332, Section 333, Section 334, Section 335, Section 336, Section 337, Section 338, Section 339, Section 340, Section 341, Section 342, Section 343, Section 344, Section 345, Section 346, Section 347, Section 348, Section 349, Section 350, Section 351, Section 352, Section 353, Section 354, Section 355, Section 356, Section 357, Section 358, Section 359, Section 360, Section 361, Section 362, Section 363, Section 364, Section 365, Section 366, Section 367, Section 368, Section 369, Section 370, Section 371, Section 372, Section 373, Section 374, Section 375, Section 376, Section 377, Section 378, Section 379, Section 380, Section 381, Section 382, Section 383, Section 384, Section 385, Section 386, Section 387, Section 388, Section 389, Section 390, Section 391, Section 392, Section 393, Section 394, Section 395, Section 396, Section 397, Section 398, Section 399, Section 400, Section 401, Section 402, Section 403, Section 404, Section 405, Section 406, Section 407, Section 408, Section 409, Section 410, Section 411, Section 412, Section 413, Section 414, Section 415, Section 416, Section 417, Section 418, Section 419, Section 420, Section 421, Section 422, Section 423, Section 424, Section 425, Section 426, Section 427, Section 428, Section 429, Section 430, Section 431, Section 432, Section 433, Section 434, Section 435, Section 436, Section 437, Section 438, Section 439, Section 440, Section 441, Section 442, Section 443, Section 444, Section 445, Section 446, Section 447, Section 448, Section 449, Section 450, Section 451, Section 452, Section 453, Section 454, Section 455, Section 456, Section 457, Section 458, Section 459, Section 460, Section 461, Section 462, Section 463, Section 464, Section 465, Section 466, Section 467, Section 468, Section 469, Section 470, Section 471, Section 472, Section 473, Section 474, Section 475, Section 476, Section 477, Section 478, Section 479, Section 480, Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489, Section 490, Section 491, Section 492, Section 493, Section 494, Section 495, Section 496, Section 497, Section 498, Section 499, Section 500, Section 501, Section 502, Section 503, Section 504, Section 505, Section 506, Section 507, Section 508, Section 509, Section 510, Section 511, Section 512, Section 513, Section 514, Section 515, Section 516, Section 517, Section 518, Section 519, Section 520, Section 521, Section 522, Section 523, Section 524, Section 525, Section 526, Section 527, Section 528, Section 529, Section 530, Section 531, Section 532, Section 533, Section 534, Section 535, Section 536, Section 537, Section 538, Section 539, Section 540, Section 541, Section 542, Section 543, Section 544, Section 545, Section 546, Section 547, Section 548, Section 549, Section 550, Section 551, Section 552, Section 553, Section 554, Section 555, Section 556, Section 557, Section 558, Section 559, Section 560, Section 561, Section 562, Section 563, Section 564, Section 565, Section 566, Section 567, Section 568, Section 569, Section 570, Section 571, Section 572, Section 573, Section 574, Section 575, Section 576, Section 577, Section 578, Section 579, Section 580, Section 581, Section 582, Section 583, Section 584, Section 585, Section 586, Section 587, Section 588, Section 589, Section 590, Section 591, Section 592, Section 593, Section 594, Section 595, Section 596, Section 597, Section 598, Section 599, Section 600, Section 601, Section 602, Section 603, Section 604, Section 605, Section 606, Section 607, Section 608, Section 609, Section 610, Section 611, Section 612, Section 613, Section 614, Section 615, Section 616, Section 617, Section 618, Section 619, Section 620, Section 621, Section 622, Section 623, Section 624, Section 625, Section 626, Section 627, Section 628, Section 629, Section 630, Section 631, Section 632, Section 633, Section 634, Section 635, Section 636, Section 637, Section 638, Section 639, Section 640, Section 641, Section 642, Section 643, Section 644, Section 645, Section 646, Section 647, Section 648, Section 649, Section 650, Section 651, Section 652, Section 653, Section 654, Section 655, Section 656, Section 657, Section 658, Section 659, Section 660, Section 661, Section 662, Section 663, Section 664, Section 665, Section 666, Section 667, Section 668, Section 669, Section 670, Section 671, Section 672, Section 673, Section 674, Section 675, Section 676, Section 677, Section 678, Section 679, Section 680, Section 681, Section 682, Section 683, Section 684, Section 685, Section 686, Section 687, Section 688, Section 689, Section 690, Section 691, Section 692, Section 693, Section 694, Section 695, Section 696, Section 697, Section 698, Section 699, Section 700, Section 701, Section 702, Section 703, Section 704, Section 705, Section 706, Section 707, Section 708, Section 709, Section 710, Section 711, Section 712, Section 713, Section 714, Section 715, Section 716, Section 717, Section 718, Section 719, Section 720, Section 721, Section 722, Section 723, Section 724, Section 725, Section 726, Section 727, Section 728, Section 729, Section 730, Section 731, Section 732, Section 733, Section 734, Section 735, Section 736, Section 737, Section 738, Section 739, Section 740, Section 741, Section 742, Section 743, Section 744, Section 745, Section 746, Section 747, Section 748, Section 749, Section 750, Section 751, Section 752, Section 753, Section 754, Section 755, Section 756, Section 757, Section 758, Section 759, Section 760, Section 761, Section 762, Section 763, Section 764, Section 765, Section 766, Section 767, Section 768, Section 769, Section 770, Section 771, Section 772, Section 773, Section 774, Section 775, Section 776, Section 777, Section 778, Section 779, Section 780, Section 781, Section 782, Section 783, Section 784, Section 785, Section 786, Section 787, Section 788, Section 789, Section 790, Section 791, Section 792, Section 793, Section 794, Section 795, Section 796, Section 797, Section 798, Section 799, Section 800, Section 801, Section 802, Section 803, Section 804, Section 805, Section 806, Section 807, Section 808, Section 809, Section 810, Section 811, Section 812, Section 813, Section 814, Section 815, Section 816, Section 817, Section 818, Section 819, Section 820, Section 821, Section 822, Section 823, Section 824, Section 825, Section 826, Section 827, Section 828, Section 829, Section 830, Section 831, Section 832, Section 833, Section 834, Section 835, Section 836, Section 837, Section 838, Section 839, Section 840, Section 841, Section 842, Section 843, Section 844, Section 845, Section 846, Section 847, Section 848, Section 849, Section 850, Section 851, Section 852, Section 853, Section 854, Section 855, Section 856, Section 857, Section 858, Section 859, Section 860, Section 861, Section 862, Section 863, Section 864, Section 865, Section 866, Section 867, Section 868, Section 869, Section 870, Section 871, Section 872, Section 873, Section 874, Section 875, Section 876, Section 877, Section 878, Section 879, Section 880, Section 881, Section 882, Section 883, Section 884, Section 885, Section 886, Section 887, Section 888, Section 889, Section 890, Section 891, Section 892, Section 893, Section 894, Section 895, Section 896, Section 897, Section 898, Section 899, Section 900, Section 901, Section 902, Section 903, Section 904, Section 905, Section 906, Section 907, Section 908, Section 909, Section 910, Section 911, Section 912, Section 913, Section 914, Section 915, Section 916, Section 917, Section 918, Section 919, Section 920, Section 921, Section 922, Section 923, Section 924, Section 925, Section 926, Section 927, Section 928, Section 929, Section 930, Section 931, Section 932, Section 933, Section 934, Section 935, Section 936, Section 937, Section 938, Section 939, Section 940, Section 941, Section 942, Section 943, Section 944, Section 945, Section 946, Section 947, Section 948, Section 949, Section 950, Section 951, Section 952, Section 953, Section 954, Section 955, Section 956, Section 957, Section 958, Section 959, Section 960, Section 961, Section 962, Section 963, Section 964, Section 965, Section 966, Section 967, Section 968, Section 969, Section 970, Section 971, Section 972, Section 973, Section 974, Section 975, Section 976, Section 977, Section 978, Section 979, Section 980, Section 981, Section 982, Section 983, Section 984, Section 985, Section 986, Section 987, Section 988, Section 989, Section 990, Section 991, Section 992, Section 993, Section 994, Section 995, Section 996, Section 997, Section 998, Section 999, Section 1000	1	2020	7.00	$	104,300	$	104,300	$	41,344
Subtotal - Automatic Shut-off Valves							1	104,300	$	104,300	$	41,344
2. Pipeline Cathodic Protection												
Pipeline Cathodic Protection	Rectifier Bridge Point Linear Anode System	40 CFR § 195.568(a)(2) Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed shall be cathodically protected after it is first put in service, provided that the pipeline is not entirely protected by inherently resistant materials, as defined in section 4 of this appendix.	Facilities or equipment of intangible personal property used as pollution control equipment as required by the federal or state government and used in the conduct of that business and exempt from property taxation. [Constitution of S.C. § 3(1); S.C. Code Ann. § 12-37-220(A)(8).]	12788	12/2/2013	15.00	$	80,000	$	72,664	$	9,704
Pipeline Cathodic Protection	Rectifier Bridge Point Linear Anode System	See Above	See Above	12789	12/2/2013	15.00	$	80,000	$	72,664	$	9,704
Pipeline Cathodic Protection	700 Cathodic Protection Systems	See Above	See Above	12790	12/2/2013	15.00	$	700,000	$	635,960	$	84,928
Pipeline Cathodic Protection	Rectifier Bridge Point Linear Anode System	See Above	See Above	12791	12/2/2013	15.00	$	80,000	$	72,664	$	9,704
Pipeline Cathodic Protection	Ck Cp Integration Project	See Above	See Above	14383	7/31/2018	15.00	$	568,176	$	568,176	$	64,192
Pipeline Cathodic Protection	Asset Creation Cp Integration Project Part 5	See Above	See Above	14384	12/31/2018	15.00	$	1,438,249	$	1,438,249	$	162,511
Pipeline Cathodic Protection	2017 Rectifier Replacement Program Subs	See Above	See Above	14424	12/31/2018	15.00	$	7,248,243	$	7,248,243	$	819,044
Pipeline Cathodic Protection	Cp-1 Cp Upgrade Project	See Above	See Above	15128	6/30/2019	15.00	$	112,000	$	105,008	$	11,776
Pipeline Cathodic Protection	Dfi/Dcvg Cp Survey Fund	See Above	See Above	15426	12/31/2019	15.00	$	740,000	$	693,816	$	77,811
Pipeline Cathodic Protection	Sp Multiple Leadwire Project	See Above	See Above	15428	12/31/2019	15.00	$	82,000	$	76,896	$	8,624
Pipeline Cathodic Protection	2020 cp Isolation Joint Line Cp Upgrades	See Above	See Above	17855	12/31/2020	15.00	$	420,000	$	420,000	$	46,186
				19024	12/31/2018	15.00	$	88,000	$	(124,000)	$	(13,897)
Subtotal - Pipeline Cathodic Protection							9	9,718,668	$	9,606,648	$	1,076,391
3. Pipeline Coatings												
Pipeline Coatings	Sweet Line 701 Line 2 Tracts	49 CFR§195.569 Except for brief exposure of buried pipe during excavation, each buried or submerged pipeline must have an external coating for external corrosion control that at the time the pipe is placed in service, effectively mitigates corrosion along the entire surface of the buried or submerged pipeline, except for minor discontinuities that are necessary for the application or installation of the coating or for the connection of the pipeline to other pipe.	Facilities or equipment of intangible personal property used as pollution control equipment as required by the federal or state government and used in the conduct of that business and exempt from property taxation. [Constitution of S.C. § 3(1); S.C. Code Ann. § 12-37-220(A)(8).]	12413	6/30/2020	12.50	$	87,000	$	77,901	$	9,739
Pipeline Coatings	Line 600 & 602 Bore Project	See Above	See Above	14800	12/31/2018	20.00	$	91,270	$	72,866	$	2,840
Pipeline Coatings	703 Repair	See Above	See Above	14801	12/31/2018	20.00	$	1,583,186	$	1,264,232	$	154,450
Pipeline Coatings	Line 02 Liquidity Tie Tracts	See Above	See Above	15427	12/31/2019	20.00	$	101,000	$	83,304	$	8,164
Pipeline Coatings	2017 Cp Remediation Project - Phase 2	See Above	See Above	15429	12/31/2019	20.00	$	862,000	$	843,873	$	90,205
Pipeline Coatings	Retrack - West Pump Station to Creek Line	See Above	See Above	16475	12/31/2019	20.00	$	132,661	$	34,184	$	11,242
Pipeline Coatings	Hartsfield Tenant 1871 Pit 23 Project	See Above	See Above	16736	12/31/2019	20.00	$	5,213,884	$	5,213,884	$	537,486
Pipeline Coatings	36in South Decatur Rounds On Line 02 Line 702 To 703	See Above	See Above	16738	12/31/2019	20.00	$	4,750,000	$	4,750,000	$	489,500
Pipeline Coatings	2018 Pine Mountain South Creek Line 02 Repair	See Above	See Above	16827	12/31/2019	20.00	$	2,830,900	$	2,830,900	$	291,814
Subtotal - Pipeline Coatings Amortized							8	15,651,900	$	15,334,954	$	1,615,440
Subtotal - Transmission Projects							18	18,222,618	$	15,941,602	$	1,643,618
2. Storage & Terminals												
A. Water Pollution Control												
1. Waste Water Pollution Control Facilities												
Waste Water Pollution Control Facilities	Godley Facility Oily Water Upgrade	NPL EPA	Consent Agreement 02-2019-1801 Section 8. Install the oil/water separator, the WWTU, the collection and monitoring box, and the	15069 15013	12/31/19 12/31/19	5.00 5.00	$	849,000 231,047	$	807,498 219,758	$	269,166 73,253
Waste Water Pollution Control Facilities	Equipment for Clean Water Upgrade											
Subtotal - Secondary Containment							2	849,000	$	807,498	$	269,166
2. Clean Water Pollution Control Facilities												
Clean Water Pollution Control	Install New Oily Drain Lines @ Delta	40 CFR § 112 "The owner or operator of an onshore facility subject to this section shall prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereinafter "SPCC Plan" or "Plan"). No person may operate such a facility unless a complete copy of the SPCC Plan is maintained at the facility if the facility is normally attended at least four hours per day or at the nearest field office if the facility is normally unattended for more than four hours per day.	NPDES Permit No SC0040029 Facilities or equipment of intangible personal property used in pollution control assistance as required by the federal or state government and used in the conduct of that business and exempt from property taxation. [Constitution of S.C. § 3(1); S.C. Code Ann. § 12-37-220(A)(8).]	13019	11/01/19	12.00	$	14,000	$	11,691	$	1,193
Subtotal - Secondary Containment							1	14,000	$	11,691	$	1,193
3. Secondary Containment												
Secondary Containment	Line 01 Dump Replacement	40 CFR 112 "The owner or operator of an onshore facility subject to this section shall prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereinafter "SPCC Plan" or "Plan"). No person may operate such a facility unless a complete copy of the SPCC Section 3.3 Containment and Diversionary Structures	Facilities or equipment of intangible personal property used as pollution control equipment as required by the federal or state government and used in the conduct of that business and exempt from property taxation. [Constitution of S.C. § 3(1); S.C. Code Ann. § 12-37-220(A)(8).]	13040	05/01/20	15.00	$	135,000	$	83,496	$	8,930
Subtotal - Secondary Containment							1	135,000	$	83,496	$	8,930
B. Air Pollution Control												
1. Tank Floating Roofs												
Tanks - Roofs	Tank 220 Internal Floating Deck Replacement & Floor Coating	40 CFR 63.1002 (b) The owner or operator shall comply with each applicable requirement in paragraphs (b)(1) through (b)(3) of this section, except as provided in paragraph (b)(4) of this section. (1) Control equipment. For HAP, (2) Closure, and Cleaning. (i) For...	Non-Operating Facility Number: 0000-0000 Facilities or equipment of intangible personal property used as pollution control assistance as required by the federal or state government and used in the conduct of that business and exempt from property taxation. [Constitution of S.C. § 3(1); S.C. Code Ann. § 12-37-220(A)(8).]	12908	06/01/20	15.00	$	463,000	$	338,211	$	34,270
Tanks - Roofs	Tank 661 External Floating Roof Seal Replacement	40 CFR 63.1062 (a)(2) Internal floating roof. For a TK that has the equipment specified in paragraph (a)(2)(i) of this section, the owner or operator shall comply with each applicable requirement specified in paragraphs (a)(2)(ii) through (a)(2)(iv) of this section. (i) A liquid-mounted seal and a vapor-mounted seal. (ii) Rim seals. Each rim seal system must be a liquid-mounted seal or a vapor-mounted seal. The owner or operator may install a combination of liquid-mounted seals and vapor-mounted seals in different tanks.	See Above	13010	05/01/17	15.00	$	30,000	$	29,000	$	3,192
Subtotal - Tank Floating Roofs							3	209,000	$	433,105	$	37,462
Subtotal - Storage & Terminals							8	849,000	$	1,251,477	$	75,237
From Total							26	19,071,618	$	17,193,079	$	1,718,855

ROA 0430

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

UTILITY AND RAILROAD COMPANIES PROPERTY TAX RETURN

PT-420
(Rev. 8/13/18)
7025

TAX YEAR 2018

PTUTL 637066008

COLONIAL PIPELINE COMPANY
1185 SANCTUARY PARKWAY, SUITE 100
ALPHARETTA GA 30009-4765

FILE NUMBER: 700500108
[redacted]
TELEPHONE: 678-762-2276
FAX NUMBER: 770-825-7617

The following information, where applicable, must be submitted to the Department of Revenue on or before the last day of the fourth month after the close of the taxpayer's accounting period, after which an appropriate penalty will be applied as provided by law.

1) This form completed in detail including distribution information as to gross investment in each taxing district. Forms enclosed. SEE PT-427 ATTACHED

2) A copy of the annual report of Utility or Railroad filed with the South Carolina Public Service Commission, Annual Report of the Company (financial) or USDA-REA Financial and Statistical Report (Form 7). Not Available Yet

3) A certification of Pollution Control Equipment gross investment and depreciation schedule. N/A

4) A list of licensed vehicles, investment and depreciation schedule. SEE ATTACHED

5) A complete explanation of the method used to determine exempt property when applicable. N/A

6) Attach a schedule of construction work in progress that was capitalized for South Carolina. A separate list between real and personal property is required. SEE ATTACHED

7) A detailed list of non-operating (non-utility) real property by tax map number. SEE ATTACHED

Interstate Companies- In addition to the above information, companies not operating solely in South Carolina should file the following:

1) A copy of the annual report to a Federal Regulating Board. FORM 6 ATTACHED

2) Allocation Information

Total Revenues	SEE ATTACHED
South Carolina Revenues	SCHEDULE
Total Net Operating Income	
South Carolina Net Operating Income	
Total Gross Investment	
South Carolina Gross Investment	
Total Net Investment	
South Carolina Net Investment	

(over)

70291018

I declare that this return including any accompanying schedules and statements has been examined by me and to the best of my knowledge and belief is a true and complete return made in good faith pursuant to the 1976 Code of Laws and amendments.

Taxpayer's Signature	INDIRECT TAX MANAGER Title	4/23/18 Date
Accountant's Signature	Title	Date

J. KEITH FUQUA Contact Person	678-762-2276 Tax Preparer / Contact Phone Number

Returns found incomplete or improper will be returned to the taxpayer for completion or amendment.

Mail completed returns to:

South Carolina Department of Revenue
Utilities
Columbia, SC 29214-0300

70292014

Colonial Pipeline Company
South Carolina PT-420 Reconciliation
As of 12/31/2017

2. Allocation Information

Total Revenues	1,231,377,197
South Carolina Revenues	81,876,633
Total Net Operating Income	501,184,926
South Carolina Net Operating Income	33,324,748
Total Gross Investment	3,593,307,999
South Carolina Gross Investment	195,698,815
Total Net Investment	2,007,790,067
South Carolina Net Investment	93,275,490

Company Name Colonial Pipeline Company Tax Year 2018 PT-427 (10/09) 7042

--DISTRIBUTION INFORMATION--

COUNTY	MUNICIPALITY OR TAX DISTRICT	(1) GROSS INVESTMENT	FOR TAX COMMISSION USE ONLY (DO NOT WRITE IN THIS SPACE) DISTRIBUTION
Anderson	County total	69,019,288	
	District #1	35,382,055	
	District #2	9,454,766	
	District #3	20,799,744	
	District #5	3,382,722	
Abbeville	County Wide	4,948,003	
Aiken	County Wide	525,308	
Cherokee	County Wide	35,577,517	
	District #11	25,695,931	
	District #27	9,881,585	
Page Total		110,070,616	

1) Gross Investment - To include utility plant in service, non-utility property and material and supplies. Do NOT include licensed vehicles or construction in progress.

2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

TOTAL ASSESSMENT _____

ROA 0434

Company Name Colonial Pipeline Company

Tax Year 2018

PT-427
(10/89)
7042

--DISTRIBUTION INFORMATION--

COUNTY	MUNICIPALITY OR TAX DISTRICT	GROSS INVESTMENT (1)	FOR TAX COMMISSION USE ONLY (DO NOT WRITE IN THIS SPACE) DISTRIBUTION
Edgefield	County total	8,439,782	
Greenville	County total	20,904,597	
	District #46	7,111,283	
	District #891	2,070,820	
	District #52	5,636,499	
	District #65	6,085,994	
Greenwood	District #02	1,213,741	
Page Total		30,558,120	

1) Gross Investment - To include utility plant in service, non-utility property and material and supplies. Do NOT include licensed vehicles or construction in progress.

2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

TOTAL ASSESSMENT _____

ROA 0435

Company Name Colonial Pipeline Company

Tax Year 2018

PT-427
(10/89)
7042

--DISTRIBUTION INFORMATION--

COUNTY	MUNICIPALITY OR TAX DISTRICT	(1) GROSS INVESTMENT	FOR TAX COMMISSION USE ONLY (DO NOT WRITE IN THIS SPACE) DISTRIBUTION
Laurens	County Wide	2,612,081	
McCormick	County Wide	3,039,104	
Spartanburg	County Total	44,649,477	
	S. District #3	5,132,073	
	S. District #4	7,007,068	
	S. District #6	4,842,126	
	S. District #7	1,449,738	
	Roebuck District (Fire)	3,102,440	
	Croft Fire District	23,116,032	
York	Clover 2 School, Bethany Santiago Fire	709,558	
Page Total		51,310,220	
Report Total		191,938,956	

1) Gross Investment - To include utility plant in service, non-utility property and material and supplies. Do NOT include licensed vehicles or construction in progress.

2) Attach a list of property leased in South Carolina showing name and address of lessor and description of property.

TOTAL ASSESSMENT _____

ROA 0436

Colonial Pipeline Company
South Carolina Annual Report

SOUTH CAROLINA REPORT YEAR 2018

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Abbeville County				
County-Wide Schools	23.40	16 "	4,274,051	
	23.40	8 "	598,483	
Allocation of Capitalized Interest and Overhead			75,469	
		TOTAL	4,948,003	
Aiken County				
School District No. 6	1.59	16	290,418	
School District No. 6	8.89	8 "	227,372	
Allocation of Capitalized Interest and Overhead			8,020	
		TOTAL	525,806	
Greenwood County				
School District No. 2	5.74	16 "	1,048,421	
	5.74	6 "	146,807	
Allocation of Capitalized Interest and Overhead			18,512	
		TOTAL	1,213,741	
Laurens County				
Greenville School District	2.70	40 "	1,891,231	
No. 520	2.71	36 "	681,009	
Laurens Hospital District	(2.70)	40 "		
	(2.71)	36 "		
Allocation of Capitalized Interest and Overhead			39,840	
		TOTAL	2,612,081	
McCormick County				
County-Wide Schools	15.79	16 "	2,884,071	
	15.80	8 "	404,104	
Allocation of Capitalized Interest and Overhead			50,929	
		TOTAL	3,339,104	
York County				
School District	0.75	40 "	525,342	
	0.69	36 "	173,393	
Allocation of Capitalized Interest and Overhead			10,822	
		TOTAL	709,556	

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Anderson County				

School District No. 1	4.89	40 "	3,425,230
	4.89	36 "	1,228,632
School District No. 2	7.40	40 "	5,183,874
	7.40	36 "	1,859,582
	10.69	16 "	1,869,075
	10.69	8 "	278,525
School District No. 3	12.03	40 "	8,428,466
	11.97	36 "	3,008,000
School District No. 5	3.50	40 "	2,451,696
	3.50	36 "	879,532
	TOTAL PIPELINE		28,730,234

LAND AND BUILDINGS:

Description and Location:

Land: (Anderson Station) S. D. #3

Tax Map No. 101-00-03-012-000, District 031 6,847
7.01 Acres, 251 Chris De Lane, Purchased 4/16/75

Land: Belton Terminal S. D. #1

Tax Map No. 243-00-06-002-000, District 101 191,608
53 Acres, 1916 Camelot Forest, Purchased 10/3/62

Anderson County (cont'd)

	GROSS INVESTMENT	ASSESSED VALUE
Building: Anderson Station S. D. #3	204,051	
Control Building - Prefabricated Steel 34' - 9" x 56' - 1,975 sq. ft.		
Building: Belton Terminal S. C. #1		
Control Building - Prefabricated Steel 34' - 9" x 56' - 9" - 1,975 sq. ft. and Sample Building - Prefabricated Steel 10' - 5" x 12' - 6" - 131 sq. ft. Storage Building - Prefabricated Steel 100' x 60'		
TOTAL LAND & BUILDINGS	651,629	
	954,135	

PERSONAL PROPERTY:

Description and location:

Anderson Station - Varenne Township, School District #3		
Tanks: 2-500 bbl.	63,818	
Pump Equipment: 6 - 5,000 HP DVS, United Pump Units 2 - 2,000 HP DVS, United Pump Units	2,710,737	
Other Station Facilities Including small sump tanks, utility motors and properties not otherwise listed.	6,062,512	
TOTAL ANDERSON STATION	8,837,117	
Belton Junction - Belton Township, School District #1		
Tanks: 2 - 54,000 bbl. 4 - 43,000 bbl. 5 - 33,000 bbl. 5 - 24,000 bbl. 5 - 17,000 bbl.	9,370,706	
Pump Equipment: 16" system to Augusta 1 - 300 HP JTC, Pacific Pump Unit (Stored in Place)		

Anderson County (cont'd)	GROSS INVESTMENT	ASSESSED VALUE
Pump Equipment (Local):	624,341	
1 - 50 HP - Union 4 x 6 HSB) Local		
1 - 60 HP - Union 4 x 6 HSB)		
1 - 75 HP - Bingham 6 x 8 14B CVA Booster		
1 - 600 HP - United 4 x 11 MSN (4/3 STG)		
1 - 1000 HP - United 4 x 11 MSN (6 STG)		
Other Station Facilities		
Including small sump tanks, utility motors and properties not otherwise listed.	19,550,051	
TOTAL BELTON JUNCTION	20,445,093	
Total Pipeline	28,730,234	
Total Land & Building	954,135	
Total Personal Property	38,282,215	
ANDERSON COUNTY	67,966,584	
Do not include CWIP		
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD	1,052,704	
TOTAL ANDERSON COUNTY	69,019,288	

	TOTAL SCHOOL DISTRICTS	% ALLOC.	ALLOCATION*	TOTAL
School District No. 1	34,842,397	51.2640%	539,658	35,382,055
School District No. 2	9,310,659	13.6987%	144,207	9,454,766
School District No. 3	20,482,600	30.1361%	317,244	20,799,744
School District No. 5	3,331,128	4.9011%	51,594	3,382,722
TOTAL	67,966,584	100.0000%	1,052,704	69,019,288

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Cherokee County				
School District #11	26.60	40 "	18,632,130	
	28.55	26 "	6,671,879	
Total Pipeline			25,304,009	
LAND AND BUILDINGS:				
Description and Location:				
Land: Gaffney Station S. D. #27				2,325
28.89 acres in White Plains Township, S. D. #27, Cherokee County, South Carolina, known as a portion of Lot No. 1 of F. C. Phillip's Farm, more particularly described in deed from C. E. St. Amand and Victor S. Sarratt to Colonial Pipeline Company dated 9/28/62 and recorded in Volume 5N, Page 93, Cherokee County Records.				
Building: Gaffney Station S. D. #27				267,444
Control Building - Prefabricated Steel 34' - 9" x 56' - 9" - 1,975 sq. ft.				
TOTAL LAND & BUILDINGS				269,769
PERSONAL PROPERTY:				
Description and location:				
Gaffney Station - White Plains Township, S. D. #27				
Tanks: 2-500 bbl.				60,877
Pump Equipment:				
6 - 5,000 HP DVS, United Pump Units				
2 - 2,000 HP DVS, United Pump Units				2,771,421
Other Station Facilities				
Including small sump tanks, utility motors and properties not otherwise listed.				6,639,002
TOTAL PERSONAL PROPERTY				9,481,100
CHEROKEE COUNTY				35,034,877
Do not include CWIP				
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD				542,640
TOTAL CHEROKEE COUNTY				35,577,517

TOTAL SCHOOL DISTRICTS		%ALLOC.	ALLOCATION	TOTAL
School District #11	25,304,009	72.2252%	391,923	25,695,931
School District #27	9,730,868	27.7748%	150,717	9,881,585
TOTAL	35,034,877	100.0000%	542,640	35,577,517
	OK			OK

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Edgefield County				
County-Wide School	19.27	16 "	3,519,699	
	19.71	8 "	504,107	
TOTAL PIPELINE			4,023,806	

LAND AND BUILDINGS:
Description and Location:

Land: North Augusta Metering Site - North Augusta Outside

0.055 acres purchased from Gulf Oil Corp. dated 6/16/63 by deed and recorded 7/9/64 in Deed Book 44, Page 587, Edgefield County Records. 393

Buildings: North Augusta Metering Site - North Augusta Outside

Control Building - Prefabricated Steel
Sample Building - Prefabricated Steel on concrete slab 187,174

TOTAL LAND & BUILDINGS 187,567

PERSONAL PROPERTY:
Description and location:

North Augusta Metering Site - North Augusta Outside
Tanks: 2-500 bbl.
1 - 2,000 bbl. 120,218

Other Station Facilities
Including small sump tanks, utility motors and properties not otherwise listed. 3,979,464

TOTAL PERSONAL PROPERTY 4,099,682

EDGEFIELD COUNTY 8,311,055
Do not include CWIP
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD 128,726

TOTAL EDGEFIELD COUNTY 8,439,782

TOTAL SCHOOL DISTRICTS (COUNTY-WIDE) 8,439,782

PIPELINE	MILES OF PIPELINE	SIZE	GROSS INVESTMENT	ASSESSED VALUE
Greenville County				
Tax District No. 15	2.25	40 "	1,576,025	
	2.25	38 "	585,413	
Tax District No. 45	2.55	40 "	1,807,176	
	2.55	36 "	648,341	
Tax District No. 60	1.58	40 "	1,106,720	
	1.58	36 "	397,046	
Tax District No. 65	1.28	40 "	896,584	
	1.28	36 "	321,657	
Tax District No. 75	4.00	40 "	2,801,824	
	4.00	38 "	1,005,160	
Tax District No. 110	2.21	40 "	1,548,008	
	2.21	36 "	555,362	
Tax District No. 140	2.05	40 "	1,435,935	
	2.05	36 "	515,155	
Tax District No. 299	2.33	40 "	1,632,062	
	2.33	36 "	585,517	
	Total Pipeline		17,398,008	

LAND AND BUILDINGS:
Description and Location:

Land: Simpsonville Station S. D. #299 3,950

1.90 acres in Fairview Township, Greenville County, South Carolina, more particularly described in deed from Hugh Lee Gault, et al, dated 11/20/62 and recorded at Book 712, Page 3, Greenville County Records.

2.05 acres in Fairview Township, Greenville County, South Carolina, more particularly described in deed from Benjamin Hugh Gault, et al, dated 11/20/62 and recorded at Book 712, Page 25, Greenville County Records.

Building: Simpsonville Station S. D. #299 125,692

Control Building - Brick Veneer
23' x 43' - 989 sq. ft.

TOTAL LAND & BUILDINGS 129,642

Greenville County (cont'd)	GROSS INVESTMENT	ASSESSED VALUE
PERSONAL PROPERTY:		
Description and location:		
Simpsonville Station S. D. #293		
Tanks: 1 - 625 bbl. Transmix Tank	20,466	
Pump Equipment:		
6 - 5,000 HP DVS, United Pump Units		
2 - 2,000 HP DVS, United Pump Units	776,756	
Other Station Facilities:		
Including small sump tanks, utility motors and properties not otherwise listed.	2,260,264	
TOTAL PERSONAL PROPERTY	3,058,106	
GREENVILLE COUNTY	20,585,754	
Do not include CWIP		
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD	318,844	
TOTAL GREENVILLE COUNTY	20,904,597	

TOTAL SCHOOL DISTRICTS:		ALLOC. %	ALLOCATION*	TOTAL
District #46	7,002,820	34.0178%	108,464	7,111,283
District #891	2,039,236	9.9061%	31,585	2,070,820
District #52	5,550,530	26.9630%	85,970	5,636,499
District #65	5,993,168	29.1132%	92,826	6,085,994
TOTAL	20,585,754	100.0000%	318,844	20,904,597

PIPELINE		MILES OF PIPELINE	SIZE		GROSS INVESTMENT	ASSESSED VALUE
Spartanburg County:						
School District No. 3	3SSGF	0.21	40	36	199,868	
	3GF	3.61	40	36	3,436,821	
	3CPF	1.49	40	36	1,416,109	
School District No. 4	4REF	3.73	40	36	3,550,031	
	4WWPSF	3.52	40	36	3,350,189	
School District No. 6	6PSF	0.95	40	36	903,963	
	6WWPSF	2.45	40	36	2,331,790	
	6SSACF	1.71	40	36	1,627,494	
School District No. 7	7SSGF	0.75	40	36	713,813	
	7SSGF	0.75	40	36	713,813	
Roebuck Fire District	6WWRF	1.50	40	36	1,427,626	
	6SSWWWF	1.28	40	36	1,218,241	
	6SSRF	0.43	40	36	409,253	
Croft Fire District	7SSCF	0.43	40	36	409,253	
	7SSCF	2.45	40	36	2,331,790	
	Total Pipeline				23,946,052	

LAND AND BUILDINGS:

Description and Location:

Land: Spartanburg County

2.22 acres, Tract No. 3 and .10 acres, Tract No. 4, in District 7 C.F.D. School District, Spartanburg County, South Carolina, more particularly described in deed from JOCO, Inc., to Colonial Pipeline Company dated 9/26/62 and recorded at Deed Vol. 28M, Page 514, Spartanburg County Records. 13,290

45.33 acres, Tract No. 2 in District 7 C.F.D. School District, Spartanburg County, South Carolina, more particularly described in deed from Johnson Oil Co., Inc., to Colonial Pipeline Company, dated 9/26/62 and recorded at Deed Volume 28M, Page 517, Spartanburg County Records. 60,625

Spartanburg County (cont'd)	GROSS INVESTMENT	ASSESSED VALUE
Building: Spartanburg Terminal. S. D. #7 C.F.D.		
Control Building - Prefabricated Steel		
34' - 9" x 56' - 6" - 1,975 sq. ft. and		
Warehouse and Office Building - Prefabricated Steel		
62' x 30' - 1,890 sq. ft.	525,643	
TOTAL LAND & BUILDINGS	539,563	
PERSONAL PROPERTY:		
Description and location:		
Spartanburg Terminal. S. D. #7 C.F.D.		
Tanks:		
1 - 55,000 bbl.		
1 - 54,000 bbl.		
3 - 43,000 bbl.		
8 - 33,000 bbl.		
6 - 24,000 bbl.		
3 - 17,000 bbl.		
22 TANKS TOTAL	6,692,709	
Pump Equipment:		
4P HSH Bingham Pump Units	1,048,430	
Other Station Facilities:		
Including small sump tanks, utility motors, fire protection system, materials and supplies; properties not otherwise listed.	11,221,758	
TOTAL PERSONAL PROPERTY	18,962,897	
SPARTANBURG COUNTY	43,508,512	
MATERIALS AND SUPPLIES	459,957	
Do not include CWIP		
ALLOCATION OF CAPITALIZED INTEREST & OVERHEAD	681,008	
TOTAL SPARTANBURG COUNTY	44,649,477	

TOTAL SCHOOL DISTRICTS		% ALLOC.	ALLOCATION*	TOTAL
School District No. 3	5,053,797	11.4941%	78,276	5,132,073
School District No. 4	6,900,194	15.6935%	106,874	7,007,068
School District No. 6	4,768,272	10.8448%	73,854	4,842,126
School District No. 7	1,427,626	3.2469%	22,112	1,449,738
Roebuck Fire District	3,055,120	6.9484%	47,319	3,102,440
Croft Fire District	22,783,459	51.7722%	352,573	23,116,032
			0	0
TOTAL	43,988,469	100.0000%	681,008	44,649,477

* NOTE: ALLOCATION CONSISTS OF ALLOCATION CAPITALIZED INTEREST AND OVERHEAD

SOUTH CAROLINA REPORT YEAR 2018
List of Non-Operating (Non-Utility) real property by tax map number

Anderson County

LAND AND BUILDINGS:

Description and Location:

Tax Map No. 248-09-01-010-000, District 001
3.44 Acres, Lots 2&3 Big Creek Road, Purchased 11/5/1993

Tax Map No. 248-09-01-008-000, Tax Dist 001
4.5 Acres, Lot 9, Purchased 5/9/1989

Tax Map No. 248-09-01-006-000, Tax Dist 001
4.8 Acres, Lot 11, Purchased 5/9/1989

Tax Map No. 248-09-01-001-000, Tax Dist 001
2.53 Acres, Lot 1 off Big Creek Road, Purchased 6/3/1988

Tax Map No. 248-09-01-002-000, Tax Dist 001
Lot 4 off Big Creek Road, Purchased 6/3/1988

Tax Map No. 248-09-01-005-000, Tax Dist 001
4.96 Acres, Lot 12 off Big Creek Road, Purchased 6/4/1988

Tax Map No. 248-09-01-004-000, Tax Dist 001
3.51 Acres, Lot 13 off Big Creek Road, Purchased 6/4/1988

Tax Map No. 248-09-01-003-000, Tax Dist 001
3.99 Acres, Lot 14 off Big Creek Road, Purchased 6/3/1988

Tax Map No. 248-00-07-013-000, Tax Dist 101
.61 Acre, Camelot Forest Rd, Purchased 12/19/1995

Tax Map No. 248-00-07-001-000, Tax Dist 101
18.85 Acres, Camelot Forest Rd, Purchased 12/19/1995

SOUTH CAROLINA REPORT YEAR 2018
List of Non-Operating (Non-Utility) real property by tax map number

Fee Right of Way S. D. #5

Lot 67, Block "D", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Albert L. Campbell to Colonial Pipeline Company dated 8/3/62 and recorded at Deed Book L, Page 162, Anderson County Records.

Lot No. 47, Block "C", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Francis R. Fant, Trustee, to Colonial Pipeline Company dated 8/1/62 and recorded at Deed Book L, Page 160, Anderson County Records, less .03 acre to State of South Carolina, Deed 4/10/67, recorded Book 15-G, Page 426, Anderson County Records.

Lot No. 12, Block "D", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Francis R. Fant, Trustee, dated 8/1/62 and recorded at Deed Book L, Page 160, Anderson County Records.

Lot 4, 4-a, and 5-a, Block "W", Nevitt Forest in Broadway Township, S. D. #5, Anderson County, more particularly described in deed from Nevitt Forest, Inc., dated 8/1/62 and recorded at Deed Book L, Page 160, Anderson County Records.

Cherokee County

LAND AND BUILDINGS:
Description and Location:

Tax Map No. 067-00-00-012.000, tax district 11
3.4 acres, Old Racetrac Road, Purchased 11/8/2008

Tax Map No. 085-00-00-001.000, tax district 27
30 acres, Old Racetrac Road

Tax Map No. 137-00-00-051.000
2.87 acres, River Road

SOUTH CAROLINA REPORT YEAR 2018
List of Non-Operating (Non-Utility) real property by tax map number

Greenville County

LAND AND BUILDINGS:
Description and Location:

Tax Map No. 057-601-01-01-010, Tax Dist 052
5.6 acres, Harrison Bridge, purchased 3/26/1997

Tax Map No. 033-100-010-05-02, Tax Dist 697
.567 acres, Interstate 385, purchased 7/7/2004

Spartanburg County

LAND AND BUILDINGS:
Description and Location:

Tax Map No. 7-21-04-003.00, tax dist 8500
1.2 acres, Lot 12 Block B, Purchased 11/1/62

Tax Map No. 4-17-00-004.22, tax dist 4T00 / WCF
7.69 acres, Lot A, Purchased 9/1/1998

Tax Map No. 7-21-04-034.02, tax dist 8500 / CF
1.77 acres, Lot 12

Tax Map No. 7-21-04-032.00, tax dist 8500 / CF
3.97 Acres, Lot 10 Block 1, Purchased 4/1/1963

Colonial Pipeline Company
South Carolina

VEHICLES - 12/31/2017

Year	DESCRIPTION	VIN	CO. NO.	AMOUNT
2017	F-150 SUPERCAB 6.5' BOX 4X4	1FTFX1EF7HFC62785	721	32,414.39
2002	F250 SUPERCAB SRW 4X4	1FTNX21L72EC08503	721	23,696.33
2016	EXPLORER XLT 4X4	1FM5K8D6XGGD04416	721	31,065.72
2015	F-350 SUPERCAB SRW 8' BOX 4X4	1FD7X3B69FEA70438	721	48,788.82
2015	F-150 SUPERCAB 6.5' BOX 4X4	1FTFX1EF1FKD17288	721	35,236.04
2013	F-150 SUPERCAB 6.5" BOX 4X4	1FTFX1EF3DKD29438	721	28,746.84
2011	F-150 SUPERCAB 6.5' BOX	1FTFX1EF1BFB47212	721	30,118.19
2010	F-350 SRW SUPER CAB 6.75' BOX	1FTSX3B58AEA49809	721	45,217.12
1999	F250 SUPER DUTY REGULAR CAB	1FTNF20L7XEE27697	741	20,067.55
2016	F-350 SUPERCAB SRW 8' BOX 4X4	1FD7X3B62GEA72498	741	48,418.89
2016	F-350 SUPERCAB SRW 8' BOX 4X4	1FD7X3B65GEA72494	741	47,983.89
2015	F-350 SUPERCAB SRW 8' BOX 4X4	1FD7X3B65FED17695	741	50,041.18
2012	F-150 SUPERCAB 4X4 6.5'BOX	1FTFX1EF5CFB27708	741	26,785.43

Total Vehicles - SC

468,582.39 Actual South Carolina Vehicles

468,582.39 GL Total for South Carolina

(0.00) 2017 SC Vehicle Adjustment

Colonial Pipeline Company
South Carolina CWIP Worksheet
As of 12/31/2017

County	Real	Personal
Anderson		79,776
Cherokee		-
Spartanburg		46,082
Total CWIP		125,858

Colonial Pipeline Company
Schedule of Delivered Barrels
All types of fuel

State	Delivered Barrels - 2017	Percent	Delivered Barrels - 2016	Percent
Texas	48,148,999	5.20%	54,845,220	5.94%
Louisiana	11,150,891	1.20%	10,742,041	1.16%
Mississippi	57,582,911	6.22%	61,001,874	6.61%
Alabama	32,212,595	3.48%	31,119,595	3.37%
Georgia	120,987,175	13.07%	120,201,381	13.02%
Tennessee	93,810,089	10.13%	93,379,286	10.11%
South Carolina	57,603,653	6.22%	56,540,370	6.12%
North Carolina	124,484,952	13.45%	124,971,866	13.53%
Virginia	104,927,385	11.34%	105,120,920	11.38%
Maryland	56,705,137	6.13%	50,703,515	5.49%
Pennsylvania	12,564,029	1.36%	11,570,041	1.25%
Delaware	-	0.00%		0.00%
New Jersey	168,902,824	18.25%	169,972,869	18.41%
New York	36,557,557	3.95%	33,279,739	3.60%
Total	925,638,197	100%	923,448,717	100%

ROA 0452

Colonial Pipeline Company

Barrel Miles / Total by State

State	2017		2015	
TX	29,663,362,726	3.63%	33,298,992,531	3.78%
LA	113,783,974,709	13.91%	124,547,511,774	14.16%
MS	142,840,608,934	17.46%	149,142,961,076	16.95%
AL	152,288,517,495	18.61%	158,659,124,338	18.03%
GA	116,064,782,799	14.19%	122,429,352,936	13.92%
TN	9,731,735,357	1.19%	9,794,674,996	1.11%
SC	54,355,844,927	6.64%	58,498,015,011	6.65%
NC	65,505,295,594	8.01%	71,312,902,447	8.11%
VA	85,199,657,962	10.41%	95,239,315,626	10.83%
MD	23,555,357,703	2.88%	27,530,385,063	3.13%
PA	6,215,377,405	0.76%	7,406,653,050	0.84%
DE	573,092,081	0.07%	673,242,175	0.08%
NJ	18,269,899,551	2.23%	21,167,282,788	2.41%
NY	57,273,783	0.01%	75,689,816	0.01%
Total	818,104,781,026	100%	879,776,303,627	100%

Colonial Pipeline Company
Investment - Carrier Property
As of December 31, 2017

State	Carrier Property	CWIP	Materials & Supplies	Intangibles including ROW	Non-Carrier Property	Total Investment	Percent of Total	Carrier Reserve for Depreciation	Intangibles Reserve for Depreciation	Non-Carrier Reserve for Depreciation	Total Reserve for Depreciation	Carrier Net Book	Percent of Total
Texas	252,568,229	11,448,433	228,318	47,143,287	14,629,279	321,017,546	8.93%	133,404,976	5,955,233	9,385,490	148,745,699	172,271,848	8.58%
Louisiana	387,048,660	11,102,242	538,798	69,605,137	2,386,322	470,681,159	13.10%	184,611,040	12,130,547	62	196,741,650	273,939,509	13.64%
Mississippi	259,008,392	5,682,123	537,652	54,252,431	23,280	329,682,478	9.17%	112,248,633	10,762,429	1	123,011,063	206,671,415	10.29%
Alabama	283,448,115	3,569,374	1,075,921	57,792,283	5,347,139	351,232,832	9.77%	121,570,879	5,372,066	414	126,943,360	224,289,472	11.17%
Georgia	508,272,784	7,839,525	1,288,593	7,216,101	6,906,124	531,473,127	14.79%	231,651,989	2,227,525	186,509	234,066,053	297,407,094	14.81%
Tennessee	137,342,568	376,432	43,214	3,296,168	50,000	141,113,382	3.93%	68,189,029	1,026,864	5	69,224,898	71,888,485	3.58%
South Carolina	181,947,681	125,853	459,957	2,200,642	964,778	185,698,815	5.45%	101,789,762	653,511	52	102,423,325	93,275,490	4.65%
North Carolina	373,878,045	2,826,262	1,166,361	4,421,737	7,051,304	389,343,709	10.84%	189,831,610	1,459,740	200,412	191,491,761	197,851,948	9.85%
Virginia	345,021,062	2,217,332	627,002	11,617,530	3,309,821	362,802,747	10.10%	190,700,627	3,452,052	241,471	194,394,050	168,408,698	8.39%
Maryland	150,030,858	1,228,121	951,584	3,716,144	589,981	156,016,688	4.34%	81,613,974	1,219,759	426,312	83,260,045	72,756,643	3.62%
Pennsylvania	25,956,803	224,482	-	189,673	34,974	26,405,881	0.73%	13,585,261	91,048	27,972	13,704,281	12,701,600	0.63%
Delaware	10,928,243	0	-	210,538	-	11,138,781	0.31%	7,909,952	63,497	-	7,973,448	3,165,332	0.16%
New Jersey	288,847,732	3,987,282	981,399	3,216,882	2,357,169	299,355,454	8.33%	88,089,668	1,158,720	563,416	89,811,794	209,553,671	10.44%
New York	7,127,651	0	-	152,857	-	7,280,407	0.20%	3,661,013	47,666	-	3,708,679	3,571,729	0.18%
Wash. DC	48,931	0	-	6,050	-	54,981	0.00%	24,694	3,153	-	27,846	27,135	0.00%
Totals	3,221,483,554	50,787,464	7,853,799	269,537,459	43,845,723	3,593,307,999	100.00%	1,528,892,907	45,603,809	11,022,116	1,585,517,932	2,007,790,067	100.00%
Actual Form 6 Balance	3,221,483,554	50,787,464	7,853,799	269,537,459	43,845,723	3,593,307,999		1,528,892,907	45,603,809	11,022,116	1,585,517,932	2,007,790,067	
	Page 210 line 28		Page 230 line 30	Page 211 line 37	Page 211 line 33			Page 211 line 33651	Page 211 line 38	Page 211 line 34			
Difference	-	0	0	0	(0)	0		(0)	0	0	0	0	

ROA 0454

Supplement Information about Subsidiary Income

The income on Line 13, page 114 of Form 6 represents income from subsidiaries that are fully taxed for property tax purposes in their respective states of operation and Colonial feels that income should be removed from the net Income that is capitalized into value to avoid double taxation. The information included here takes that income by each year's effective tax rate and calculates the adjustment. This info is being provided as supplemental information to the current property tax return.

Year	Investment Income	Net Adjustment	Income Tax	Effective Rate
2012	16,475,435	10,476,729	6,237,366	0.37859
2013	18,420,863	11,656,400	6,868,738	0.37288
2014	20,863,682	13,118,252	7,745,430	0.37124
2015	36,787,208	22,312,112	14,475,096	0.39348
2016	39,146,866	24,323,141	14,823,725	0.37867
2017	38,265,901	23,775,770	14,490,131	0.37867

Notes:
Investment Income comes from Form 6 Page 114 Line 13
Net Adjustment = Investment Income - Income Tax
Income Tax = Investment Income x effective rate
Effective Rate = Income taxes from Form 6 Page 114 lines 16&17 divided by Taxable Income on Form 6 Page 114 line 16

PT-422
(Rev. 5/4/04)
7032

PROPOSED ASSESSMENT

2018 Tax Year

SOUTH CAROLINA DEPARTMENT OF REVENUE
PROPERTY DIVISION - UTILITIES
P.O. BOX 125
COLUMBIA, SOUTH CAROLINA 29214

Keith Fuqua
Colonial Pipeline Company
1185 Sanctuary Parkway, Ste 100
Alpharetta, GA 30009

The Department of Revenue has proposed a property tax assessment of $ 13,682,230 against your company for tax year 2018 .

* This is not a tax bill. This is a property tax assessment, and any tax bills relating to this assessment will be issued by the appropriate counties at a later date.

SEE REVERSE SIDE FOR APPEAL PROCEDURE

This demand is not applicable if you are currently in bankruptcy proceedings under Title 11 of the US code. Although you are liable for the stated amount, such will be claimed through the bankruptcy courts.

Date of Notice: July 27, 2018

By: Taylor Ingram

Utility Assessment Coordinator
(843) 953-8371
Taylor.Ingram@dor.sc.gov

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2018

COLONIAL PIPELINE COMPANY
Keith Fuqua
1185 Sanctuary Pkwy. Ste 100
Alpharetta, GA 30009

COUNTY	DISTRICT	GROSS INVESTMENT	ASSESSMENT
ASBEVILLE	County Wide	4,943,003	353,710
AIKEN	County Wide	525,808	37,480
ANDERSON	District #1	35,382,900	2,522,250
ANDERSON	District #2	9,454,766	673,970
ANDERSON	District #3	20,799,744	1,482,690
ANDERSON	District #5	3,382,722	241,130
CHEROKEE	District #11	25,695,931	1,831,710
CHEROKEE	District #27	9,881,585	704,400
EDGEFIELD	County Wide	8,439,782	601,620
GREENVILLE	District #46	7,111,283	506,920
GREENVILLE	District #52	5,636,499	401,790
GREENVILLE	District #65	6,085,994	433,830
GREENVILLE	District #391	2,070,820	147,620
GREENWOOD	District #02	1,213,741	86,520
LAURENS	County Wide	2,612,081	186,200
McCORMICK	County Wide	3,339,104	238,030
SPARTANBURG	3CPF	1,440,060	102,650
SPARTANBURG	3GF	3,489,040	248,710
SPARTANBURG	3SSGF	202,973	14,470
SPARTANBURG	4REF	3,605,136	256,990
SPARTANBURG	4WWPS	3,401,932	242,500
SPARTANBURG	6PSF	821,515	58,560
SPARTANBURG	6SSACF	1,652,714	117,810

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2018

SPARTANBURG	6SSRF	415,417	29,610
SPARTANBURG	6SSWWWF	1,237,253	88,200
SPARTANBURG	6WWPSF	2,367,896	168,790
SPARTANBURG	6WWRF	1,449,770	103,350
SPARTANBURG	7SSCF	23,116,032	1,647,800
SPARTANBURG	7SSGF	1,449,738	103,340
YORK	Clover 2 Sch, Beth-Sant Fire	709,558	50,580
Company Total		191,939,797	13,682,230

PT-422
(Rev. 5/4/04)
7032

PROPOSED ASSESSMENT

2018 Tax Year

SOUTH CAROLINA DEPARTMENT OF REVENUE
PROPERTY DIVISION - UTILITIES
P.O. BOX 125
COLUMBIA, SOUTH CAROLINA 29214

Keith Fuqua
Colonial Pipeline Company
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By: Taylor Ingram

Utility Assessment Coordinator
(843) 953-8371
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South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2018

COLONIAL PIPELINE COMPANY
Keith Fuqua
1185 Sanctuary Pkwy. Ste 100
Alpharetta, GA 30009

COUNTY	DISTRICT	GROSS INVESTMENT	ASSESSMENT
ABBEVILLE	County Wide	4,948,003	352,710
AIKEN	County Wide	525,808	37,480
ANDERSON	District #1	35,382,900	2,523,250
ANDERSON	District #2	9,454,766	673,970
ANDERSON	District #3	20,799,744	1,482,690
ANDERSON	District #5	3,382,732	241,130
CHEROKEE	District #11	25,695,931	1,831,710
CHEROKEE	District #27	9,881,585	704,400
EDGEFIELD	County Wide	8,439,782	601,620
GREENVILLE	District #46	7,111,283	506,920
GREENVILLE	District #52	5,636,499	401,790
GREENVILLE	District #65	6,083,994	433,830
GREENVILLE	District #891	2,070,820	147,620
GREENWOOD	District #02	1,213,741	86,520
LAURENS	County Wide	2,612,087	186,200
McCORMICK	County Wide	3,339,104	238,030
SPARTANBURG	3CPF	1,440,060	102,650
SPARTANBURG	3QF	3,489,040	248,710
SPARTANBURG	3SSQF	202,973	14,470
SPARTANBURG	4REF	3,605,136	256,990
SPARTANBURG	4WWPS	3,401,932	242,500
SPARTANBURG	6PSF	821,515	58,560
SPARTANBURG	6SSACF	1,652,714	117,810

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2018

SPARTANBURG	6SSRF	415,417	29,610
SPARTANBURG	6SSWWWF	1,237,253	88,200
SPARTANBURG	6WWPSF	2,367,896	168,790
SPARTANBURG	6WWRF	1,449,770	103,350
SPARTANBURG	7SSCF	23,116,032	1,647,800
SPARTANBURG	7SSGF	1,449,738	103,340
YORK	Clover 2 Sch, Beth-Sant Fire	709,558	50,580
Company Total		191,939,797	13,682,230

2016 Property Tax Year

Utility Appraisal Summary
Worksheet

Company: Colonial Pipeline Co.

Total System Value		2,600,000,000
South Carolina Allocation		5.58%
South Carolina System Value		145,080,000
Adjustments:		
S.C. Licensed Vehicles (Net)	(140,600)	
S.C. CWIP	(125,858)	
S.C. Pollution Control (Net)	(790,071)	
Other:		
		(1,056,529)
SOUTH CAROLINA TAXABLE VALUE		144,023,471
SOUTH CAROLINA ASSESSMENT RATIO		9.50%
SOUTH CAROLINA PROPOSED ASSESSMENT		13,682,230

2018 Property Tax Year

Income Approach
Worksheet

Company: Colonial Pipeline Co.

INCOME TO BE CAPITALIZED	320,000,000
CAPITALIZATION RATE	10.75%
INCOME APPROACH TO VALUE	2,977,000,000

	NOI	Plant Investment	Index	Plant adjusted NOI
2013	349,623,309	1,367,537,176	1.28	446,883,707
2014	358,050,861	1,446,359,258	1.24	444,835,965
2015	353,824,558	1,536,543,045	1.17	414,679,172
2016	269,220,506	1,643,011,034	1.10	296,009,194
2017	316,485,715	1,747,967,219	1.03	326,281,452
2 year Avg		292,853,110		
2 yr Plant adj Avg		311,145,323		
3 year Average		313,176,926		
3 yr Plant adjusted Avg		345,656,606		
4 year Average		324,395,410		
4 year adjusted Avg		370,451,448		
5 year Average		329,440,990		
5 yr Plant adjusted Avg		385,737,898		
Normalized Trend - 2017		298,419,881		
Linear Trend - 2018		282,909,327		
			Say	320,000,000

INCOME STATEMENT - inputs to value

Form 6 Page	Description	12/31/2017 Tax Year 2018	12/31/2016 Tax Year 2017	12/31/2015 Tax Year 2016	12/31/2014 Tax Year 2015	12/31/2013 Tax Year 2014	12/31/2012 Tax Year 2013	12/31/2011 Tax Year 2012	12/31/2010 Tax Year 2011	12/31/2009 Tax Year 2010	12/31/2008 Tax Year 2009	12/31/2007 Tax Year 2008	12/31/2006 Tax Year 2007	12/31/2005 Tax Year 2006	12/31/2004 Tax Year 2005	12/31/2003 Tax Year 2004
114, line 1	Operating Revenues	1,231,377,197	1,214,958,875	1,207,177,722	1,171,894,128	1,150,113,180	1,135,032,844	1,058,440,240	951,950,547	917,250,208	877,068,618	796,107,958	764,300,348	698,981,675	711,574,650	664,015,913
114, line 2	Operating Expenses	730,192,271	789,282,908	702,095,929	595,783,259	587,992,526	516,099,452	482,042,852	473,559,452	425,223,091	434,903,633	383,540,629	388,272,622	373,173,829	383,266,730	334,361,650
114, line 3	Net Cashier Operating Income	501,184,926	425,676,037	505,081,793	575,810,868	562,120,654	619,972,392	554,397,388	478,650,395	491,135,147	387,165,756	412,487,329	376,027,726	325,807,846	328,307,920	329,714,263
114, line 4	Net non-cashier income	9,275,904	8,553,816	5,602,674	1,350,536	1,707,669	1,254,514	2,729,536	23,751,187	22,090,555	21,071,100	20,762,378	21,433,649	15,054,813	10,955,373	11,053,672
114, line 15	(less) Income Tax from Operations	109,369,863	115,426,328	120,992,493	101,554,499	178,501,396	201,640,454	164,652,267	130,759,092	132,499,629	98,983,167	119,994,536	111,037,024	102,293,222	90,454,606	93,142,043
114, line 17	(Less) Deferred Income Tax	(171,490,032)	29,508,519	73,832,958	33.04% 69,419,074	34.27% 8,472,563	34.27% 8,012,088	33.33% 20,125,073	35.24% 31,972,516	34.21% 35,535,948	31.99% 30,153,669	29.96% 6,172,455	32.15% 6,601,663	22.41% (29,233,222)	30.07% 24,719,465	30.62% 23,567,550
	Form 6 calculated NOI	563,290,243	283,841,150	390,156,305	385,457,298	375,146,873	400,919,209	369,429,018	309,978,567	223,634,372	250,948,781	266,406,224	248,216,984	252,634,845	244,834,437	242,563,442
114, line 29	Net Income	569,253,801	233,054,343	315,874,958	322,261,393	314,460,663	345,141,779	310,499,437	272,913,503	277,056,549	193,144,198	274,024,193	193,012,605	157,360,356	174,814,310	174,016,629
Calculations of NOI Using 35% tax rate																
CALC	Income Tax at 35% of NOI	190,450,272	101,756,803	214,731,653	218,940,726	213,665,648	231,709,569	210,670,696	181,690,953	156,564,110	139,522,947	166,737,561	139,014,534	123,608,827	132,527,013	132,591,350
CALC	Net Income to Capitalize	310,734,654	263,619,124	950,350,714	357,094,733	346,514,605	378,952,043	343,728,302	296,369,445	304,443,031	237,842,709	255,729,758	726,813,187	203,930,865	216,843,917	216,022,707
CALC	Five Year Average NOI to Capitalize	226,116,605	239,608,452	255,567,899	344,651,649	334,327,393	310,252,886	283,052,258	282,279,634	243,225,988	225,013,435	223,840,432				
CALC	Percent Growth to 5 Year Average	-3.67%	-4.49%	3.15%	3.15%	7.79%	8.57%	8.42%	7.39%	7.76%	0.67%					
CALC	Four Year Average NOI to Capitalize	320,517,306	329,982,344	358,526,254	356,872,350	341,730,374	330,750,430	293,145,492	278,140,246	253,857,181	228,046,640	226,356,676	216,829,419			
CALC	Percent Growth to 4 Year Average	-2.05%	-7.97%	0.46%	4.47%	3.33%	12.64%	0.11%	0.29%	15.23%	1.12%	4.53%				
CALC	Three Year Average NOI to Capitalize	368,334,021	363,376,159	351,970,751	367,254,340	359,690,017	339,554,563	314,979,813	279,203,002	252,665,172	238,728,565	225,181,283	215,291,056	211,991,466		
CALC	Percent Growth in 3 Year Average	-4.77%	-8.01%	-2.57%	1.25%	5.04%	7.80%	14.01%	5.21%	10.93%	3.75%	6.02%	1.57%			
	Net Cashier Income - 35% Inc Tax	318,455,715	259,229,506	353,824,558	358,950,551	349,829,309	378,960,642	349,418,918	311,490,101	318,511,175	261,073,654	293,627,031	240,102,052	231,353,225	223,873,248	223,663,423
	3 yr Avg	310,126,920														
	4 yr Avg	324,795,418														
	5 yr Avg	329,440,990														

ROA 0465

2018 Property Tax Year

Cost Approach
Worksheet

Company: Colonial Pipeline Co.

Total Plant In Service			3,272,271,018
Less: Accumulated Depreciation			1,524,303,799
Net Utility Plant			1,747,967,219
Adjustments:			
Add:	Materials & Supplies	7,853,799	
	Noncarrier Property (net)	32,623,607	
	R.O.W. (net)	231,303,811	
Less:			
			271,781,217
COST APPROACH TO VALUE			2,020,000,000

PROPOSED ASSESSMENT

PT-422
(Rev. 6/4/04)
7032

2018 Tax Year

SOUTH CAROLINA DEPARTMENT OF REVENUE
PROPERTY DIVISION - UTILITIES
P.O. BOX 125
COLUMBIA, SOUTH CAROLINA 29214

Keith Fuqua
Colonial Pipeline Company
1185 Sanctuary Parkway, Ste 100
Alpharetta, GA 30009

The Department of Revenue has proposed a property tax assessment of $ 10,945,760 against your company for tax year 2018 .

THIS ASSESSMENT IS 80% OF THE ORIGINAL 2018 PROPOSED ASSESSMENT, AS IT IS NOW UNDER APPEAL. A FORMAL PROTEST WAS FILED WITH SCDOR ON AUGUST 13, 2018. ONCE THIS APPEAL IS RESOLVED, A FINALIZED ASSESSMENT CERTIFICATION WILL BE ISSUED AT THAT TIME.

* This is not a tax bill. This is a property tax assessment, and any tax bills relating to this assessment will be issued by the appropriate counties at a later date.

This demand is not applicable if you are currently in bankruptcy proceedings under Title 11 of the US code. Although you are liable for the stated amount, such will be claimed through the bankruptcy courts.

Date of Notice: August 21, 2018

By: Taylor Ingram

Utility Assessment Coordinator
(843) 953-8371
Taylor.Ingram@dor.sc.gov

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2018

COLONIAL PIPELINE COMPANY
Keith Fuqua
1185 Sanctuary Pkwy, Ste 100
Alpharetta, GA 30009

COUNTY	DISTRICT	GROSS INVESTMENT	ASSESSMENT
ABBEVILLE	County Wide	4,948,003	282,170
AIKEN	County Wide	525,808	29,990
ANDERSON	District #1	35,382,900	2,017,780
ANDERSON	District #2	9,454,766	539,180
ANDERSON	District #3	20,799,744	1,186,150
ANDERSON	District #5	3,382,722	192,910
CHEROKEE	District #11	25,695,931	1,465,360
CHEROKEE	District #27	9,881,585	563,520
EDGEFIELD	County Wide	8,439,782	481,300
GREENVILLE	District #46	7,111,283	405,540
GREENVILLE	District #52	5,636,499	321,430
GREENVILLE	District #55	6,085,994	347,070
GREENVILLE	District #891	2,070,820	118,090
GREENWOOD	District #02	1,213,741	69,220
LAURENS	County Wide	2,612,081	148,960
McCORMICK	County Wide	3,339,104	190,420
SPARTANBURG	3CPF	1,440,060	82,120
SPARTANBURG	3GF	3,489,040	198,970
SPARTANBURG	3SSGF	202,975	11,580
SPARTANBURG	4REF	3,605,136	205,590
SPARTANBURG	4WWPS	3,401,932	194,000
SPARTANBURG	6PSF	821,515	46,850
SPARTANBURG	6SSACF	1,652,714	94,230

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

DISTRIBUTION REPORT

Tax Year 2018

SPARTANBURG	6SSRF	415,417	23,690
SPARTANBURG	6SSWWWF	1,237,253	70,560
SPARTANBURG	6WWPSF	2,367,896	135,030
SPARTANBURG	6WWRF	1,449,770	82,680
SPARTANBURG	7SSCF	23,116,032	1,313,240
SPARTANBURG	7SSDF	1,449,738	82,670
YORK	Clover 2 Sch. Beth-Sant Fire	709,558	40,460
Company Total		191,939,797	10,945,780

Exhibit G

- 0723_Simpsonville_SCG830038_Water_Permit_000_20211231 (Bates #226-277)
- Simpsonville general permit and Spartanburg NPDES and air permit (Bates #535)
- 0741_Spartanburg_090GW issued 1 2016_Water_Permit_000_20171231 (Bates 1-7)
- 0722_Gaffney_Consent Agreement 02-082-W_Water_Permit_000_None (Bates #226-235)
- 0723_Simpsonville_SCG830038_Water_Permit_000_20211231
- 0743_NorthAugusta-21_0980-0018 05 2009_Air_Permit_000_20190430 (Bates #332-342)
- 0720_Anderson_0200-0154 07 2009_Air_Permit_000_20190630 (Bates #398-406)
- 0741_Spartanburg_2060-0210 7_2013_Air_Permit_000_20190831 (Bates #407-416)
- 0721_Belton_0200-0053 08 2009_Air_Permit_003_20190731 (Bates #417-429)
- 0741_Spartanburg_2060-0210 7_2013_Air_Permit_000_20190831 (Bates #539-548)
- 0743_NorthAugusta-21_0980-0018 05 2009_Air_Permit_000_20190430 (Bates #549-559)
- 0721_Belton_0200-0053 08 2009_Air_Permit_003_20190731 (Bates #560-572)
- 0720_Anderson_0200-0154 07 2009_Air_Permit_000_20190630 (Bates #573-581)
- SSSD Permit 01 01 2016 (Bates #219-225)
- Anderson Air Permit 7 13 09 (Bates #210-218)
- SPT NPDES Permit 8 09 (Bates #127-209)
- SPT Air permit September 09 (Bates #118-126)
- SC Hydrotest Permit (Bates #67-109)
- Air permit 5 09 (Bates #110-117)
- SSSD Permit termination confirmation 11-30-17 (Bates #65-66)
- Permit renewal SPT 1-30-2014 (Bates #8-22)
- Permit renewal BLT 1-30-2014 (Bates #438-452)
- BLT NPDES Permit 8 09 (Bates #453-535)
- BLT Air Permit 8 09 (Bates #430-437)

Exhibit 2

A. No, I had it -- I had it done for today's purpose.

Q. Okay.

A. No, it's something I -- I'd never seen it until I got it in the e-mail late Friday night, so.

Q. Do you know if any of the portions that are not zoned for industrial use, if those include any delivery locations, pump stations, tank farms -- or tank farms?

A. I think there was -- I don't know for sure. I'd have to study it real close. Spartanburg, you know, is a delivery facility and tank farm and it's, obviously, got all kinds of industrial around it.

Q. Are the claimed assets of cathodic protection, pipe coatings, and automatic shut-off valves, are those all located in the areas that are zoned for industrial use?

A. No.

Q. Okay.

A. No, they're -- cathodic protection and pipe coatings are scattered along the pipeline and in all the stations. They're -- they're means of protecting steel.

offerings, such as barge operations and termling (sic) storage. We provide storage services and things of that nature.

Q. So the products that you move, could you say that again? It's gasoline, diesel, jet fuel ...

A. Those are -- those are the primary --

Q. Primary?

A. -- generic terms for what we move.

Gasoline -- gasoline consists of premiums, regular grades. We also -- we move both blendstocks for ethanol blending and we move finished gasolines that don't require ethanol bending. We move both formulated gasolines and conventional gasolines. Obviously, this area is completely conventional gasolines for South Carolina.

Ultra Low Sulfur Diesel. We move heating oil. We move marine diesel. We also move quite a bit of jet fuel, both commercial jet fuel and military grade jet fuel. We move kerosene.

Q. Okay. So --

A. And we also move things such as blendstocks; things that are unfinished products that are used in the process of blending and making fuels.

Q. What -- could you describe that a little

more?

A. For instance, you hear the term "naphthas," "alkylate," "reformate," those are -- those are just basically quantities of fuel that are not finished gasoline. You take those types of blendstocks, blend them together, and it creates a finished gasoline.

Q. And does Colonial do that blending?

A. We offer our blending service for a particular customer at one of our facilities where we do that. We perform the blending for them. They are the registered refinery, but we provide the services to blend the product and do that for them.

Q. And what -- what is that provider or that customer that you provide those services to?

A. The company that we work for there is V-Tol (phonetic).

Q. And you said they're the refiner but you do -- you provide the service of blending for them?

A. We're physically doing the things that they want us to do to execute blending operations. So we own the equipment, the tanks, and all of that. We have the people. They're basically just

instructing us on the operations that they need to do to do that blending.

Q. Okay.

A. And there's requirements under the EPA requirements that define out the refiner and how that works. So that's very clear in the regulations.

Q. And that -- that blending, does that happen in South Carolina?

A. That blending does not happen in South Carolina; that particular blending happens in Louisiana.

Q. Okay. Are there blending services that you provide in South Carolina?

A. We provide -- we deal with transmix that is generated on our system. We handle that transmix through blending operations here in the State and throughout our system. We also deal with transmix in other fashions, but one of the fashions is blending that product.

Q. Okay. So those blending operations that occur in South Carolina, where do those occur?

A. Those occur primarily at our tank farms, pump stations, and our delivery facilities.

Q. Tank farms, delivery facilities, and what

Q. Okay. So who are -- Colonial's customers are the shippers; is that --

A. Yes.

Q. -- accurate? Okay. And it -- it sounds like a lot goes on during the process, during the time that Colonial has the product, but unless there's -- well -- but, generally, input is more or less equal to output? Like, what comes into the pipeline is generally the same that comes out?

A. Yes. So, again, there's the services that we provide and things of that nature. And, again, we're managing our system to be sure what comes out is good, so. But, yeah, effectively, we want good product coming in and we give good product going out.

Q. And that product would be the same -- I mean, it may not be the -- like an example of fungible product. It may not be the specific one, but it's the -- essentially the same product that goes through -- that comes in will come out on the other end for the customer.

A. Volumes differ as we manage our processes and things. For instance, we're protecting product, certain types of product. We're dealing

A. Correct.
Q. -- Kool-Aid drink.
A. Correct.
Q. Okay.
A. Right.
Q. Okay. How much -- which one's more common? Is it more common to have the -- the blendstocks come in and you have a different product at the end or is it more common to have basically the same product going in that will come out at the other end?
A. It's more common to have the same specification coming in and the same specification going out.
Q. Do you -- could you put a rough percentage to which one is the same specification coming in coming out versus the blendstocks coming in?
A. Very high.
Q. Okay. Ninety percent?
A. Yes, at least 90 percent.
Q. Okay. I'm just going to ask some questions to try to make sure I'm clear. So Colonial has no role in mining or refining product; is that correct?
A. Correct. We're not a refiner.

Q. So -- I'm sorry. Let's go -- whenever we talked about the product that goes in, product comes out that's different, whenever you have those blends that come in, you said that was less than -- I guess less than ten percent because 90 percent of the time it's the same specifications in, same specifications out; is that -- was that right?

A. All fungible. The fungible movements that we talked about?

Q. Uh-huh (affirmatively responds).

A. Right.

Q. Okay.

A. Our delivered barrels would be greater than 90 percent fungible movements, correct.

Q. Do you know how your customers are billed?

A. Our -- our customers are billed based on our tariff, which is a FERC filing.

Q. Okay.

A. Our rates from point A to point B are filed through FERC. And then, of course, we have all of our products and services -- the services and things that we're offering, those would be billed individually based on those services.

Q. Okay. And you're talking -- you mention

from -- from activities related to testing of pipe and tanks, which are, by their nature, industrial.

Q. So they're related to industrial activities or industrial facilities; is that -- is that correct?

A. Yes.

Q. Okay. Is there any one that specifically uses the language of "industrial plant"?

A. I don't know the answer to that. I don't -- I don't know if those permits specifically identify that term.

(RESPONDENT'S EXHIBIT 5 WAS MARKED FOR IDENTIFICATION PURPOSES)

Q. Okay. I'm going to hand you what's been marked as Department's Exhibit 5. This is a portion of Colonial's Response to Department's Request for Production and it's Bates stamped at the bottom as Colonial 0283. Do you recognize this?

A. Yes.

Q. Okay. What is it?

A. This is a -- a single page out of a Spill Prevention Control and Countermeasure Plan. It looks like it's Section 1 and 1.1.