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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 2 OF 7

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STATE OF SOUTH CAROLINA

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December 20, 2019

The Honorable Ralph King Anderson, III
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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
Our File Number: 180048

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's Response in Opposition to Petitioner's Motion for Summary Judgment. Also enclosed is a Proof of Service.

Should you have any questions, please do not hesitate to contact me at 803-898-5623 or marcus.antley@dor.sc.gov.

Respectfully,

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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 RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure and Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court (ALC), the undersigned, as attorneys for the Respondent, South Carolina Department of Revenue (Department), file this Response in Opposition to Colonial Pipeline Company's (Petitioner or Taxpayer) Motion for Summary Judgment. As a matter of law, the Taxpayer does not qualify for the *ad valorem* exemption in S.C. Code Ann. § 12-37-220(A)(8) (2014) (Pollution Control Exemption), and therefore, the Department remains entitled to judgment.

ARGUMENT

The Department incorporates by reference the Stipulation of Facts, and the cited portions of the 30(b)(6) Deposition of Colonial Pipeline Company ("Colonial Depo."), are attached as Exhibit 1.

I. The Taxpayer misconstrues the applicable law regarding the construction of a tax exemption statute.

The Taxpayer incorrectly asserts that any ambiguity in a tax exemption is resolved against the Department. Although the general rule is that ambiguity in general tax administration may be resolved in favor of the taxpayer, the more specific rule is that exemption statutes are construed strictly against the taxpayer. *Home Medical Systems, Inc. v. S.C. Dep't of Rev.*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) ("The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption."); *York County Fair Association v. SC Tax Commission*, 249 SC 337, 154 SE 2d 361 (1967).

Even in in its argument that an ambiguous statute should be resolved against the government, the Taxpayer concedes—perhaps inadvertently—that the rule it relies on applies in the case of "general tax administration" but "**not a credit or exemption.**" (Petitioner's Memo in Support; p. 19) (emphasis added). Clearly, the Pollution Control Exemption is an exemption, and therefore, it must be construed strictly against the Taxpayer.

II. The Department cannot be estopped from correcting an incorrect interpretation or mistaken application of law by its employees or agents.

To support the argument that it is an industrial plant, the Taxpayer points to the Government Services Division granting the Pollution Control Exemption as to some items. This amounts to an estoppel argument—because the Government Services Division partially granted the exemption initially, the Taxpayer argues the Department is estopped from denying the Pollution Control Exemption. This estoppel argument is unsupported by the facts or relevant law.

First, the Department followed its internal procedures and the provisions of the Revenue Procedures Act (RPA) that govern the review of property tax appeals. When a property taxpayer

appeals a proposed property tax assessment (which includes decisions regarding any exemptions), the appeal is conducted in accordance with the RPA. S.C. Code Ann. § 12-60-2120 (referencing § 12-60-450(C) through (E)). Ultimately, it is the Department representative within the Office of General Counsel for Litigation who prepares and issues the final agency determination on behalf of the Department and represents the Department in any ALC hearing. *See* § 12-60-30, -450; *see also* SC Revenue Procedure #06-2. Importantly, if the Taxpayer requests a contested case hearing to review the Department's Determination, the ALC serves as the sole fact finder and the matter is reviewed *de novo*. *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017). In order to facilitate the efficient review of such disputed matters (including contested tax decisions), SCALC Rule 14 provides that the administrative law judge "may request each party to prepare and return a Pre-Hearing Statement setting forth *with particularity* the issues in the contested case." SCALC Rule 14 (emphasis added). Moreover, SCALC Rule 16 provides that "[a]ny 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." Upon discovering that some assets had been exempted in a manner inconsistent with the Department's final agency interpretation of the exemption at issue, the Department timely amended its Pre-Hearing Statement to clarify that the Taxpayer does not qualify for the Pollution Control Exemption for *any* of its claimed property. (Stip. Facts, ¶ 31).

Second, the Department is not bound by representations of its agents that are inconsistent with the statutory language and, thus, outside of the agent's scope of authority. *Texaco, Inc. v. Wasson,* 269 S.C. 255, 265, 237 S.E.2d 75, 79 (1977); *Heyward,* 240 S.C. at 352, 126 S.E.2d at 18. In *Texaco,* the Court held that the Department was not estopped from assessing additional taxes

based on the use of an improper accounting method even though Department employees had expressly and in writing authorized the taxpayer to use that method "until such time as the South Carolina Tax Commission grants permission to change such method." *Texaco,* 269 S.C. at 264-65, 237 S.E.2d at 79. In *Heyward,* the taxpayer argued that the Department was estopped "because of acquiescence in and approval of the taxpayer's election of the installment method of reporting profit ...." *Heyward*, 240 S.C. at 351, 126 S.E.2d at 17. The Court rejected that argument, holding that "estoppel [does not] 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." *Id.* (emphasis added).

Simply put, the Department is required to apply all of the elements of the Pollution Control Exemption established by the General Assembly. *TNS Mills,* 331 S.C. at 623, 503 S.E.2d at 478; *Asmer,* 225 S.C. at 343-44, 82 S.E.2d at 466. In *TNS Mills,* the taxpayer contended that the Department had the authority to grant the Pollution Control Exemption retroactively. 331 S.C. at 621, 503 S.E.2d at 476-77. This contention was based in part on a memorandum prepared by a Department employee opining that a recently-enacted statute authorized accepting exemption applications at any time. *Id.* The Court rejected this contention, holding that "[a]lthough the employee] believed the Department had the authority to grant retroactive exemptions, and exemptions may have been granted under this erroneous view, neither the Commission nor the courts are bound by his erroneous interpretation." *Id.* at 621-22, 503 S.E.2d at 477. Thus, the Department is not estopped from invoking the correct elements of the Pollution Control Exemption even if its employees incorrectly or inadvertently misapplied those elements by granting the Pollution Control Exemption.

III. The Taxpayer was not granted pollution control exemptions in many States.

The Taxpayer oversells its success when stating it "was granted the pollution control exemption for some or all of the same equipment in Alabama, Virginia, and North Carolina." (Petitioner's Memo in Support; p. 7). Of course, the fact other states may have granted the exemption to the Taxpayer is not binding on this court nor is it necessarily relevant to the analysis of the statutory provision at issue. However, to the extent the Taxpayer relies on the decisions of other states to support its position in this matter, it is important to emphasize that no other State has an exemption identical to the Pollution Control Exemption, particularly the language about "industrial plants."

Moreover, the Taxpayer's application for a pollution control exemption for cathodic protection and pipeline coatings in Virginia is pending and has not been finally decided. (Colonial Depo. p. 28:4-14). North Carolina only granted the pollution control exemption for the automatic shutoff valve, and the Taxpayer did not apply for a pollution control exemption for cathodic protection or coatings. (Colonial Depo. p. 39:2-15). Georgia denied the Taxpayer's application for a pollution control exemption for other items, and the Taxpayer did not apply for an exemption for cathodic protection, pipe coatings, and automatic shutoff valves. (Colonial Depo. p. 34:1-17). The Taxpayer also did not apply for a pollution control exemption in New York. (Colonial Depo. p. 36:21-22). New Jersey did not grant a pollution control exemption for any of the Taxpayer's property. (Colonial Depo. p. 39:20-25; p. 40:1-10). Tennessee initially denied the pollution control exemption, but the file is still pending. (Colonial Depo. p. 40:20-25; p. 41:1-8).

In reality, more States denied or refused to grant pollution control exemptions for the Taxpayer than granted them. Additionally, the Taxpayer did not even apply for pollution control

exemptions for the claimed property in multiple states. Regardless, the Department is unaware of any other State that includes in its pollution control exemption statute the element of "facilities or equipment of industrial plants."

IV. The size and complexity of the Taxpayer's operations is irrelevant.

The Taxpayer uses over four pages of its Memorandum to describe the size and complexity of the Taxpayer's operations. All of the activities described by the Taxpayer are related to transportation and unrelated to manufacturing, producing, or outputting. The Taxpayer admits it 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). The Taxpayer's transportation method causes some of the Refined Petroleum Product to mix, so the Taxpayer has to separate the mixed Refined Petroleum Products to preserve the quality of the Refined Petroleum Products that the Taxpayer transports. (*See* Stip. Facts, ¶¶ 3-8). The Taxpayer injects Drag Resisting Agents, i.e. a lubricant, into the pipeline to reduce friction. (Stip. Facts, ¶ 2). The Taxpayer also mentions "regrading" as an activity that occurs in South Carolina, but "regrading" is simply changing the label of a product of a higher grade product to a lower grade product. (Colonial Depo. p. 189:24-25; p. 214:11-17). The employees, storage tanks, pumps, and other parts of the pipeline system discussed in Petitioner's Memo all support the Taxpayer's transportation activities.

V. The Taxpayer's definitions of "industrial plant" are unreliable and do not represent common usage.

The Taxpayer quotes multiple definitions for "industrial plant" but provides insufficient citations to confirm the source of those definitions. (*See* Petitioner's Memo in Support; p. 13-14). First, the Taxpayer cites "Google," but Google is a search engine and not a source in itself. While

a Google search for a term may yield results of sources that define the term, Google does not define the term. Without knowing the source of the Taxpayer's Google definition, the Department is unable to verify its reliability.

The second definition quoted by the Taxpayer is from Wikipedia, an online encyclopedia that any person can edit. Because Wikipedia constantly changes, a citation with the date and time accessed is particularly important, and its reliability is questionable. Still, the Taxpayer concedes that Wikipedia does not have an independent definition of industrial plant.

The third definition quoted by the Taxpayer is from Webster's Online Dictionary, not to be confused with Merriam-Webster's online dictionary—the source cited in the Department's Memorandum in Support of its Motion for Summary Judgment (Department's Memo). Although the Taxpayer does not provide a full citation, it appears the definition is from Webster-dictionary.org, which like Wikipedia allows the public to add words and definitions. *See Webster-dictionary.org* (December 16, 2019, 11:53 AM), https://www.webster-dictionary.org/. The Webster-dictionary.com definition of "industrial plant" seems to derive from WordNet and includes the following example sentence: "they built a large plant to manufacture automobiles." *See Webster-dictionary.org* (December 16, 2019, 11:53 AM), https://www.webster-dictionary.org/definition/industrial%20plant. This example sentence is consistent with the Department's interpretation of the term "industrial plant" that likens industrial plants to manufacturing plants.

The fourth definition quoted by the Taxpayer is from MnemonicDictionary.com and merely regurgitates the WordNet definition used by Webster-dictionary.org and includes the same

example sentence. See MnemonicDictionary.com (December 18, 2019, 10:27 AM), https://mnemonicdictionary.com/?word=industrial+plant.

The last dictionary definition quoted by the Taxpayer is from The Free Dictionary and also regurgitates the WordNet definition. The example quoted by the Taxpayer of a "gas system—facility (plant and equipment) for providing natural-gas service" is actually a "related word," and not necessarily an example of an industrial plant. *See The Free Dictionary* (December 16, 2019, 1:42 PM) https://www.thefreedictionary.com/industrial+plant. However, even if a gas system for providing natural-gas service were an industrial plant, the Taxpayer does not provide natural gas service, and a gas system is more like a utility than a transportation company. Many of the related words, like refinery and manufacturing plant, are consistent with the Department's interpretation of industrial plant to require production or manufacturing. *Id.*

VI. The Taxpayer's environmental regulatory references are irrelevant.

The Taxpayer attempts to show it is an "industrial plant" with a Federal regulation on flammable liquids and statute on State Energy Conservation Plans. The Taxpayer admits that the term "industrial plant" is not directly defined by the section on flammable liquids in the Code of Federal Regulations. Utilizing a logical fallacy, the Taxpayer mischaracterizes 29 C.F.R. § 1906.106(e) to say what "industrial plants" include instead of describing how an industrial plant must use or handle flammable liquids to fall under that specific regulation.[1] While some industrial plants may use flammable liquids incidental to the principal business or in unit physical operations,

[1] The actual text reads: "This paragraph shall apply to those industrial plants where:
(a) The use of flammable liquids is incidental to the principal business, or
(b) 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. This paragraph shall not apply to chemical plants, refineries or distilleries." 29 C.F.R. § 1910.106(e)."

this does not mean that everything that uses flammable liquids incidental to the principal business or in unit physical operations is an industrial plant. Despite providing no analysis, the Taxpayer again cites 42 U.S.C.A. § 6326. As stated in the Department's Memo, the Taxpayer has no production in South Carolina, so even if the Federal definition of "industrial plant" in 42 U.S.C.A. § 6326 controlled, the Taxpayer fails to meet it.

When The Taxpayer looks to South Carolina law, it wants to focus the Court's attention on the word "industrial." Interestingly, not all the claimed assets are even in areas zoned for industrial use. *See* Colonial Depo. pp. 59:16-20. The two South Carolina statutes cited by the Taxpayer, 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). Just as easily, the Department could look to the definition of "industrial customer" in S.C. Code Ann. § 12-23-20(8) (2014) as persons "engaged in the business of manufacture, fabrication, processing, and related work," in order to support its argument that the Taxpayer is not an industrial plant. While the General Assembly may intentionally use expansive language in statutes aimed at economic development and definitions of pollution, such broad language is generally avoided in tax exemption statutes where exemptions are narrowly construed.

Again focusing on the word industrial, the Taxpayer points to South Carolina Department of Health and Environmental Control (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. Further, DHEC does not determine whether a taxpayer is an industrial plant for purposes of the Pollution Control Exemption.

VII. The case law cited by the Taxpayer is unauthoritative and unpersuasive.

The Taxpayer cites no South Carolina cases to support its broad definition of "industrial plant." The only Supreme Court of South Carolina case on the Pollution Control Exemption concerns a greige mill—i.e. a textile factory—as the taxpayer. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). None of the cases cited by the Taxpayer even relate to Refined Petroleum Product pipelines or property tax exemptions.

The Florida case cited by the Taxpayer considered a food distribution center and commercial laundry facility in the context of industrial development revenue bonds. *State v. Jacksonville Port Auth.*, 305 So. 2d 166 (Fla. 1974). In reaching its decision, the court concluded from reading the Florida statute at issue that "the legislature intended the phrase to be liberally construed." *Id.* at 168. Conversely, tax exemption statutes are not liberally construed in South Carolina. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920).

The North Carolina case cited by the Taxpayer held that the size of an operation does not qualify it as an industrial plant. *Richards v. Jolley*, 208 N.C. App. 436, 441, 703 S.E.2d 467, 470 (2010). This contradicts the Taxpayer's emphasis on its own size and complexity to show it is an industrial plant. Further, the taxpayer in the North Carolina case was a pallet *manufacturer*. (emphasis added) *Id.* at 440.

The sales tax cases cited by the Taxpayer regard natural gas systems in Minnesota and Alabama. *See Great Lakes Gas Transmission L.P. v. Comm'r of Revenue*, 638 N.W.2d 435 (Minn. 2002); *S. Nat. Gas Co. v. State*, 261 Ala. 222, 73 So. 2d 731 (1953); and *State v. Alabama Gas Corp.*, 258 Ala. 356, 62 So. 2d 454 (1952). In *Great Lakes Gas*, the statute at issue was repealed and does not use the term industrial plant. The purpose of that statute was to avoid double taxation, and the record contained testimony that the taxpayer was refining. *Id.* at 440-441. In *S. Nat. Gas Co.*, the taxpayer also refined. *S. Nat. Gas Co. v. State*, at 226. Undisputedly, the Taxpayer is not a refiner and does no refining in South Carolina. (Colonial Depo. p. 126:22-25; p. 188:13-16). Additionally, the Taxpayer does not transport natural gas, which requires a completely different infrastructure from the Taxpayer's pipeline. As mentioned above, natural gas systems are more like utilities than transportation companies like the Taxpayer.

VIII. Revenue Ruling # 91-8 and Rev. Procedure #05-1 do not support the Taxpayer's position.

Revenue Ruling # 91-8 and Rev. Procedure #05-1 address the sales tax exemption provided by S.C. Code Ann. § 12-36-2120(17) in the context of manufacturers and wastewater treatment plants. The cited policy documents have nothing to do with the Pollution Control Exemption. Neither policy document defines "industrial plant," and Section 12-36-2120(17) contains no reference to an industrial plant. However, relevant here, Rev. Rul. #91-8 states,

> [A]s a general rule, tax exemption statutes are strictly construed against the taxpayer. Owen Industrial Products, Inc. v. Sharpe, 274 SC 193, 262 SE 2d 33 (1980), Hollingsworth on Wheels, Inc. v. Greenville County Treasurer et al, 276 SC 314, 278 SE 2d 340 (1981). This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. York County Fair Association v. SC Tax Commission, 249 SC 337, 154 SE 2d 361 (1967).

The Taxpayer can find no support for its liberal construction of the statutory term "industrial plant" in these policy documents.

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. Regardless of size or complexity, the Taxpayer is a transportation company, and all of its activities in South Carolina are transportation-related. Mere transportation of a product is not enough to constitute an industrial plant. 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 Taxpayer has not brought itself squarely within the parameters of the statute granting the exemption. 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. In short, the Taxpayer's pipeline is not an industrial plant, 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 denying the Petitioner's Motion for Summary Judgment and granting the Department's Motion for Summary Judgment.

{Signature on following page}

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Columbia, South Carolina
December 20, 2019

Exhibit 1

A. That's -- that's another kind of valve or containment valve, isolation valve.

Q. Okay. What other states besides Alabama?

A. Let's see. We -- we filed a very similar application in Virginia that's still pending and it was not as many assets. It was the floating roofs, pollution -- cathodic protection, and pipe coatings.

And it's -- they've approved the floating roofs and the other two are -- have been reviewed and found to be pollution control equipment, but they're pending how -- how to apply the -- trying to figure out which department applies the abatement.

Q. Okay.

A. Their structure's much different than South Carolina's. They have a water pollution control group and an air pollution control group and then they have a state control group. So we're working through that with them.

And then in other states, they weren't as similar. They were more -- Texas has a very defined list of assets that qualify. And I think we had three small items that we applied for there and received the exemption on.

A. We applied in Georgia and Georgia's statute is very strict, that all -- that assets have to be 100 percent for only the purpose of pollution control. And so they -- we have tried some of the same kind of valves and fittings and dikes and things and they denied all of that, so.

Q. Did you try cathodic protection?

A. No.

Q. Did you try pipe coatings?

A. No.

Q. Did you try automatic shut-off valves?

A. Not that I recall. I don't think it -- I think it was just a containment dike.

Q. Did you have those three different pieces of equipment, cathodic protection, pipe coatings, and --

A. We have those in every state.

Q. Okay. So why didn't you ..?

A. Well, again, it was a test filing to see how -- we did not think they would grant pollution control exemption and other pipelines had told me they had failed in the past. So we didn't go through a lot of length to create a complete list. That's why we went the test route, just to see how they would react to -- to

information, and we're still pending after we provided additional information, and we've been pending for a long time.

And New Jersey didn't deny or approve. They just refused to hear it. And I -- we've pushed them on that and they basically said, "We don't want to make a decision because you can appeal that." So I don't know how we -- what we do there. They -- New Jersey is New Jersey. It's very aggressive.

Q. With Tennessee and New Jersey, did the assets that you applied for, did those include cathodic protection, pipe coatings, and automatic shut-off valves?

A. I'm almost positive they were not cathodic protection or pipe coatings. There may have been some valves in those.

Q. Okay. Were there other states?

A. I'm thinking of the footprint we're in. Louisiana doesn't offer. Mississippi doesn't offer. We did not file in Maryland. Didn't file in Delaware, Pennsylvania, or New York. No, I think that's it.

Q. Okay. So I'll just go back through them just to make sure I'm clear. So in Alabama, you

like a 42-page list of assets that qualify.
Q. Okay. So in North Carolina, you applied for the emergency shut-off valves but not cathodic protection or pipe coatings; is that right?
A. That's what I -- in North Carolina, I think that's -- was the only thing that was approved was an emergency shut-off valve.
Q. Okay. Did you apply for --
A. It was some kind of valve. I don't remember if -- if that's what it was, that or a dike containment valve, but it's some kind of a valve that prevents spillage.
Q. Did you apply for cathodic protection and pipe coatings as --
A. No.
Q. Okay. Did not apply -- well, in Georgia, you did not apply for cathodic protection, pipe coatings, or automatic shut-off valves.
A. No.
Q. In New Jersey, you applied for automatic shut-off valves but not cathodic protection and pipe coatings.
A. Again, it was some kind of valves.
Q. Okay.
A. I'm not a hundred percent sure it was the

automatic shut-off valve.

Q. And those were not granted, those --

A. They've not been ruled upon at all.

Q. Those are pending, I guess; is that a fair way of describing it?

A. Pending forever is --

Q. Okay.

A. -- I think how I would say it, but yeah.

Q. Pending in perpetuity?

A. Yeah.

Q. Okay. And in Texas, those -- you only applied for the automatic shut-off valves, not cathodic protection and pipe coatings; is that right?

A. Those were not on the list, cathodic --

Q. In --

A. -- protection or pipe coatings.

Q. I'm sorry. In Tennessee.

A. Oh, Tennessee?

Q. I might have said Texas. I'm sorry. For Tennessee.

A. I know we did not apply for the -- the cathodic protection or shut -- or pipe coatings. And, again, it's -- it was some kind of valving and containment kind of equipment. I haven't

looked at those, either, for a good while, but it -- it was small assets like to control spillage.

Q. And were those denied or granted?

A. They were initially denied and we supplied some different -- some additional information and then that they have reopened the file and it's been pending now for about a year.

Q. Okay. Okay. Did you provide the South Carolina Department of Revenue with copies of any of those applications?

A. Not yet.

MR. MAYBANK: Applications to other states?

MR. ANTLEY: Yes.

MR. MAYBANK: He's asking you if you gave the South Carolina Department --

THE WITNESS: No. No, not yet. I think you've asked for them or I don't -- I think that's in that request.

BY MR. ANTLEY:

Q. Would you have copies of those applications --

A. Yes.

Q. -- in other states?

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.

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.

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.

We're able to change that to another product for -- for a customer.

A simple one would be premium gasoline. We could call that regular gasoline. We've -- historically, we've seen some issues many, many eons ago with heating oil where we would regrade between heating oil and diesel a lot. So, again, just --

Q. Okay.

A. -- whatever -- to meet our customer needs.

Q. All right. And that goes on in South Carolina today?

A. Correct. We can do that at any -- can and do that at any of our tank farm facilities.

Q. Okay. And, obviously, you charge for that?

A. We do.

Q. Okay. And then I think we're all confused. Do you blend in South Carolina? And if so, if you could explain the blending operations that go on in South Carolina as opposed to nationally.

A. Again, in South Carolina, we would be dealing with our transmix material and we would be blending that material at our -- at our pump stations. We would be blending that material back actually into our main lines as product is

don't know, per se. I don't have an exact number or knowledge of exactly what's going on, but those services are available, and I do -- I do believe we have provided those in South Carolina.

Q. But let me make sure I'm clear. What I think I heard you say originally was that you have regraded higher, I'll say, octane products or higher grade product to lower grade products, but you are not actually changing the product that you have on hand.

You are simply -- instead of calling it 93-octane, the -- the owner of the product has said, "We want to call it 89-octane," and so that's what you're selling now or transporting. That's what you're transporting.

A. Yeah, we -- correct, and we may mix those products together.

Q. Okay. But you're not adding anything to make a lower grade product a higher grade product.

A. No, we don't typically do that, other than just handling the transmixes we've been talking -- talking about, the -- the products generated through our normal operations through our maintenance and things of that nature.

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.

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 RESPONSE TO TAXPAYER'S MOTION FOR SUMMARY JUDGMENT**

Intervenors Abbeville County, Anderson County, Greenville County, and York County (collectively, "Counties"), acting by and through their counsel, provide this response to Taxpayer Colonial Pipeline Company's ("Taxpayer") Motion for Summary Judgement, according to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP") and Rule 19 and Rue 68 of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC"), because no genuine issue of material fact exists between the parties and, as a matter of law, Taxpayer does not qualify for the exemption provided by South Carolina Code Annotated section 12-37-220(A)(8),[1] which is commonly known as the "Pollution Control Exemption."

[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).

INTRODUCTION

Counties join in and adopt the respective motions for summary judgment filed by the Department and Aiken County and Laurens County (collectively, "AL Counties"). Further, because many of the issues raised by Taxpayer have been addressed by the Department's, AL Counties', and Counties' respective motions for summary judgment, Counties provide a brief response to each of the points Taxpayer raises in its motion for summary judgment. Lastly, Counties note there is no dispute over whether summary judgment is an appropriate vehicle for resolving this contested case. Taxpayer, the Department, and all taxing entities involved have filed respective motions for summary judgment.

BRIEF RESPONSE

I. Resolving Statutory Ambiguity

Taxpayer misstates the appropriate standard by which this Court must determine whether Taxpayer qualifies for the Pollution Control Exemption.[2]

The South Carolina Supreme Court has unequivocally answered this question. Like the instant dispute, *TNS Mills, Inc. v. South Carolina Department of Revenue* involved a taxpayer claiming an exemption for certain pollution control property. Our Supreme Court held the "burden is on ***the claimant*** to prove ***their rights*** to an exemption by bringing themselves clearly within the conditions imposed by the statute," 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (emphasis added).

Further, our Supreme Court has explained that it will strictly construe tax exemption

[2] Despite Taxpayer's apparent disagreement with the appropriate standard for this Court's determining whether Taxpayer fits within the scope of the Pollution Control Exemption, at least once in Taxpayer's Memorandum of Law in Support of Taxpayer's Motion for Summary Judgment ("Taxpayer's Memo"), Taxpayer seemingly admits ambiguities are ***resolved against the taxpayer*** in taxing situations involving "a credit or [an] exemption." Taxpayer's Memo, p. 19).

statutes against the taxpayer. *See, e.g.*, *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) ("The language of a tax exemption statute must be given its plain, ordinary meaning and ***must be strictly construed against the claimed exemption***" (emphasis added).); *York County Fair Assoc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) (holding "[c]onstitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. ***He must clearly bring himself within the constitutional or statutory language upon which he relies***" (emphasis added) (internal quotations omitted)).

In *CFRE, LLC v. Greenville County Assessor*, our Supreme Court further explained how it construes tax exemption statutes. In analyzing whether the taxpayer was entitled to the residential tax assessment ratio, the Court explained:

> In this case, interlaced with these standard canons of statutory construction is our policy of ***strictly construing tax exemption statutes against the taxpayer***. 'This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It 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.'"

394 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (emphasis added) (quoting *Se. Kusan, Inc. v. S.C. Tax Comm'n,* 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)).

If this Court finds any uncertainty as to whether Taxpayer might fit within the confines of the Pollution Control Exemption, then this Court must find against the Taxpayer.

II. Department's Final Determination

Taxpayer argues the Department's rescinding the initial division grant of an exemption precludes this Court from reviewing *all* of Taxpayer's property to determine whether any of it meets the statutory requirements of the Pollution Control Exemption.

First, the Department always has the right to "amend" a division determination when

issuing a Department Determination. That is, the ***Department*** may adopt a division's determination, add, subtract, or determine a matter in a completely different manner–a division determination is, by definition, ***not*** a Department Determination.

Second, regardless of whether the Department had the right to "change its mind" (as Taxpayer seems to assert), Counties are not bound by any determination (whether division or Department). Through the contested case process, Counties have always had the right to challenge, and have always challenged, Taxpayer's claimed exemption of all of Taxpayer's property. *See generally* Consolidated Pre-Hearing Statement for Abbeville County, Anderson County, Greenville County, and York County, dated July 2, 2019 ("Counties' PHS"). Counties continue to contest Taxpayer is entitled to the Pollution Control Exemption on any of Taxpayer's property.

Finally, a contested case constitutes a *de novo* review by this Court of the parties' dispute. No party can preclude this Court, as the ultimate finder of fact and concluder of law, from exercising authority to determine whether any, all, or none, of Taxpayer's property is exempt.

III. Other States' Exemptions

Taxpayer suggests this Court should rely on whether other states have granted a "similar" exemption on "similar" property. Leaving aside Taxpayer's overzealous representation of what states have ***actually*** granted an exemption (versus how many times Taxpayer has been denied) and what equipment has ***actually*** been exempted (versus what property is not exempt), Taxpayer's reliance on other state's actions is misguided.

Tax structures and tax policy vastly differ from state to state. The rationale and historical underpinnings for each state's scheme differ. Constitutional and statutory language differ. Administrative interpretations differ. The political rationale for which taxes should or should not be imposed differ.

For example, Oklahoma employs a property tax on personal property even if that property is not used to generate income; Florida permits a property exemption for "farmers," which was so broadly worded to permit people who ***rented*** cows and placed them on commercial tracts to exempt the entire property while large areas were developed (Walt Disney World availed itself of this exemption); and New Hampshire has no sales tax or income tax, so that state's legislature allows local governments to rely almost exclusively on property taxes, which are nearly the highest in the United States.[3]

Absent an identical legislative, historical, structural, political, interpretative, and linguistic background, using one state's partial grant of an exemption on some portion of Taxpayer's property is unpersuasive, particularly in light of our Supreme Court's mandate strictly to construe exemption statutes in ***South Carolina*** (the only relevant state) against a taxpayer.[4]

IV. Massive Size and Amazingly Complex Operations

Taxpayer admits it operates a transportation company. At least 50 times in Taxpayer's Memo, Taxpayer uses the terms (or a derivative of the terms) transport, move, and pipeline to describe itself and its operations. Taxpayer is a transportation company that sometimes stores the materials it transports. ***Period.***

Notwithstanding these repeated admissions, Taxpayer seemingly suggests the size and complexity of Taxpayer's ***transportation*** operations justify Taxpayer's entitlement to the Pollution Control Exemption. Once again, Taxpayer is misguided.

Federal Express ("Fed Ex"), United Parcel Service ("UPS"), Norfolk Southern Railway

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[3] Counties recognize these tax anecdotes are absurd–that is precisely Counties' point. Without an ***identical*** tax scheme in each state in which Taxpayer operates, comparing one state with another (particularly exemptions) is just as absurd.

[4] Moreover, Taxpayer's operations vary from state to state. What activities Taxpayer performs in one state might satisfy the requirements of a similar exemption in that state, but Taxpayer might not perform those same activities in South Carolina. As the exemption claimant, Taxpayer, not Counties, bear the burden of establishing the identical nature of activities and the identical nature of the claimed exemption.

("NS"), CSX Transportation, and Maersk, for example, all operate complex transportation systems. Some of these companies even transport "dirty," industrial products like coal, oil, gas, and, hazardous materials, like manufactured and spent nuclear material. For example, through most of 2019, Fed Ex delivered an average of 6.2 million packages per day. On average, UPS delivered over 20.7 million packages and documents per day. Like Fed Ex, UPS operates worldwide with over 1800 facilities, over 123,000 package cars, vans, tractors, and motorcycles, and 255 owned aircraft with an additional 298 short-term leased or chartered aircraft, serving approximately 815 airports with 2320 daily flight segments. As of 2018, NS directly owned or operated approximately 35,600 miles of track in 22 states, using 30 rail yards, 54 intermodal yards, and 8 locomotive shops. NS owns or leases almost 61,500 pieces of rolling stock capable of carrying nearly 6.5 million tons.

According to Taxpayer's theory, because of the size and complexity of their operations and the nature of moving an industrial-type product, some or all of these other transportation companies entities would qualify for the Pollution Control Exemption, an absurd result clearly not intended by the General Assembly.

V. Definition of "Industrial Plant"

Taxpayer fails to cite to any (credible) source to aid this Court in determining what the General Assembly meant by the term "industrial plant" in the Pollution Control Exemption statute. Rather, Taxpayer "cites" to a search engine (not a source), and multiple "open source" websites.[5] Essentially, Taxpayer wants this Court to base state tax policy on what a random teenager in another part of the United States or somewhere else in the world might have typed on a website. *See, supra, Resolving Statutory Ambiguity.*

[5] Open source means anyone (even a party to this contested case) could add, delete, or amend a "definition."

Further, not one of the statutes, regulations, cases, or revenue rulings from federal sources, South Carolina, or other states defines the term "industrial plant." Rather, Taxpayer has attempted to torture various similar-looking words from completely different contexts in attempt to force them into portmanteau-like proof that would fit Taxpayer's narrative. *See, supra, Other States' Exemptions*.

VI. Taxpayer's Failing to Challenge DHEC

To qualify for the Pollution Control Exemption, Taxpayer must bring itself squarely within the statutory requirements by establishing each element. Taxpayer has failed to do so.

In Counties' PHS, Counties raised the issue of Taxpayer's failing to challenge the Department of Health and Environmental Control's ("DHEC") refusing to determine whether Taxpayer's property qualified as pollution control property. Rather, DHEC specifically pointed out its lack of authority to make that determination. Taxpayer never challenged DHEC's failing to make that determination. Further, to the extent any of DHEC's communications could be read as an affirmative determination that a portion of Taxpayer's property qualified as pollution control property, nothing in those communications provide a "**detailed listing**" of which property qualified. Again, Taxpayer never challenged DHEC's failing to provide that detailed listing.

Taxpayer failed to address these issues in Taxpayer's motion for summary judgment. As such, Taxpayer is not entitled to receive the Pollution Control Exemption.

CONCLUSION

For the reasons stated above, the Pollution Control Exemption is not available to any of Taxpayer's South Carolina assets, and this Court should deny Taxpayer's motion for summary judgement and grant Counties' Motion for Summary Judgment.

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Respectfully submitted,

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Greenville, South Carolina
December 23, 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 RESPONSE TO COLONIAL PIPELINE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

FILED
DEC 23 2019
SC ADMIN LAW COURT

Pursuant to the Court's Amended Consent Scheduling Order, Petitioners Aiken County and Laurens County (the "Counties"), by and through their undersigned counsel, hereby serve the following Response to Colonial Pipeline Company's ("Colonial") Motion for Summary Judgment ("Response").

ARGUMENT

Colonial's Motion for Summary Judgment ("Motion") should be denied, based on the following non-exclusive grounds, as well as the grounds asserted by the other Respondents (to the extent they are consistent with South Carolina law):

Colonial Both Misstates and Fails to Meet the Stringent Summary Judgment Standard for a Taxpayer Seeking an Exemption

1. As an initial matter, Colonial states the incorrect standard for analyzing this case. Colonial states that any ambiguities in the statute are to be resolved "against the government and in favor of the taxpayer." (Colonial MSJ, at p. 19) However, on the exact same page of its Motion, Colonial states that any ambiguity "especially in the case of general tax administration ***and not a credit or exemption***, must be resolved in favor of the taxpayer." (*Id.* (emphasis added)) This case involves a tax exemption, so the rules regarding interpretation of "general tax

administration" statutes do not apply. Rather, the rules regarding interpretation of tax exemption statutes apply, which Colonial expressly recognizes in its Motion as an exception to the more general statutory construction rules. Colonial bears the burden of proving that it is entitled to 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 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). This is the standard that the Court applies. The Taxpayer must bring itself squarely within the bounds of the Exemption and any ambiguity in the Exemption's language must be construed against the Taxpayer.

2. Further, Colonial's Motion fails to address every element of the Exemption[1] and, therefore, cannot be granted. In order to meet this stringent burden imposed by law, Colonial has to prove every element of the Exemption. A taxpayer's motion for summary judgment regarding an exemption cannot merely conclude that there is only one issue and ignore the other exemption elements. Rather, a taxpayer must show that there is no genuine issue as to any material fact regarding all the elements of the requested exemption.

3. Colonial's brief declares that "the sole issue is whether Petitioner's facilities constitute an 'industrial plant' in South Carolina, and thus are eligible for the [Exemption]." (Colonial MSJ, at p. 13.) This is something short of what the Taxpayer is required to show in

[1] Unless otherwise defined herein, the capitalized terms have the meaning set forth in Aiken's and Laurens' Counties Motion for Summary Judgment.

order to justify an offensive[2] motion for summary judgment. As a minimum, there are both legal and factual issues regarding whether the Property is pollution control property within the meaning of the Exemption. All of the counties involved in this matter have raised the issue of DHEC's non-responsive "response" impacting the pollution control designation for the property, and several portions of Colonial's 30(b)(6) Deposition Testimony raise a genuine fact issue regarding whether the Property is designed for pollution control, or whether it is primarily designed to protect the pipeline and the product traveling through the pipeline. (*See, e.g.*, Colonial 30(b)(6) Tr. at 65:7-14)[3]. Thus, Colonial's Motion for Summary Judgment must fail, as it has not, and cannot, show that the summary judgment standard is met as to every element of the Exemption.

The Taxpayer's Proposed Definitions of Industrial Plant are Not Helpful

4. Colonial spends a significant amount of space in its Motion positing different definitions of the terms "industrial" and "plant." These proposed definitions are inapposite and the Court should disregard them. First, certain of the "dictionary"[4] definitions that Colonial cites are circular and unhelpful. For instance, the Taxpayer cites *Webster's Online Dictionary's* take on the meaning of "industrial plant," stating: "Industrial plant – buildings for carrying on industrial labor." (Taxpayer MSJ at p. 14.) According to this definition, "industrial plant" is just where industrial labor happens. The Court does not need a long explanation to understand that

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[2] While a respondents' or defendants' motion for summary judgment is subject to the same standard under Rule 56, SCRCP, on a practical level a defending party that does not bear the burden of proof has a much easier task in seeking summary judgment. If a defending party can simply show that—as a matter of law—at least one element of a claim must fail, the defending party can qualify for summary judgment. This is not the case with a party that bears the burden of proving each and every element of its claims, such as Colonial must do in this case.

[3] All quoted portions of Colonial's 30(b)(6) Deposition are attached hereto as **Exhibit A**.

[4] The Counties object to any citation of Wikipedia. While generally helpful for answering trivia questions, settling intraoffice bets, and answering children's questions (*e.g.*, "Daddy, how hot is the Sun?"), Wikipedia is an open-source database that is not reliable authority.

this is not an instructive definition. All of the other proposed definitions suffer from the same defect. (*Id.*) When the General Assembly enacted the Exemption, it had a specific meaning and intent for the statute. As noted in the Counties' Motion for Summary Judgment, the Exemption language and Constitutional taxation scheme support a specific, particularized definition. Tax exemption statutes must be construed against the Taxpayer. Therefore, the Court cannot accept such general definitions, none of which are rooted in South Carolina law.

5. Second, the state and federal definitions cited by Colonial have no application here. Taxpayer cites a number of definitions from the Code of Federal Regulation ("CFR"). It should go without saying that the United States Government and the State of South Carolina have different functions, roles, and legislative motivations. Absent express direction from both the Federal Government and General Assembly of South Carolina that two statutes/regulations be read together, it is inappropriate to use Federal definitions to define South Carolina terms. For instance, Taxpayer cites 29 C.F.R. section 1910.106. However, this regulation was generated by the Occupational Safety and Health Administration ("OSHA"). Congress created OSHA "[t]o assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the [OSHA] Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes." Occupational Safety & Health Act of 1970, Pub. Law 91-596 (1970). There is absolutely no relationship between OSHA's purpose and the General Assembly's taxation scheme. OSHA's definitions are inapposite.

6. Similarly, Taxpayer cites to 42 U.S.C. section 6326(5). This section is part of Title 42, Chapter 77, which Congress enacted for the following specific purposes:

> (1) to grant specific authority to the President to fulfill obligations of the United States under the international energy program;
>
> (2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;
>
> . . . .
>
> (4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;
>
> (5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;
>
> . . . .
>
> (7) to provide a means for verification of energy data to assure the reliability of energy data; and
>
> (8) to conserve water by improving the water efficiency of certain plumbing products and appliances.

42 U.S.C. § 6201. None of these purposes are even remotely related to South Carolina taxation. As such, the referenced definition has no application in this case.

7. The Taxpayer's citation to unrelated South Carolina statutes is also unhelpful. The Taxpayer cites to "South Carolina's Pollution Control Act." (Colonial MSJ, at p. 15). At first blush, this citation at least appears to be somewhat closer to the mark. However, the cited definitions have nothing to do with the definition of "industrial plant." Rather, these appear to be cited to establish the general propositions that (1) pollution hurts the environment, and (2) "industrial waste" can take the form of a liquid, gas or solid. While there is not much the Counties can do to disagree with these assertions[5], it is unclear what relationship to the Exemption these references may have.

8. The Taxpayer's reference to the industrial revenue bond statute is also misplaced. The Taxpayer makes no attempt to tie the revenue bond definitions to the Exemption statute.

[5] Colonial appears to be arguing that "pollution pollutes." The Parties are likely on the same page in this respect.

There is no indication in the Motion of what relationship an economic development statute, with a specific statutory purpose, audience, and goal, has to do with a tax exemption statute. Put plainly, it is simply unfair to cherry pick definitions from other, unrelated statutes in order to cobble together a theory of what the Exemption means.

9. Finally, the Taxpayer cites to a number of out-of-jurisdiction cases. These cases are from Florida and North Carolina. There is no mention of the specific statutes at issue in these cases, nor is there any indication whatsoever that these cases have anything to do with the issue before this Court. The Exemption is not part of a "model code" or standardized state legislation where comparison of decisions construing the standardized legislation would be appropriate. The Exemption is more akin to a snowflake than a Christmas cookie created by a popular and widely disseminated cookie-cutter pattern. The Court should disregard these cases.

The Taxpayer has a Number of Permits. It does Not Matter

10. The Taxpayer, like many businesses, has a number of permits. In fact, the Taxpayer devotes nearly three pages to describing the permits, but does not appear to state why they are relevant to the inquiry before the Court. The cited permits undoubtedly show that Colonial operates in a heavily-regulated business. However, this is no different than a hospital, a garbage truck company, a railroad, or any of the other businesses in the United States that are required to get permits to function legally. None of these permits establish that the Taxpayer is entitled to the Exemption. None of these permits answer the question before the Court. As such, the Court should disregard the permits.

The Taxpayer Operates a Complex Business that Involves a Messy Product—this is Not the Standard for the Exemption

11. It seems unlikely that any of the Parties will argue that the Taxpayer does not operate a complex, technical transportation company. The Taxpayer takes great pains to describe

the Taxpayer's operations, operational challenges, and the general hazards of its activities. (Colonial MSJ, at pp. 8-12.) This explanation is interesting, but it does not prove the Taxpayer's entitlement to the Exemption. Many other transportation companies operate in analogous ways. Railroads, barges, and trucks transport Refined Petroleum Products. Other transportation companies have environmental permits. Other transportation companies take measure to make sure the Refined Petroleum Products they transport arrive safely and do not explode in transit. Railroads that transport nuclear waste and coal involve "dirty" products too, but they are not seeking the Exemption. Other than the fact that Colonial transports Refined Petroleum Products through a fixed pipeline system, there is no logical difference between Colonial and other transportation companies. Being involved in a "commercial business operation" is simply not enough to qualify for the Exemption.

The Taxpayer's Exemptions in Other States Should Not Influence the Court's Interpretation of the Exemption

12. The Taxpayer asserts that it has received a tax exemption for certain equipment in other jurisdictions. (Colonial MSJ, at p. 7.) The Taxpayer does not reference any of the specific statutory language for those exemptions, nor does it elaborate on why it thinks those exemptions are relevant. If it had, the Court would have found that the statutes in Alabama, Virginia and North Carolina are all very different than the Exemption statute before this Court. *Compare* S.C. Code Ann. 12-37-220(A)(8), *with* Ala. Code § 40-9-1; N.C. Gen. Stats. § 105-275; Va. Code Ann. § 58.1-3660(A). Further, the Taxpayer's record of receiving an exemption for its equipment in other states is far from pristine, and many states have concluded that the equipment does not comply with their specific exemption requirements. (*See, e.g.*, 30(b)(6) Dep. Tr. 28:4-14, 34:1-17, 39:2-15, 40:1-10.) The Court should, therefore, disregard what other states

have concluded with regard to wholly dissimilar statutes and property that is not before this Court.

CONCLUSION

The Taxpayer's Motion should be denied. The Counties' Motion for Summary Judgment should be granted. This result is mandated by South Carolina law.

Respectfully submitted,

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Attorneys for the Taxing Entities

December 23, 2019
Columbia, South Carolina

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
911 Spears Drive, Elgin, SC 29045
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percent pollution control.

A. Uh-huh (affirmatively responds).

Q. So -- and you didn't apply in that case because those assets were not considered a hundred percent pollution control; is that right?

A. No.

Q. So -- so just so I'm clear, so pipeline -- I'm sorry. Pipe coatings, cathodic protection, and automatic shut-off valves are not purely for pollution control or a hundred percent pollution control.

A. No, they serve a function for operating the pipeline, as well. But, yes, I guess I'd agree with that.

Q. Could you -- and if you can't, that's -- I understand, but could you assign a percentage to the amount of it that's for pollution control versus some other purpose?

A. I have no idea.

Q. Okay. What kind of pollution is it supposed to control? Is it air? Water? Noise? And I'm asking about all three. If they're different, let me know.

A. I think they're all for air and water. If you'll -- you know, the products we carry are

NEXSEN | PRUET

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

December 23, 2019

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

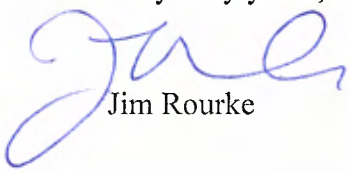
RE: Colonial Pipeline Company, Petitioner v. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County and York County, Intervenors
Docket No. 18-ALJ-17-0443-CC

Dear Judge Anderson:

Enclosed please find an original and one (1) copy of the Petitioner's Memorandum of Law in Opposition to Respondent's and Intervenors' Motion for Summary Judgment. Please return a file-stamped copy to me via our courier.

If there are any questions, or if the Court requires anything further, please let me know.

Very truly yours,



Jim Rourke

Enclosure

cc: Jason Luther, Esq. (via email)
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Michael E. Kozlarek, Esq. (via email)
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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 OPPOSITION TO RESPONDENT'S AND INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT**

All parties are in agreement that the issue before this Court is whether Petitioner's facilities constitute an "industrial plant." The Intervenor Counties also raise the issue of whether Petitioner's failure to challenge the Department of Health and Environmental Control's (DHEC) letter constitutes a defense in this matter. Because the Department and Intervenor Counties have asserted similar arguments, Petitioner submits this consolidated Memorandum in opposition to the Respondent's and Intervenors' Motions for Summary Judgment and in support of its own Motion for Summary Judgment.

A. THE PHRASE "INDUSTRIAL PLANT" IS NOT LIMITED TO MANUFACTURERS

1. Respondent Selectively Chose an Alternative Definition of "Plant" from the *Merriam-Webster Dictionary*.

Citing the lack of a statutory definition of "industrial plant," Respondent argues a "standard definition" of "plant" is found in the *Merriam-Webster Dictionary* as: "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." However, Respondent overlooks the fact that the definition it cites is actually an *alternative definition* of the term—definition 2.b. *See* Exhibit A. The first, and therefore primary, relevant definition of "plant" from the *Merriam-Webster Dictionary* (definition 2.a) is: "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." *See Merriam-Webster* (December 18, 2019, 1:17 PM), https://merriam-webster.com/dictionary/plant. This primary definition does not have a manufacturing component, and merely requires a trade or business that is industrial in nature. Therefore, Respondent's insistence that a plant must contain a manufacturing operation is inconsistent with *Merriam-Webster*'s definition of "plant." As quoted in Petitioner's Memorandum in Support of its Motion for Summary Judgment, Wikipedia states that "[i]ndustrial plant should not be confused with 'manufacturing plant' in the sense of a 'factory,'" and the Free Dictionary gives as an example of "industrial plant" a "gas system – facility (plant and equipment) for providing natural-gas service."

2. Respondent Conflates the Sales Tax and Property Tax Pollution Control Exemptions.

The Memorandum of Intervenor Abbeville, et al. Counties (at p. 13) argues that "the term 'industrial plant' appears to be similar to (if not synonymous with) the term 'manufacturing.'" As cited above, the Department takes a similar tack. However, by imposing a manufacturing requirement on the property tax pollution control exemption, Respondent treats that exemption identically to the sales tax pollution control exemption, even though the exemptions have vastly different language. Section 21-36-2120(17) exempts from sales tax pollution control machines "used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale." By contrast, the General Assembly chose to limit the property tax pollution control exemption to "all facilities or equipment" of "industrial

plants...." If the General Assembly had wished to limit the property tax pollution control exemption to manufacturers, then it certainly knows how to do so—i.e., by mirroring the limitations found in the sales tax exemption. Inferring a manufacturing requirement from the property tax pollution control exemption appears misplaced, in light of the sales tax exemption language.

3. Respondent Improperly Embeds a Manufacturing Requirement into the Definition of "Plant."

Respondent uses the alternative *Merriam-Webster Dictionary* definition cited above to conclude that "[t]herefore, an industrial plant is a factory or workshop for the manufacture of a particular product of or relating to industry." Respondent's Memorandum at p. 12. However, in addition to failing to acknowledging the primary definition of "plant" in this context, Respondent ignores the multiple times the term "plant" is used in South Carolina tax regulations in the non-manufacturing context.

For example, regulations extend the sales tax machine exemption to "(h) Pipe, valves, fittings, etc., regardless of size, which are purchased by paper manufacturers specifically for use in drinking water lines, fire protection lines, or for transmission of water from source to *water treatment plant*, or from *water treatment plant itself*" (emphasis added). A facility that treats water cannot be construed as a manufacturer in the traditional sense, as it does not change the physical nature of the output – instead, it simply cleans, treats, and distributes or transmits water.

Additionally, Chapter 28 of Title 12 imposes user fees on gasoline and diesel fuel. This fee can be imposed at the "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." Clearly, in the context of these user fees, the Department interprets a "plant" to include a storage and distribution facility without a manufacturing component.

Based on the foregoing, if the only requirement for a "plant" is the treatment and output of a product, Petitioner surely meets that standard. As discussed in its Memorandum in Support of Petitioner's Motion for Summary Judgment, Petitioner processes transmix back to its component parts (Petitioner's Memorandum at p. 9), injects and blends product (*Id.*), injects Drag Resisting Agents to facilitate the flow of the product (*Id.*), and purifies the product by removing "sting" water that accumulates in the product (*Id.*).

4. Embedding a Manufacturing Requirement into the Definition of "Plant" Violates Canons of Statutory Construction.

If a "plant" must contain manufacturing activity, then the phrase "manufacturing plant" is redundant. Thus, reading a manufacturing requirement into the definition of the term "plant" essentially renders the modifier "manufacturing" meaningless. Canons of statutory construction require this Court to give effect to every word of a statute or regulation, rather than adopting an interpretation that renders a portion meaningless. *Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (citing *McClenaghan v. McClenaghan*, 20 S.C. Eq. (1 Strob. Eq.) 295 (1847) ("[I]f the clause means anything, and we are obliged to find some meaning for it, on the maxim *ut res magis valeat quam pereat*")) ("[W]e should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless.")

Pursuant to the well-accepted canons of statutory construction, all words in a statute have meaning. *Gordon v. Phillips Utils., Inc.*, 362 S.C. 403, 608 S.E.2d 425 (2005) (citing *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964)) ("[T]he legislature intends to accomplish something by its choice of words, and would not do a futile thing."); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196 (2002) (citing *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)) ("The Court must

presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.").; *State v. Sweat*, 379 S.C. 367, 377, 655 S.E.2d 645, 651 (Ct. App. 2008) (citing *Proctor v. Dep't of Health and Envtl. Control*, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct. App. 2006)) ("When interpreting a statute, courts must presume the legislature did not intend to do a futile act.); (emphasis added). As a result, "[t]his court must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *Montgomery v. Spartanburg Cnty. Assessor*, 419 S.C. 77, 81, 795 S.E.2d 866, 868 (Ct. App. 2016) (quoting CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting Sweat, 379 S.C. at 377, 665 S.E.2d at 651) (internal quotation marks omitted).

If an operation must manufacture a product in order to be considered a "plant," then any use of the modifier "manufacturer" or "manufacturing" in conjunction with the term "plant" would be duplicative and superfluous. For example, § 12-43-220(a)(3) provides that "[r]eal property owned by or leased to a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a) if the office building is not located on the premises of or contiguous to the *plant site of the manufacturer*" (emphasis added). "Plant site" is further defined in S.C. Regs. § 117.1700.7 (2012) as land contiguous "to the overall manufacturing operation." If the term "plant" has a manufacturing requirement embedded in the term, then there would be no need to use the modifier "manufacturer" in § 12-43-220(a)(3) or "manufacturing" in S.C. Regs. § 117-1700.7 because each of those subsections already uses the term "plant." So if the term "plant" must necessarily refer to a manufacturing operation, there would be no need to clarify that the plant is owned or operated by a manufacturer.

As another example, S.C. Regs. § 117-1820 addresses "how *manufacturing plants* that are subject to the Industrial Revenue Bond Act are to be treated" (emphasis added). If the phrase "plant" requires a manufacturing component, then the phrase "manufacturing plant" again is redundant.

5. In Other Contexts, the Term "Industrial Plant" Includes Non-Manufacturing Operations.

The pollution control exemption allows the Department to defer to DHEC to "investigate" property, so DHEC guidance regarding the definition of "industrial plant" should carry significant weight in this matter. DHEC issued as final the Industrial Stormwater General Permit (SCR000000) on September 1, 2016.[1] In the permit, DHEC provides that in order to be eligible for discharge, the entity must "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...." See excerpts from Permit attached as Exhibit B.[2] The guidance goes on to define "storm water discharge associated with industrial activity" as:

> 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

[1] See https://www.scdhec.gov/environment/water-quality/stormwater/industrial-activitiesassociated-stormwater-discharges.

[2] Permit is also available in full at https://www.scdhec.gov/sites/default/files/docs/Environment/docs/stormwater/2016%20FINAL%20IGP.pdf.

> 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 from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities include those that are federally, State, or municipally owned or operated that meet the description of the facilities listed in S.C. Reg. 61-9.122.26(b)(14). The term also includes those facilities designated under the provisions of S.C. Reg. 61-9. 122.26(a)(1)(v).

See id. (emphasis added).

In other words, DHEC has identified a number of "primary industrial activities" which are listed in Appendix D of its Stormwater General Permit. These "primary industrial activities" can generate "storm water discharges associated with industrial activities" which, by definition, occur at an "industrial plant." This means that all of the "primary industrial activities" described in Appendix D must occur at "industrial plants"—otherwise, the discharge would not meet the definition outlined in the permit.

DHEC's designation of industrial activities described in Appendix D (also attached under Exhibit B) is vital to this matter, because it identifies the types of activities that, by definition, occur at industrial plants. Appendix D lists 30 eligible sectors of "industrial activity," which include such non-manufacturers as food processors, printers, miners, quarries, and recyclers, as well as *transportation and warehousing activities.* These industrial activities are far more expansive than the restrictions suggested by Respondent. Most notably, Sector P includes Petroleum Bulk Storage Stations and Terminals, which Petitioner owns and operates. *See* 30(b)(6) Deposition Transcript of Colonial Pipeline (hereinafter "30(b)(6) Deposition") at pp.

221-223. Additionally, the definition of "storm water discharge associated with industrial activity" includes Notably, the term specifically includes "storage areas (including tank farms)" which comprise a substantial portion of Petitioner's holdings in South Carolina.

Based on the foregoing, Respondent's attempt to limit the definition of "industrial plant" to manufacturers is inconsistent with DHEC's own guidance in this area. The plain language of the exemption acknowledges DHEC's central role in the administration of this exemption, which means its guidance should be given particular deference in this matter. Regardless of whether Petitioner currently holds a DHEC permit, DHEC has expressly expanded the definition of "industrial plant" to include non-manufacturing activities such as those of the Petitioner.

6. Use of the Phrase "or Company" within the Pollution Control Exemption Provides Supports Petitioner's Contention.

The exemption at issue provides:

> (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.

(emphasis added). After analyzing the plain language of the exemption, Respondent concludes that "the only other category of companies that likely would qualify for the exemption [beyond manufacturers] is utilities." *Respondent's Memorandum at p. 13.*

Petitioner believes Respondent's interpretation of the term "company" to refer solely to utilities is illogical and inconsistent with the plain language of the exemption. Instead, the Legislature's use of the phrase "or company" greatly expands the types of entities eligible for the

exemption beyond manufacturers. In fact, the General Assembly could hardly have used a broader, more all-encompassing phrase in this instance than "or company."

In the property tax context, the General Assembly has demonstrated it is capable of combining the terms "manufacturers" and "utilities", most notably in § 12-43-220(a)(1), which provides: "[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 must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property" (emphasis added). Moreover, in the sales tax context, when the General Assembly sought to refer to both manufacturers and electric utilities, it did not use the phrase "manufacturer or company," but instead referred to "manufacturers [and] *electric power* companies...." § 12-36-2120(9).[3] The term "company" used in the pollution control exemption does not have a similar modifier, which compels the conclusion that the term is designed to be construed broadly to apply to any type of company found to operate an "industrial plant."

7. Relying Solely on the Definition of "Plant Site" is Unavailing.

Respondent relies on the definition of "plant site" found in S.C. Regs. § 117.1700.7 (2012) as proof that a "plant" must have a manufacturing component. However, the term "plant site" is used only once in the entirety of Title 12. Section 12-43-220(a)(3) provides a reduced assessment ratio for office buildings owned by manufacturers but not contiguous with the manufacturer's "plant site." The statute provides:

> (3) Real property owned by or leased to a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a) if the office building is not located on the premises of or contiguous to the *plant site of the manufacturer*.

[3] Note § 12-36-2120(9) provides an exemption for fuel "sold to manufacturers, electric power companies, and *transportation companies*...." This construction makes clear a "company" could be reasonably construed to mean, e.g., electric power companies, transportation companies, and pipeline companies.

So in defining the term "plant site," the regulation at issue places it in the context of the only statute in which it appears—that is, a limited property tax exemption for a manufacturer concurrently operating an office building. That is why the regulation defines a "plant site" as land contiguous "to the overall manufacturing operation." As noted above, in other contexts, the term "plant" is used numerous times to describe non-manufacturing operations.

B. PETITIONER'S FAILURE TO CONTEST DHEC

The Intervenor Counties (but not Respondent) argue that Petitioner's failure to contest DHEC's actions constitute a defense to this action. Aiken County argues the "taxpayer never challenged DHEC's failure to make a determination," and that Petitioner "should have disputed DHEC's decision" and "availed itself of any administrative remedies" available under the South Carolina Administrative Procedures Act (Aiken County Memorandum at p. 15) Abbeville County et al. similarly argue that Petitioner never challenged DHEC's determination that it lacked authority to make a determination. (Abbeville County Memorandum at pp. 8-9.)

In fact, DHEC made a determination that all three items (pipeline cathodic protection, pipeline coatings and automatic shutoff valves) constituted pollution control. DHEC's letter to the Department (attached as Exhibit B in Petitioner's Motion for Summary Judgment) states that "each of these technologies would be characterized by [DHEC] as pollution control equipment," and "the Department believes the listed technologies can be fairly described as pollution control equipment." Petitioner obviously saw no need to dispute such a finding.

In any event, Petitioner (and for that matter the Department) have no administrative remedies to contest DHEC's determinations with respect to Pollution Control Exemption matters.

Somewhat on point is *Duke Energy Corporation v. Department of Revenue*, 12-ALJ-17-0031, which was a sales tax pollution control exemption case. The taxpayer was regulated by the Nuclear Regulatory Commission ("NRC"), not DHEC. The Department of Revenue asserted Duke's failure to comply with section 12-36-2120(17) which requires that the pollution control machine must be "necessary to comply with an Order of an agency of the United States or of this state," and S.C. Regs. § 117-302.6, which requires a certified statement from the ordering agency. Duke admittedly had no such Order or Certified Statement from the NRC. This Court held that the NRC regulations which required the equipment at issue sufficed. Petitioner has cited in its Memorandum (p.7) the federal law requirements for the equipment for which Respondent denied the exemption.

C. STATUTORY CONSTRUCTION

1. Legislative Intent

While Respondent notes Petitioner's burden with respect to tax exemption statutes, "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); see *Ray Bell Const. Co. v. Sch. Dist. of Greenville Cty.*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) ("All rules of statutory construction are subservient to the one that the 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**." (emphasis original)). When interpreting a statute, "[t]he Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." *Harris v. Anderson Cty. Sheriffs Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent

beyond the borders of the act itself." *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).

In this case, while there is no clear explanation regarding the legislative intent supporting the adoption of the property tax pollution control exemption, it is reasonable to assume the exemption is designed both (1) to incentivize the acquisition of pollution abatement equipment, thereby limiting the possibility of contamination, thereby protecting and promoting the health, welfare and safety of the citizens of this State and its habitat and wildlife, with the resultant higher level of employment and economic activity and stability and (2) to serve as an economic development incentive for employers to do business in South Carolina.

While Petitioner is not aware of South Carolina courts addressing the legislative intent behind pollution control exemptions, other courts have cited such intent with approval. For example, one Illinois court described:

> the public policy of [Illinois] that 'pollution control facilities' be valued for property tax purposes in relation to their 'economic productivity to their owners.' That court felt that these bills indicated a legislative intent to encourage business and industry to make expenditures to comply with the environmental requirements of government agencies. Since the evidence is undisputed that plaintiff's reason for installing the gas fired boilers here was to meet these requirements, and since plaintiff received no economic benefit in making the installation, the circuit court ruled that plaintiff was entitled to the exemption....

Illinois Cereal Mills, Inc. v. Dep't of Rev., 37 Ill.App.3d 379 (4th District 1976). Similarly, one source noted that in response to similar proposed exemptions, "...industry representatives further testified that such investments do not increase productivity, efficiency, cost control or profits, by benefit *solely* the general public. Therefore, they argued, because pollution investment serves *only* a social purpose, the public should share the investment cost..." Kirk Junker, *Tax Exemption for Pollution Control Devices in Pennsylvania*, 34 Duq. L. Rev. 503, 511 (1996)

(citations omitted). In other words, the exemptions were created as an incentive to purchase equipment that may not otherwise increase a business's economic output, but that is required by a regulatory agency and protects the environment, thereby benefitting the general public.

Additionally, in *Appeal of Town of Bethlehem*, 911 A.2d 1 (N.H. 2006), the Supreme Court of New Hampshire noted the "clear intent" of a similar pollution control exemption statute to "create tax incentives for industry to construct pollution control facilities," finding "protection against water and air pollution as a matter of legislative and statewide interest." *Id.* at 8 (citing *Appeal of City of Berlin*, 553 A.2d 758 (1988)). *See also* Meghan E. O'Neill, *Corporate Welfare?: State Tax Incentives for Air Pollution Control*, 35 Conn. L. Rev. 1717, 1744 ("[T]he legislature recognized the increased anxiety of concerned citizens about damage to the environment caused by the disposal of industrial wasted and thermal discharge....Arkansas passed the cited exemption to the use tax laws in an effort to encourage industries to make substantial capital investments in order to prevent and reduce air and water pollution and protect the overall environment." (citations omitted)).

In this case, the equipment at issue surely is consistent with these descriptions of legislative intent. It is undisputed that Petitioner is required to own and operate the property at issue to comply with federal guidelines.[4] Without doubt, this equipment protects against air and water pollution, which are matters of utmost interest and importance in South Carolina as well. Thus, this Court should interpret the exemption to comport with this legislative intent.

With respect to economic development, the law is well settled that economic development statutes warrant special consideration so that their intent will be fulfilled. *See Arizona v. Capitol Castings, Inc.*, 88 P.3d 159, 160 (Ariz. 2004) (concluding machinery exempt

[4] Through the entirety of this matter, Respondent has never disputed that Petitioner has met the requirement that the exemption be "required by the state or federal government and used in the conduct of their business."

from tax by emphasizing the purpose of the tax exemptions was to "stimulate business investment in Arizona in order to improve the state's economy and increase revenue from other taxes" and that the exemptions "should further, not frustrate, the policy of encouraging investment and spurring economic development"). *See also Sharp v. Tyler Pipe Indus., Inc.,* 919 S.W.2d 157, 161 (Ct. App. Tex. 1996) (terms "liberal" and "strict" as applied to statutory construction can be misleading where other principles are at work; construing tax exemption statutes too narrowly could defeat legislative purpose of economic development); *Idaho State Tax Comm'n v. Haener Bros.,* 828 P.2d 304, 307 (Idaho 1992); and *Amoena Corp. v. Strickland,* 283 S.E.2d 894, 897 (Ga. 1981) (construing the Georgia sales tax exemption for machinery and equipment in which the Georgia Supreme Court stated that "it is true that tax exemptions are to be strictly construed against the taxpayer and doubts resolved in favor of taxability. However, this should not impinge on the other rule that a statute is to be construed in accordance with its real intent and meaning and not so strictly as to defeat the legislative purpose." 283 S.E.2d at 897.)

Importantly, Respondent and South Carolina courts have followed this expansive view as to interpretation of economic development statutes. Indeed, in its Technical Advice Memorandum (TAM) 89-14, the Department stated this rule of statutory construction with regard to the Infrastructure Tax Credit:

> It is ambiguous whether the language "any one infrastructure project" means that only one project § qualify for the credit per year or whether the credit is merely limited to 50% or $10,000 of expenses paid. Many South Carolina cases have held that tax statutes are not to be extended beyond the clear import of their language, *and any substantial doubt as to its meaning is to be resolved in favor of the taxpayer.* (*Southeastern Fire Ins. Co. v. South Carolina Tax Commission,* 253 S.C. 407, 171 S.E.2d 355 (1969); *Deering Milliken, Inc. v. South Carolina Tax Commission,* 257 S.C. 185, 184 S.E.2d 711 (1971)). *It therefore appears that the appropriate interpretation of this statute should be the one most favorable*

> *to the taxpayer.* Section 12-7-1250(A) should thus be construed to mean that a taxpayer is not limited to the number of projects which will qualify for the credit.

S.C. TAM 89-14 (emphasis added).

The Department took a similar position in S.C. Private Letter Ruling (PLR) 95-3 regarding a similar Title 25 economic development incentive, the Job Tax Credit Act. At that time, as noted in the PLR, the Job Tax Credit was limited to a "'[c]orporation' [which] means a business entity which is subject to South Carolina taxes as contained in Section 12-7-230 and Chapter 7, Title 38. (Emphasis in original.)."

As an S corporation, the taxpayer "paid no corporate level taxes." *Id.* The PLR nevertheless held the taxpayer was entitled to the credit, stating:

> In reviewing Code Section 12-7-1220 in its entirety, the legislature intended the job tax credit to be available as an economic incentive to encourage businesses subject to corporate level taxes to expand work forces in South Carolina. Although it is rare that S corporations are subject to corporate level taxes and it is rare that S corporations convert to C corporations, S corporations may earn and carryover a job tax credit.

Id.

One clear objective of the pollution control exemption is to encourage and reward investment in South Carolina. By routing its pipeline and supporting operations in and through South Carolina, Petitioner has invested millions of dollars in the State and employs a number of people in the state, both as employees and independent contractors. Thus, the statute should be construed in a way that furthers its objectives, rewards taxpayers for making beneficial investments, and continues to encourage investments in the State. Respondent's narrow view of notice frustrates the public purpose behind the exemption and would punish businesses like Petitioner's by denying substantial economic development incentives.

2. The Department's Interpretation is Not Entitled to any Deference

Respondent argues the construction of a statue by the Agency charged with administration will be accorded the most respectful consideration (Respondent's Memorandum at p. 9) "[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). Additionally, the agency's interpretation must be a "'long-standing" one. *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."). However, if "plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).8 The Court will also reject the agency's interpretation if "it is arbitrary, capricious, or manifestly contrary to the statute." *Kiawah Dev. Partners, II*, 411 S.C. at 34-35, 766 S.E.2d at 718 (internal quotation marks and citation omitted).

In that vein, it is worth repeating that the Department has twice – TWICE – ruled that Colonial is an industrial plant. By letter dated August 15, 2017, (*see* Stipulation of Facts, ¶ 16) and on July 27, 2018 (Stipulation of Facts, ¶ 25) the Department's Government Services Division granted the majority of Petitioner's Pollution Control Exemption Requests for years 2017 and 2018. By definition, the Department ruled that Colonial was an "industrial plant." Therefore, because Respondent has previously granted the pollution control exemption to Petitioner *in this very audit*, Stipulation of Facts, ¶31, Respondent's change in position is both

new and unpublicized. Moreover, it is notable that the Department has not cited to a single written publication or policy document so limiting the phrase "industrial plant."

D. CONCLUSION

Based on the foregoing, Petitioner requests this court grant its Motion for Summary Judgment in full, thereby applying the pollution control exemption available under § 12-37-220(A)(8) to the disputed property at issue.

Respectfully submitted,

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Attorneys for Petitioner Colonial Pipeline Company

Date: December 23, 2019

EXHIBIT A

MERRIAM-WEBSTER DEFINITION OF "PLANT"

SINCE 1828

\ 'plant \
planted; planting; plants

Definition of *plant*

(Entry 1 of 2)

transitive verb

1a : to put or set in the ground for growth plant seeds
b : to set or sow with seeds or plants
c : implant
2a : establish, institute
b : colonize, settle
c : to place (animals) in a new locality
d : to stock with animals
3a : to place in or on the ground
b : to place firmly or forcibly planted a hard blow on his chin
4a : conceal
b : to covertly place for discovery, publication, or dissemination

intransitive verb

: to plant something

plant

noun

Definition of *plant* (Entry 2 of 2)

1a : a young tree, vine, shrub, or herb planted or suitable for planting
b : any of a kingdom (Plantae) of multicellular eukaryotic mostly photosynthetic organisms typically lacking locomotive movement or obvious nervous or sensory organs and possessing cellulose cell walls
2a : 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
3 : an act of planting
4 : something or someone planted

Other Words from *plant* Synonyms More Example Sentences Learn More about *plant*

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Other Words from *plant*

Verb

plantable \ 'plan-tə-bəl \ adjective

Noun

plantlike \ 'plant-ˌlīk \ adjective

Synonyms for *plant*

Synonyms: Verb

- drill,
- put in,
- seed,
- sow

Synonyms: Noun

- factory,
- manufactory,
- mill,
- shop,
- works,
- workshop

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Examples of *plant* in a Sentence

Verb I *planted* corn this year. I *planted* the border *with* roses.

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Recent Examples on the Web: Verb Seeds of Love arranges tree-*planting* experiences on request and also hosts weekly events. — Sunny Fitzgerald, *Washington Post*, "The world needs trees more than ever. Here's how to plant some on your travels.," 5 Dec. 2019 Countries such as Nigeria and Brazil have already pledged large-scale tree-*planting* efforts to fight climate change. — Kate S. Petersen, *Ars Technica*, "Massachusetts bill would block logging, let state forests keep their carbon," 26 Nov. 2019

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First Known Use of *plant*

Verb

before the 12th century, in the meaning defined at transitive sense 1a

Noun

before the 12th century, in the meaning defined at sense 1a

History and Etymology for *plant*

Verb

Middle English, from Old English *plantian*, from Late Latin *plantare* to plant, fix in place, from Latin, to plant, from *planta* plant

Noun

Middle English *plante*, from Old English, from Latin *planta*

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Time Traveler for *plant*

The first known use of *plant* was before the 12th century

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Is That Plant 'Perennial' or 'Annual'?

Is That Plant 'Perennial' or 'Annual'?

We get asked at least once a year

Dictionary Entries near *plant*

planospore

plan position indicator

plansifter

plant

planta

plantad

plantage

See More Nearby Entries

Phrases Related to *plant*

climbing plant

grow (plants) from seed

plant/sow a seed of

plant/sow the seeds of

pot plant

sewage plant

sewage treatment plant

Statistics for *plant*

Last Updated

8 Dec 2019

Look-up Popularity

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More Definitions for *plant*

plant

verb

English Language Learners Definition of *plant*

(Entry 1 of 2)

: to put (a seed, flower, or plant) in the ground to grow
: to fill (an area) *with* seeds, flowers, or plants
: to put or place (something) in the ground

plant

noun

English Language Learners Definition of *plant* (Entry 2 of 2)

: a living thing that grows in the ground, usually has leaves or flowers, and needs sun and water to survive
: a building or factory where something is made
US : the land, buildings, and equipment of an organization

See the full definition for *plant* in the English Language Learners Dictionary

plant

verb

\ 'plant \

planted; planting

Kids Definition of *plant*

(Entry 1 of 2)

1 : to place in the ground to grow We'll *plant* seeds in the spring.
2 : to fill with seeds or plants *plant* a garden
3 : to set firmly in the ground They *planted* posts for a fence.
4 : to place firmly He *planted* himself on the couch.
5 : to introduce as a thought or idea
6 : to place (someone or something) secretly … the teacher thought that he was *planted* in the audience to pep up the discussion …— E. L. Konigsburg, *Mrs. Basil E. Frankweiler*

plant

noun

Kids Definition of *plant* (Entry 2 of 2)

1 : any member of the kingdom of many-celled mostly photosynthetic living things (as mosses, ferns, grasses, and trees) that lack a nervous system or sense organs and the ability to move about and that have cellulose cell walls
2 : the buildings and equipment of an industrial business or an institution a power *plant*

Other Words from *plant*

plantlike \ 'plant-ˌlīk \ adjective

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Thesaurus: All synonyms and antonyms for *plant*

Rhyming Dictionary: Words that rhyme with *plant*

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Nglish: Translation of *plant* for Spanish Speakers

Britannica English: Translation of *plant* for Arabic Speakers

Comments on *plant*

- VISUAL DICTIONARY

- SCRABBLE® WORD FINDER
- MERRIAM-WEBSTER'S UNABRIDGED DICTIONARY
- BRITANNICA ENGLISH - ARABIC TRANSLATION
- NGLISH - SPANISH-ENGLISH TRANSLATION

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EXHIBIT B

EXCERPTS FROM DHEC INDUSTRIAL STORMWATER GENERAL PERMIT (SCR000000) ISSUED ON SEPTEMBER 1, 2016

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, 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**

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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**
C3	2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations
C4	2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass
C5	2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; in vitro and in vivo Diagnostic Substances; and Biological Products, Except Diagnostic Substances
	2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products
	2861-2869	Industrial Organic Chemicals
	2891-2899	Miscellaneous Chemical Products
	3952 (limited to list of inks and paints)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors
	2911	Petroleum Refining
SECTOR D: ASPHALT PAVING AND ROOFING MATERIALS AND LUBRICANTS		
D1	2951, 2952	Asphalt Paving and Roofing Materials
D2	2992, 2999	Miscellaneous Products of Petroleum and Coal
SECTOR E: GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCTS		
E1	3251-3259	Structural Clay Products
	3261-3269	Pottery and Related Products
E2	3271-3275	Concrete, Gypsum, and Plaster Products
E3	3211	Flat Glass
	3221, 3229	Glass and Glassware, Pressed or Blown
	3231	Glass Products Made of Purchased Glass
	3241	Hydraulic Cement
	3281	Cut Stone and Stone Products
	3291-3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products
SECTOR F: PRIMARY METALS		
F1	3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills
F2	3321-3325	Iron and Steel Foundries
F3	3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals
F4	3363-3369	Nonferrous Foundries (Castings)
F5	3331-3339	Primary Smelting and Refining of Nonferrous Metals
	3341	Secondary Smelting and Refining of Nonferrous Metals
	3398, 3399	Miscellaneous Primary Metal Products
SECTOR G: METAL MINING (ORE MINING AND DRESSING)		
G1	1021	Copper Ore and Mining Dressing Facilities
G2	1011	Iron Ores

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

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 R: SHIP AND BOAT BUILDING AND REPAIRING YARDS		
R1	3731, 3732	Ship and Boat Building or Repairing Yards
SECTOR S: AIR TRANSPORTATION FACILITIES		
S1	4512-4581	Air Transportation Facilities
SECTOR T: TREATMENT WORKS		
T1	TW	Treatment Works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA
SECTOR U: FOOD AND KINDRED PRODUCTS		
U1	2041-2048	Grain Mill Products
U2	2074-2079	Fats and Oils Products
U3	2011-2015	Meat Products
	2021-2026	Dairy Products
	2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties
	2051-2053	Bakery Products
	2061-2068	Sugar and Confectionery Products
	2082-2087	Beverages
	2091-2099	Miscellaneous Food Preparations and Kindred Products
	2111-2141	Tobacco Products
SECTOR V: TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING; LEATHER AND LEATHER PRODUCTS		
V1	2211-2299	Textile Mill Products
	2311-2399	Apparel and Other Finished Products Made from Fabrics and Similar Materials
	3131-3199	Leather and Leather Products (note: see Sector Z1 for Leather Tanning and Finishing)
SECTOR W: FURNITURE AND FIXTURES		
W1	2434	Wood Kitchen Cabinets
	2511-2599	Furniture and Fixtures
SECTOR X: PRINTING AND PUBLISHING		
X1	2711-2796	Printing, Publishing, and Allied Industries
SECTOR Y: RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISCELLANEOUS MANUFACTURING INDUSTRIES		

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**
Y1	3011	Tires and Inner Tubes
	3021	Rubber and Plastics Footwear
	3052, 3053	Gaskets, Packing and Sealing Devices, and Rubber and Plastic Hoses and Belting
	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified
Y2	3081-3089	Miscellaneous Plastics Products
	3931	Musical Instruments
	3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods
	3951-3955 (except 3952 – see Sector C)	Pens, Pencils, and Other Artists' Materials
	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal
	3991-3999	Miscellaneous Manufacturing Industries
SECTOR Z: LEATHER TANNING AND FINISHING		
Z1	3111 (also see sector V.)	Leather Tanning and Finishing
SECTOR AA: FABRICATED METAL PRODUCTS		
AA1	3411-3499 (except 3479)	Fabricated Metal Products, Except Machinery and Transportation Equipment, and Coating, Engraving, and Allied Services.
	3911-3915	Jewelry, Silverware, and Plated Ware
AA2	3479	Fabricated Metal Coating and Engraving
SECTOR AB: TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY		
AB1	3511-3599 (except 3571-3579)	Industrial and Commercial Machinery, Except Computer and Office Equipment (see Sector AC)
	3711-3799 (except 3731, 3732)	Transportation Equipment Except Ship and Boat Building and Repairing (see Sector R)
SECTOR AC: ELECTRONIC, ELECTRICAL, PHOTOGRAPHIC, AND OPTICAL GOODS		
AC1	3571-3579	Computer and Office Equipment
	3812-3873	Measuring, Analyzing, and Controlling Instruments; Photographic and Optical Goods, Watches, and Clocks
	3612-3699	Electronic and Electrical Equipment and Components, Except Computer Equipment
SECTOR AD: NON-CLASSIFIED FACILITIES		
AD1	Other stormwater discharges designated by the Department as needing a permit (see S.C. Reg. 61-9.122.26(a)(9)(i)(C) & (D)) or any facility discharging stormwater associated with industrial activity not described by any of Sectors A-AC. NOTE: Facilities may not elect to be covered under Sector AD. Only the Department may assign a facility to Sector AD.	

[1] A complete list of SIC Codes can be found at: https://www.osha.gov/pls/imis/sic_manual.html
Conversions to and from the newer North American Industry Classification System" (NAICS)) can be obtained from the Internet at: http://www.naics.com/naics-to-sic-crosswalk/ or in paper form from various locations in the document titled *Handbook of Standard Industrial Classifications*, Office of Management and Budget, 1987.

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 REPLY TO TAXPAYER'S REPSONSE TO RESPONDENT'S AND INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT**

Intervenors Abbeville County, Anderson County, Greenville County, and York County (collectively, "Counties"), acting by and through their counsel, provide this Reply to Taxpayer Colonial Pipeline Company's ("Taxpayer") Response to Respondent's and Intervenors' Motions for Summary Judgement ("Response"), according to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP") and Rule 19 and Rue 68 of the South Carolina Rules of Procedure for the Administrative Law Court.

Taxpayer does not qualify for the exemption provided by South Carolina Code Annotated section 12-37-220(A)(8), the "Pollution Control Exemption."

INTRODUCTION

Counties join in and adopt the respective memoranda in response to Taxpayer's Motion for Summary Judgment filed by the Department and Aiken County and Laurens County (collectively, "AL Counties"). Further, because many of the issues raised by Taxpayer have been addressed by the Department's, AL Counties', and Counties' prior filings, Counties provide a brief response to the points that Taxpayer raises in its Response.

Counties do not agree (as Taxpayer states) that "All parties are in agreement that the issue before this Court is whether Petitioner's facilities constitute an 'industrial plant'." Counties have raised various issues as part of this contested case process and reserve their right to pursue all those issues in summary judgement and at a final hearing (if necessary).

Further, because Taxpayer is seeking a property tax exemption, Taxpayer is required to bring itself squarely in the exemption's bounds by affirmatively proving *each element* of the exemption. Taxpayer has failed to meet that burden.

BRIEF REPLY

I. Statutory Construction

Taxpayer implores this Court to use rules of statutory construction to twist the plain language of section 12-37-220(A)(8) to something more useful for Taxpayer. Taxpayer ignores the actual law of this State. The rules of statutory construction apply only in situations in which a statutory ambiguity exists. *See, e.g.*, *Hamilton v. Fulgham*, 385 S.C. 632, 640, 686 S.E.2d 683, 687 (2009) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning."). Because an ambiguity does not exist, this Court's analysis ends there.

However, even if an ambiguity exists, Taxpayer itself admits "there is no clear explanation regarding the legislative intent supporting the adoption of the property tax pollution control exemption." As a result, Taxpayer invites this Court to force an ambiguity into language that is not ambiguous, admits there is no legislative history to establish how to read section 12-37-220(A)(8) in light of that ambiguity, but then offers this Court Taxpayer's unfounded theories, which (much like Taxpayer's open source "definitions") are not based on any legal or factual

underpinnings supported by relevant South Carolina law.[1]

Regardless of how Taxpayer attempts to force its numerous, proverbial square pegs into the round hole of the exemption, all efforts fail for a simple reason: any ambiguity in the statutory language must be read ***against*** granting a property tax exemption—against Taxpayer. *See, generally*, Counties' *Response, Section I: Resolving Statutory Ambiguity.*

No ambiguity exists, Taxpayer loses. An ambiguity exists, Taxpayer loses.

II. Failure to Challenge DHEC

Taxpayer's Response fails to appreciate the actual language of both the Pollution Control Exemption and DHEC's correspondence. Section 12-37-220(A)(8) requires that DHEC "**shall** investigate . . . **to determine**" if any property qualifies for the exemption (emphasis added). These are non-discretionary duties. However, in each of DHEC's letters, a DHEC representative recites: "each of these technologies ***would***[2] be characterized by [DHEC] as pollution control equipment." However, DHEC's letters stated DHEC did not have the authority over this issue, despite the mandatory language of section 12-37-220(A)(8). Instead, DHEC attempted to abdicate that authority by referring the Department to various federal agencies that regulate pipeline companies. Taxpayer never challenged DHEC's failing to make the mandatory determination. Therefore, Taxpayer's exemption request fails.

Further, even were this Court to read DHEC's correspondence as an affirmative

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[1] For example, Taxpayer continues to rely on other state's tax policy to try to justify what the South Carolina General Assembly must have meant when it enacted the Pollution Control Exemption. For a response to this argument, *see, generally*, Counties' *Response, Section III: Other States' Exemptions*. Taxpayer even goes so far as to suggest that "economic development" law could be used to ***expand*** what is meant in a tax exemption setting.

[2] The auxiliary verb "would" denotes the subjunctive mood, which is used to state a hypothetical, highly improbable, or contrary-to-fact condition. *See, e.g., U.S. v. Weather*, 917 F.2d 558, *6 (4th Cir. 1990) (describing "the use of the subjunctive 'would'" as "expressing a contrary-to-fact condition") and John C. Hodges *et al., Harbrace College Handbook* 81 & 100(13th ed. 1998) (("[T]he **subjunctive mood** expresses situations that are ***hypothetical*** or ***conditional–a tentative attitude***" (first emphasis in original).); ("Subjunctives are used under the following conditions: . . . "**To express . . . a hypothetical, highly improbable, or contrary-to-fact condition**" (emphasis in original).)). That is, DHEC ***would*** have determined (some portion of) Taxpayer's property was pollution control property, ***if*** DHEC had made a determination (***but*** DHEC did not actually make that determination).

determination that a portion of Taxpayer's property qualified as pollution control property, nothing in those communications provided a "**detailed listing**" of which specific pieces of property qualified. Rather, DHEC's correspondence refers to broad categories of "technologies," not specific pieces of equipment. The specificity requirement of section 12-37-220(A)(8) makes perfect sense. If the Department is uncertain enough as to which specific pieces of a taxpayer's property constitute pollution control equipment (and, therefore exempt) to find it necessary to seek the expertise of its sister agency, then it would not make any sense for DHEC to reply to the Department by saying, "yes, these general types of equipment might be pollution control equipment."

DHEC might determine one specific piece of property is pollution control equipment and determine another, similar piece is not pollution control equipment even though both pieces could be broadly considered the same general type of "technology." Rather, section 12-37-220(A)(8) requires DHEC to transmit a detailed listing to the Department so the Department would be able to cross reference the DHEC list against supporting materials of a taxpayer's property tax return to exempt only those specific pieces of equipment noted by DHEC in its detailed listing. Without DHEC's detailed listing, the Department would still not have any way of knowing which specific piece(s) of equipment might be exempt, essentially leaving the Department in the same position as before the Department requested assistance from DHEC.

Taxpayer fails completely to address this issue in both its motion for summary judgment and its Response. Taxpayer never challenged DHEC's failing to provide the detailed listing to the Department. Therefore, Taxpayer's exemption request fails.

Finally, Taxpayer references a case involving section 12-36-2120(17) as proof that the mere existence of a federal regulation is all that is necessary to meet the DHEC-related

requirements of section 12-27-220(A)(8). However, the plain language of section 12-36-2120(17)[3] makes clear both this section and the related case are utterly without merit in analyzing section 12-37-220(A)(8). Unlike section 12-37-220(A)(8), which specifically requires DHEC to take two *mandatory* actions, section 12-36-2120(17) does not reference DHEC. In fact, not a single reference to DHEC exists anywhere in Chapter 36 of Title 12. No further analysis is necessary.

No ambiguity exists, Taxpayer loses. An ambiguity exists, Taxpayer loses.

III. Definition of "Industrial Plant"

In an effort to find any port in this contested case storm, once again Taxpayer relies on open source "dictionaries" as Taxpayer's support for its tortured definition of "industrial plant." Simultaneously, Taxpayer attacks the Department's dictionary definition by suggesting the Department did not use the first definition for "plant." Initially, although potentially instructive, the term "plant" and "industrial plant" are not necessarily synonymous terms regardless of their respective definitions.

That aside, let us look at the actual, primary definition for "plant": "[A] young tree, vine, shrub, or herb planted or suitable for planting." Further, in the same dictionary entry, the only two examples of recent usages of "plant" are related to the same vegetative definition.

> Verb Seeds of Love arranges tree-*planting* experiences on request and also hosts weekly events. — Sunny Fitzgerald, *Washington Post*, "The world

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[3] (17) machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. "Machines" include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item "recycling" means a process by which materials that otherwise would become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale. In applying this exemption to machines used in recycling, the following percentage of the gross proceeds of sale, or sales price of, machines used in recycling are exempt from the taxes imposed by this chapter:

Fiscal Year of Sale Percentage Fiscal year 1997-98 fifty percent After June 30, 1998 one hundred percent;

> needs trees more than ever. Here's how to plant some on your travels.," 5 Dec. 2019. Countries such as Nigeria and Brazil have already pledged large-scale tree-*planting* efforts to fight climate change. — Kate S. Petersen, *Ars Technica*, "Massachusetts bill would block logging, let state forests keep their carbon," 26 Nov. 2019.

Certainly, Taxpayer is not suggesting only those "operations" that are a tree or shrub qualify for the Pollution Control Exemption. Once again, Taxpayer provides the Court with the precise definition of an *absurd result*—no ambiguity here.

But, "plant (entry 2 of 2)" provides for eight potential definitions. Definition 2a: "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business," could arguably support Taxpayer's view of "industrial plant." However, definition 2b: "a factory or workshop for the manufacture of a particular product" supports the Department's and Counties' understanding of the term "industrial plant." Looking further in the same dictionary entry, all synonyms[4] for "industrial plant" connote manufacturing, which further undercuts Taxpayer's theory.

Regardless, to the extent definition 2a and definition 2b (or even the vegetative definition) of "plant" create an ambiguity, any ambiguity in the statutory language must be read ***against*** granting a property tax exemption. As a result, no ambiguity exists, Taxpayer loses. An ambiguity exists, Taxpayer loses.

Taxpayer also complains the Department does not cite to written policy documents "limiting the phrase 'industrial plant'." However, Taxpayer (not the Department or Counties) bears the burden of bringing itself squarely in the statutory requirements by establishing each element of the exemption. Taxpayer has failed to do so.[5]

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[4] Factory, manufactory, mill, shop, works, workshop.

[5] Again, Taxpayer tries to force its operations into the tight-fitted glove of the definition of "industrial plant" (that is, "manufacturer") by suggesting Taxpayer "treats" products. Taxpayer's two arguments are that Taxpayer (1) injects drag reducing agents in its pipeline, and (2) separates "transmix." Neither activity, however, has anything to do with creating a new product. Rather, they both relate to making pipeline transportation of (already) finished products more efficient. Taxpayer's improving transportation efficiencies makes Taxpayer more profitable but does not provide

IV. NPDES Permit

Taxpayer continues (mistakenly) to make much of having a federally regulated "National Pollutant Discharge Elimination System" permit but fails to explain how a federal permit is in any way relevant to South Carolina property tax (exemption) law or policy. However, even a cursory review of the portion of the permit Taxpayer included, reveals the permit covers operations like Taxpayer's but also covers, for example, printing and publishing, automobile salvage yards, local and highway passenger transportation, and even the United States Postal Service. Under Taxpayer's theory, the General Assembly intended "industrial plant" to cover junk yards and post offices—yet again, the precise definition of an absurd result. Tax law and policy in South Carolina rests solely with the General Assembly and the Department not with an overly broad environmental permitting scheme created in Washington not Columbia.

Any ambiguity in that policy restricts the grant of a property tax exemption. No ambiguity exists, Taxpayer loses. An ambiguity exists, Taxpayer loses.

CONCLUSION

For the reasons stated above, the Pollution Control Exemption is not available to any of Taxpayer's South Carolina assets, and this Court should deny Taxpayer's motion for summary judgement and grant Counties' Motion for Summary Judgment.

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Taxpayer with the necessary qualifications to have Taxpayer's property exempted from taxation.

Respectfully submitted,

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Greenville, South Carolina
January 3, 2020

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 REPLY TO COLONIAL PIPELINE COMPANY'S RESPONSE**

Pursuant to the Court's Amended Consent Scheduling Order, Petitioners Aiken County and Laurens County (the "Counties"), by and through their undersigned counsel, hereby serve the following Reply to Colonial Pipeline Company's ("Colonial") Response to the Counties' Motion for Summary Judgment ("Reply").

ARGUMENT

In reply to Colonial's Response to the Counties' Motion for Summary Judgment ("Response"), the Counties show the Court as follows:

1. ***Beware the Overly Broad Definition of "Industrial Plant."*** Citing to a variety of online resources, Colonial urges this Court to adopt an expansive definition of "industrial plant." Indeed, Colonial asserts that the term industrial plant essentially means the physical location where business takes place. For instance, if the term means, as Colonial suggests, "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business" (Colonial Response, at p. 2), then there is absolutely no limitation on what industrial plant means, as "carrying on a trade" encompasses every for-profit enterprise in South Carolina.

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Practically, this interpretation is so broad that it strips the Exemption of any specific context or meaning. This overly broad definition simply cannot be what the General Assembly intended.

2. ***Respondents' Interpretation of the Exemption Does Not Violate Standards of Statutory Construction.*** The Respondents' interpretation of the Exemption does not "render the modifier 'manufacturing' meaningless." (Colonial Response, at p. 4.) Colonial argues that if "'plant' must contain manufacturing activity, then the phrase 'manufacturing plant' is redundant." (Colonial Response, at p. 4.) First, when a legislative body enacts statutory language, that language has context and meaning. It is not at all uncommon for a single word that appears in multiple code sections to have varied meanings based on context, time, usage and the overall legislative scheme. After all, the South Carolina Code changes perennially. The meaning of a term used by the General Assembly in the 1970s may be vastly different than the meaning of the same term used by the General Assembly in a law enacted in the 1990s. Second, it is simply unfair to say that the Respondent's interpretation of "industrial plant" in the specific context of the Exemption somehow renders other language surplusage. It is not at all unimaginable that the General Assembly may choose to express a concept with two words in one instance and a single word in another. Even if the General Assembly chose to be redundant, it does not necessarily change the General Assembly's meaning.

3. ***Definitions, Definitions Everywhere, but None that Apply to this Case.*** Like a thirsty sailor surrounded by saltwater, Colonial looks to a sea of definitions that may look good on their face, but ultimately lack what is needed to sustain Colonial's arguments. While previous Colonial filings have asserted definitions from Wikipedia and the revenue bond act, in its Response Colonial actually cites to definitions from a storm water permit (Colonial Response, at p. 6) and a sales tax exemption regarding motor fuel (*Id.* at 9). Without question, every party to

this action could scour the law to cobble together definitions that best serve their arguments. But definitions that are part of a separate regulatory context and a separate legislative scheme are simply inapposite. Rather, the Court must look to the specific language and context of the Exemption. The Court should, accordingly, ignore the unrelated definitions cited by Colonial.

4. ***The Application of the Department's Regulatory Definitions are Not Limited to Specific Statutory Sections.*** All of the Respondents cited to the definition of "plant site" found in S.C. Regulation section 117.1700.07. This is a general regulation, duly promulgated by the Department, that is not expressly limited in application. In fact, this particular regulation states "[t]his section provides ***general definitions to be used in administering property taxes***." S.C. Code Ann. Regs. Section 117.1700 (emphasis added). Colonial attempts to tie this definition to section 12-43-220(a)(3) of the code, but there is no such express limitation in the regulation. To the contrary, the definition of "plant site" is the Department's "general definition" that is "used in administering property taxes." As such, the general definition is helpful as the Court determines into the meaning of the Exemption.

5. ***Granting the Exemption to Colonial Will Not Achieve Any of the Policy Goals Colonial Asserts as the Motivation Behind the Exemption.*** In its Response, Colonial asserts that "it is reasonable to assume the exemption is designed both (1) to incentivize the acquisition of pollution abatement equipment . . . and (2) to serve as an economic development incentive for employers to do business in South Carolina." (Colonial Response, at p. 12.) If this is the rationale for the Exemption, then granting the Exemption to Colonial is clearly contrary to the legislative intent. First, Colonial built its pipeline in 1960s. (30(b)(6) Dep. Tr. 57:2-3.) The pipeline is a fixed, immovable asset. It is not going anywhere. The pipeline came through South Carolina because of geography—cutting through South Carolina was the best way to get from the

refineries to the customers. (*See* Colonial Pipeline System Map, Stipulations, at Exhibit B.) There was never any need to incentivize Colonial to "do business in South Carolina." Second, there was no need "to incentivize the acquisition of pollution abatement equipment." In its 30(b)(6) Deposition Testimony, Colonial essentially admitted that the Property at issue is standard equipment on a pipeline. Every pipeline has this type of equipment. (*See* Colonial 30(b)(6) Dep. Tr. at 132:2-10.[1]) In fact, there is no such thing as a pipeline that does not contain this equipment. There is clearly no need to incentivize the acquisition of the Property at issue in this case.

6. ***The Exemption is Not an Economic Development Statute.*** Colonial asserts that the alleged policy goals make the Exemption an economic development statute that warrants "special consideration." (Colonial Response, at p. 13.) Colonial argues that the Exemption should "be construed in a way that furthers its objectives, rewards taxpayers for making beneficial investments, and continues to encourage investments in the State." Aside from Colonial's assertions, there is nothing to support the contention that this is an economic development statute entitled to some sort of expansive interpretation. Tax exemption statutes do incentivize behavior, but nothing on the face of the Exemption expressly ties the Exemption to economic development. Further, it is the clear policy of this state that tax exemption statutes be construed against the taxpayer. The Court should resist any contrary assertion.

[CONCLUSION & SIGNATURE PAGE FOLLOWS]

[1] All cited portions of Colonial's 30(b)(6) deposition are attached hereto as **Exhibit A**.

CONCLUSION

The Taxpayer's Motion should be denied. The Counties' Motion for Summary Judgment should be granted. This result is mandated by South Carolina law. The Counties reserve the right to assert additional arguments at the hearing of this matter on January 6, 2020.

Respectfully submitted,

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Attorneys for the Taxing Entities

January 3, 2020
Columbia, South Carolina

Exhibit A

30(b)(6) Deposition Transcript of Colonial Pipeline Company, pp. 57 and 132

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
911 Spears Drive, Elgin, SC 29045
(803)457-0390
VanceReporting@gmail.com

you can see there's a few -- there's a -- we run -- you got to remember, Colonial was built in the sixties before there were zoning laws in a lot of places. So it's -- I don't know if zoning's caught up to that land or not, but it was almost all agricultural at the time it was built.

But as you can see, Belton doesn't have a lot of red around it. There is some to the south of that and on -- this is main line. This is stub line. That's page two.

Page three, there's the Spartanburg Station and it's --

Q. Is that, once again, a pump station?

A. That's actually a tank farm.

Q. Okay.

A. And then there's Gaffney Station, which I believe is just a small pump station, and there's some delivery there, maybe.

That's in Cherokee and that's -- I think Spartanburg's in Spartanburg County. And I think that's it. It goes out of the state.

This is part of the stub line coming down from Edgefield into North Augusta. And you can see down at the end where we deliver, it's a lot

automatic shut-off valves.

A. So your cathodic protection and your coatings, all of those are integral to -- to -- to ensure the integrity and the operation of all of your piping, your manifolding; also, your underground conduit and things of that nature that we're trying to protect.

All of those things are very critical to the operation of the pipeline. Without those things, you know, so to speak, bad things happen. Everything's working together to ensure the integrity, the safe operation of the pipeline.

Q. Would you be able to assign some kind of percentage to those three things? I guess their contribution to -- to Colonial's transportation purpose versus preventing pollution?

A. Oh, gosh.

Q. And if you can't, it's okay.

A. No, I -- I don't think I could.

Q. Okay.

A. It's almost like asking what makes my wife pretty. Everything. That answer is "everything."

Q. So just to confirm, you said at least primarily, Colonial Pipeline Company is a

NEXSEN|PRUET

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

January 3, 2020

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

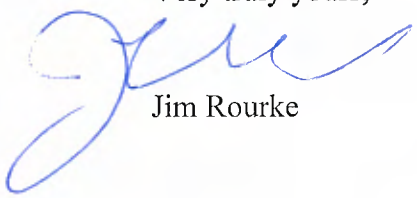
RE: Colonial Pipeline Company, Petitioner v. South Carolina Department of Revenue, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County and York County, Intervenors
Docket No. 18-ALJ-17-0443-CC

Dear Judge Anderson:

Enclosed please find an original and one (1) copy of the Petitioner's Reply to Respondent's and Intervenors' Responses to Petitioner's Motion for Summary Judgment. Please return a file-stamped copy to me via our courier.

If there are any questions, or if the Court requires anything further, please let me know.

Very truly yours,



Jim Rourke

Enclosure

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, v. South Carolina Department of Revenue, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	DOCKET NO. 18-ALJ-17-0443-CC **PETITIONER'S REPLY TO RESPONDENT'S AND INTERVENORS' RESPONSES TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Petitioner submits this consolidated Reply to the Respondent's and Intervenors' Responses to Petitioner's Motion for Summary Judgment and in support of its own Motion for Summary Judgment.

I. Standard of Review

Respondent South Carolina Department of Revenue (hereinafter "Department" or "Respondent") contends Petitioner Colonial Pipeline Company (hereinafter "Petitioner") has misconstrued applicable law regarding the construction of a tax exemption statute. While it is true that "the language of a tax exemption statute must be given its plain, ordinary meaning and must be construed strictly against the claimed exemption," *Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 195, 262 S.E.2d 33, 34 (1980), this Court has noted on a number of occasions that "[t]his rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." *CFRE, LLC v. Greenville Cty. Assessor*,

395 S.C. 67, 74–75, 716 S.E.2d 877, 881 (2011). Further, this rule of strict construction "does not mean that we will search for an interpretation in [Department]'s favor where the plain and unambiguous language leaves no room for construction." *Id. See also Jack's Custom Cycles v. Dep't of Rev.*, Docket No.: 18-ALJ-17-0393-CC (issued Oct. 2, 2019). Petitioner's arguments that it qualifies as an "industrial plant" are aligned with the plain language of the statute and do not require liberal or strained construction. With respect to the term "plant," Petitioner has provided a number of dictionary definitions supporting a more inclusive construction of the term. Additionally, reviewing other uses of the term "plant" within Title 12 and associated regulations supports Petitioner's position.

Moreover, notwithstanding this rule of strict construction, we note that the "*cardinal rule* of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (emphasis added). Therefore, "[a]ll rules of statutory construction are subservient to the one that the 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.**" *Ray Bell Const. Co. v. Sch. Dist. of Greenville Cty.*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) (emphasis in original). In its Response Memo, Petitioner identified the legislative intent behind the pollution control exemption—both to spur economic development in this State and to incentivize or reward the acquisition and installation of pollution control equipment, which serves an obvious vital public interest but does not directly increase economic production or output. Therefore, this Court should give due consideration to this legislative intent when analyzing Petitioner's eligibility for this property tax exemption.

II. Use of Dictionary Definitions

In its Response, Respondent describes the "unreliability" of Petitioner's definitions of "industrial plant." Recall, however, that the definition of "plant" proffered by Respondent in its Memorandum in Support (which requires a manufacturing process) is the *alternative* definition. *See* Merriam-Webster (December 19, 2019, 1:17 PM), https://merriam-webster.com/dictionary/plant) (included again as Exhibit A). The primary definition from that source is "the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business" –i.e., no manufacturing requirement.

Other dictionary definitions align with this approach, first defining "plant" broadly to include any trade or business, then offering a more narrow alternative definition requiring a manufacturing process. For example, Webster's Third New International Dictionary (1993) defines "plant" as

> 3 a : the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or a mechanical or other industrial business ... b : a factory or workshop for the manufacture of a particular product...."

See Exhibit B. Webster's New World College Dictionary (Fourth Edition 2005) provides the following definitions of "plant":

> **4** the tools, machinery, buildings, grounds, etc. *of a factory or business* **5** the equipment, buildings, etc. *of any institution*, as a hospital, school, etc. **6** the apparatus or equipment for some particular *mechanical operation or process [*the power *plant* of a ship*]*....

See Exhibit C (emphasis added). Similarly, Random House Webster's Dictionary (Second Edition 1996) defines "plant" as "the buildings, equipment, etc., necessary to carry on *any industrial business*." In addition, the Oxford English Dictionary (*see* Exhibit D) defines "plant" as

> 5.a. [t]he premises, fittings, and equipment of a business or (chiefly *North American*) of an institution; a factory, a place where an industrial process is carried out. In extended use: the workers employed at a business, institution, or factory. Frequently with modifying word..... d. As a mass noun: machinery and apparatus, either fixed or moveable, used in an

> industrial or engineering process. Chiefly *North American*: machinery and apparatus used in an institution. Frequently with modifying word.

Again, note that none of these alternative definitions require a manufacturing process.

Further, Petitioner disagrees with the contention of Intervenors Aiken and Laurens Counties that neither Petitioner nor this Court can rely on dictionary definitions of the terms "industrial," "plant," or "industrial plant." (Response at pp. 3-4). In fact, our Supreme Court (and the Department) have *repeatedly* cited dictionary definitions as helpful when terms are not defined by statute. *See, e.g., Centex Int'l, Inc. v. Dep't of Rev.*, 406 S.C. 132, 702 S.E. 2d 65, 70 (2013) ("as defined in Black's Law Dictionary 1310 (5th ed. 1979), a tax credit is a "type of offset in which the taxpayer is allowed a *deduction from his tax* for other taxes paid.'"); *Berkeley County School Dist. v. Dep't of Rev.*, 383 S.C. 334, 679 S.E.2d 913 (2009) ("relying on a 1979 definition of 'operating expenses' the Department [of Revenue] contends that 'school operating purposes' encompasses '[t]hose expenses required to keep the business running, *e.g.* rent, electricity, heat. Expenses incurred in the course of ordinary activities of an entity.' *Black's Law Dictionary* 984 (5th ed. 1979).")[1]; *Cothran v. State Farm Mutual Auto. Ins. Co.*, 427 S.C. 545, 831 S.E 2d 919, 920 (2019) ("The term 'set off' is not defined in our Insurance Code. Therefore we apply the term's 'usual and customary meaning. Merriam-Webster defines 'setoff' as ...."); *Perry v. Bullock,* 409 S.C. 137, 140-41, 761 S.E. 2d 251, 253 (2014) ("*Merriam-Webster* defines a medical record as..."); *Silva v Allstate Property and Cas. Ins. Co.*, 424 S.C. 512, 818 S.E. 2d 753 (2018) ("While section 38-77-170 does not define 'witness,' Black's Law Dictionary sets forth two definitions...."); and *State v. Jones*, 416 S.C. 283, 786 S.E. 2d 132, 138 (2016) ("The primary definition of 'another' is 'different and distinct from the first one considered.' *Merriam Webster's*

[1] In this case, the Supreme Court also cited with approval a definition from http://www.businessdictionary.com. See FN 4.

Collegiate Dictionary 51 (11th ed 2003). In fact, "[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning."). Westlaw indicates that the Supreme Court has cited dictionary definitions over 150 times.

III. Revenue Ruling #91-8 and Revenue Procedure #05-1

Respondent argues S.C. Revenue Ruling #91-8 and Revenue Procedure #05-1 are irrelevant to this matter, except to the extent they address the standard of review with respect to tax exemption statutes. Contrary to Respondent's assertion, these rulings are important for two reasons.

First, in both documents, the Department characterizes water treatment facilities as "plants." The plant described in Rev. Rul. #91-8 was a water treatment plant that "produces water for use by residents and businesses in the area." Contrary to Respondent's assertion in this litigation, this water treatment plant did not have a manufacturing component—instead, it processed water. Therefore, the rulings demonstrate that Respondent has forced an alternative definition of "plant" in this litigation to deny the claimed property tax exemption.

Second, Rev. Proc. #05-1 is relevant because it acknowledges that Respondent will look at the source fueling a taxpayer's activities when determining whether it is a "manufacturer" for sales tax purposes. The ruling provided guidance regarding whether certain governmental wastewater treatment facilities could qualify for the sales tax exemption for machines used at the facility. The Department found that a governmental wastewater plant could qualify for the sales tax exemption if "more than one-third of the wastewater processed at a governmental wastewater treatment facility must come from machines exempt from the sales and use tax under Code Section 12-36-2120(17) in order for sales to, or purchase by, a governmental entity or contractor of machines

used at a governmental wastewater treatment facility, or the materials used to construct such machines." *Id.*

In order to conduct the 1/3 analysis, the Department noted that a facility seeking the exemption had to provide the following information:

a) A list of all sources of wastewater processed at the facility (e.g., residential, commercial, manufacturing, storm water run-off, etc.).
b) Total wastewater (in MGD) processed at the facility.
c) Total wastewater (in MGD) from manufacturers processed at the facility.
d) A list of the top ten manufacturers in terms of wastewater (in MGD) processed at the facility.

S.C. Rev. Proc. #05-1. The requested information is geared towards measuring the percentage of wastewater coming from manufacturers versus non-manufacturers. This means that even though the government-owned water treatment facilities were not manufacturing a product, the Department provided guidance that they could still qualify as a manufacturer if they treated the wastewater of a sufficient number of manufacturers. Similarly, Petitioner treats and transfers product manufactured by refineries (Colonial Depo p. 109-110). In other words, using this guidance, Respondent extended a manufacturer's sales tax exemption to non-manufacturers doing sufficient business with manufacturers. Therefore, Rev. Proc. #05-1 is relevant because it extends the analysis not only to Petitioner's activities, but also to the upstream activities.

IV. Other Transportation Companies

The Intervenor Counties argue that granting the exemption for Petitioner will open the door to pollution control exemption claims by other companies. The Response of Intervenors Abbeville, Anderson, Greenville, and York Counties (p. 6) asserts this would be an "absurd result clearly not intended by the General Assembly." In fact as Respondent is aware, the Department previously granted the pollution control exemption to Transco, a very similar pipeline company in

South Carolina for similar equipment. Petitioner currently does not have the Proposed Assessments for Transco.

V. Estoppel

Petitioner does not contend that estoppel runs against the government or that the Department cannot change its mind. However, the Counties and Respondent argue the absurdity that Petitioner's operations could possibly constitute an "industrial plant." Yet the fact remains for the property tax years at issue in this appeal, the Department in two separate proposed assessments determined (by definition) that Colonial was an "industrial plant." The Department granted the pollution control exemption by letter dated August 15, 2017 (Stipulation ¶ 16) and on July 27, 2018 (Stipulation ¶ 25).

The Department's Proposed Assessment for both years granted the majority of Petitioner's pollution control exemption requests, which by definition meant that Petitioner was an "industrial plant" according to the Department. Respondent has never proper rescinded, amended or revoked these Proposed Assessments so for purposes of the tax years at issue in this appeal, Colonial remains an "industrial plant" pursuant to the assessment which generated this dispute.

Pursuant to ALC Rule 18, Respondent should have amended its Prehearing Statement rescinding its partial grant of the pollution control exemption. ALC Rule 18 provides that with respect to pre-hearing procedures, "[a]ny 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." In this case, Respondent failed to submit a motion along with its Amended and Second Amended Prehearing Statements. Moreover, Respondent's attempt to revoke its partial grant of the pollution control exemption for the tax years at issue clearly

prejudices Petitioner in the presentation if its case, which suggests amending the prehearing statements is not allowed.

Estoppel does not run against the government. Respondent can change its mind, as it has done for 2019. (In 2019, the Department denied the exemption for all of Colonial's pollution control equipment.) But the Department never changed its mind for the Proposed Assessments for 2017 and 2018, and they remain the law of the case for purposes of this appeal.

VI. Summary Judgment Standard

In its Response, Intervenors Aiken and Laurens Counties appear to take the position that Petitioner has failed to meet its burden with respect to certain factors found in S.C. Code Ann. § 12-37-220(A)(8). Its Response (at p. 3) states that the depositions "raise a genuine fact issue regarding whether the property is designed for pollution control . . ." As an initial matter, note Respondent denied the exemption at issue solely on the grounds that Petitioner was not an "industrial plant." All parties' initial Memoranda in Support of Motions for Summary Judgment focus exclusively on that factor because that was the factor in dispute which caused the denial, subsequent protest, and ultimately this litigation. In fact, Intervenors Abbeville, Anderson, Greenville, and York Counties acknowledge: "Counties note there is no dispute over whether summary judgment is an appropriate vehicle for resolving this case."

Second, in its Memorandum in Support of its Motion for Summary Judgment, Petitioner represented it met the other three factors. To demonstrate the property was required by federal regulation, Petitioner cited to those regulations (*see* Memorandum in Support p. 7) – 49 C.F.R. § 195 generally, and more specifically 49 CFR § 195.557(a); 49 CFR § 195.563(a); 49 CFR § 195.260(a); and 40 CFR § 63.1062(a). To demonstrate the equipment at issue was designed for the prevention or abatement of water or air pollution, Petitioner produced the DHEC Letter (at

Exhibit B to its Memorandum in Support), in which a regulatory body reviewed the equipment at issue and its uses in Petitioner's business and concluded it "can be fairly described as pollution control equipment." As the regulatory body responsible for public health and the environment, DHEC concluded that "[w]hile 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." *Id.* These two findings proffered by Petitioner help demonstrate the equipment is designed to abate or reduce pollution. Finally, to demonstrate the equipment at issue was used in Petitioner's business, it again described the uses of the equipment which previously received the exemption in prior years (*see* Memorandum in Support at p. 5), and also again relied on the DHEC Letter, which described the uses of the three pieces of equipment which formed the initial basis of this appeal (i.e., pipeline cathodic protection, pipeline coatings, and automatic shut-off valves). Petitioner reproduced the relevant portion of the DHEC Letter on page 7 of its Memorandum in Support:

> 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.

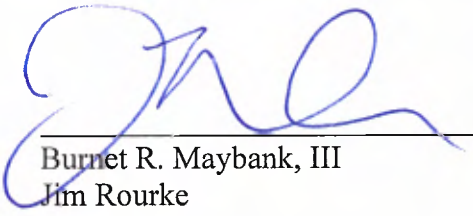
The DHEC Letter (1) identified the subject property, (2) explained the uses of the subject property, (3) concluded the subject property prevented or abated water pollution, and then (4) determined that the subject property qualified as pollution control property.

Again, it bears repeating that Respondent's sole basis in denying the exemption at issue in its Department Determination was that Petitioner was not an industrial plant. To date, no party has come forward with specific facts either contradicting the above assertions or showing there is a genuine issue of fact. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). Therefore, Petitioner has not failed to meet its burden with respect to the three factors which the Department essentially conceded in its Department Determination.

VII. CONCLUSION

Based on the foregoing, Petitioner requests this court grant its Motion for Summary Judgment in full, thereby applying the pollution control exemption available under § 12-37-220(A)(8) to the disputed property at issue.

Respectfully submitted,



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Date: January 3, 2020

A

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\ 'plant \
planted; planting; plants

Definition of *plant*

(Entry 1 of 2)

transitive verb

1a : to put or set in the ground for growth plant seeds
b : to set or sow with seeds or plants
c : implant
2a : establish, institute
b : colonize, settle
c : to place (animals) in a new locality
d : to stock with animals
3a : to place in or on the ground
b : to place firmly or forcibly planted a hard blow on his chin
4a : conceal
b : to covertly place for discovery, publication, or dissemination

intransitive verb

: to plant something

plant

noun

Definition of *plant* (Entry 2 of 2)

1a : a young tree, vine, shrub, or herb planted or suitable for planting
b : any of a kingdom (Plantae) of multicellular eukaryotic mostly photosynthetic organisms typically lacking locomotive movement or obvious nervous or sensory organs and possessing cellulose cell walls
2a : 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
3 : an act of planting
4 : something or someone planted

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Other Words from *plant*

Verb

plantable \ 'plan-tə-bəl \ adjective

Noun

plantlike \ 'plant-ˌlīk \ adjective

Synonyms for *plant*

Synonyms: Verb

- drill,
- put in,
- seed,
- sow

Synonyms: Noun

- factory,
- manufactory,
- mill,
- shop,
- works,
- workshop

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Examples of *plant* in a Sentence

Verb I *planted* corn this year. I *planted* the border *with* roses.

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Recent Examples on the Web: Verb Seeds of Love arranges tree-*planting* experiences on request and also hosts weekly events. — Sunny Fitzgerald, *Washington Post*, "The world needs trees more than ever. Here's how to plant some on your travels.," 5 Dec. 2019 Countries such as Nigeria and Brazil have already pledged large-scale tree-*planting* efforts to fight climate change. — Kate S. Petersen, *Ars Technica*, "Massachusetts bill would block logging, let state forests keep their carbon," 26 Nov. 2019

These example sentences are selected automatically from various online news sources to reflect current usage of the word 'plant.' Views expressed in the examples do not represent the opinion of Merriam-Webster or its editors. Send us feedback.

See More

First Known Use of *plant*

Verb

before the 12th century, in the meaning defined at transitive sense 1a

Noun

before the 12th century, in the meaning defined at sense 1a

History and Etymology for *plant*

Verb

Middle English, from Old English *plantian*, from Late Latin *plantare* to plant, fix in place, from Latin, to plant, from *planta* plant

Noun

Middle English *plante*, from Old English, from Latin *planta*

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More Definitions for *plant*

plant

verb

English Language Learners Definition of *plant*

(Entry 1 of 2)

: to put (a seed, flower, or plant) in the ground to grow
: to fill (an area) *with* seeds, flowers, or plants
: to put or place (something) in the ground

plant

noun

English Language Learners Definition of *plant* (Entry 2 of 2)

: a living thing that grows in the ground, usually has leaves or flowers, and needs sun and water to survive
: a building or factory where something is made
US : the land, buildings, and equipment of an organization

See the full definition for *plant* in the English Language Learners Dictionary

plant

verb

\ 'plant \
planted; planting

Kids Definition of *plant*

(Entry 1 of 2)

1 : to place in the ground to grow We'll *plant* seeds in the spring.
2 : to fill with seeds or plants *plant* a garden
3 : to set firmly in the ground They *planted* posts for a fence.
4 : to place firmly He *planted* himself on the couch.
5 : to introduce as a thought or idea
6 : to place (someone or something) secretly ... the teacher thought that he was *planted* in the audience to pep up the discussion ...— E. L. Konigsburg, *Mrs. Basil E. Frankweiler*

plant

noun

Kids Definition of *plant* (Entry 2 of 2)

1 : any member of the kingdom of many-celled mostly photosynthetic living things (as mosses, ferns, grasses, and trees) that lack a nervous system or sense organs and the ability to move about and that have cellulose cell walls
2 : the buildings and equipment of an industrial business or an institution a power *plant*

Other Words from *plant*

plantlike \ 'plant-ˌlīk \ adjective

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robber baron, ~, secre-
he⟩ **2** : according to a
: mind —Hugo Münster-
lan·ful·ness *n* -ES
ent + *-cy*] : the quality
ENESS ⟨there is about the
ness and intimacy that is
n⟩
plangens, pres. part. of
AINT] **1** : having a loud
⟨let out a ~ roar —*New*
⟩ **2** : having an expres-
~ ripple of the harp
anting cry, slow and ~
dy
pēlangi bandanna cloth
cloth + *pēlangi* striped
decoration in which a
efore it is dyed — com-

langor lamentation ⟨fr.
at PLAINT] : expressive

at FLOOR] : flat : level

, fr. Gk, act of wander-
re at PLAN-] : a wander-
act not its own ⟨meno-

[NL *planidium* + E

nid·ia \-ēə\ [NL, fr.
m] : a first-stage legless
terous and dipterous

[ISV *plani-* + *-form*]
flat articular surfaces
[*plani-* + *-gram*] : a

-graph] : PLANIGRAM
SV *plani-* + *-graphy*]
nakes on a film sharp
ined plane and blurs
elow
', dim. of Sp *plana* level
'. L *planus* — more at
ng floor at a mine
lanimètre, fr. *plani-* +
suring the area of any
f its boundary line
adj [*planimetry* + *-ic*]
lanimetry **2** *of a map*
· pla·ni·met·ri·cal·ly

? *planimétrie*, fr. ML
ia -metry — more at
rfaces — distinguished
d cultural features of
a map
me] : a machine that
y machine for planing
INDER PLANER **c** : a
r deck **d** : a machine
and machine that fits
for planing the valve

hment in which wood

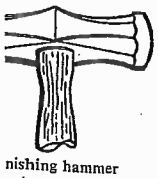
] : a surface of a sea-
dynamic lift from the
is
NL *Planipennia* + E

-, fr. *plani-* + L *penna*
ome classifications : a
most of the typical
nstrued as including
: an order or other

ti- + L *rostrum* beak
a broad flat beak
MF *planiss-*, stem of
: at FLOOR] : to make
toughen, and polish
with a smooth-faced

nishes; *specif* : a tool

ush] : a hammer with



nishing hammer
a (as the position of
ing of stars) for any
-fer-\ *adj*

nke, fr. ONF *planke*,
x flat surface, tablet
ard that in technical
4 inches and a width
b (1) : any of va-
: (as a bench, table,
K ⟨was to lift ~ at
ANKING **d** : a heavy
he drip and is used
meat or fish) **e** : a
t ~⟩ ⟨concrete ~⟩
of the peace system
in the platform of
nce and opposition
tform—*Amer. Guide*
policy or program
stern policy —Ben-

fr. [1]*plank*] **1** : to
well over —Lucy M.
e mills and factories
g a boat till you get
set down : DEPOSIT
n·the counter for a
ook and serve on a
of mashed potatoes
ak⟩ **4** : to extend
ed up his knee and

rather large usu. rectangular and elaborately constructed buildings prevailingly used by Indians but also by some Eskimos of the northwest coast of No. America and adjacent Siberia
planking *n* -S [fr. gerund of [2]*plank*] **1** : the act or process of covering or fitting out with planks **2** [[1]*plank* + *-ing*] **a** : a quantity of planks **b** : a covering or flooring made of planks; *specif* : the outer and inner covering of the timbers of a wooden ship — see SHIP illustration
plank·less \-kləs\ *adj* : having no planks
plank owner *n* [*plank*; fr. the tradition that he becomes part owner of the ship] : a member of the first crew to serve on a newly commissioned ship
plank road *n* : a road built of planks laid crosswise on longitudinal timbers and widely used in the U. S. in the mid 19th century
plank root *n* : BUTTRESS ROOT
plank scraper *n* **1** : FLOAT 5 d (1) **2** : a V-shaped or trapezoid-shaped drag for the leveling of land for irrigation, for the construction of border levees, and for the cleaning out of lateral distributing ditches
plank-sheer \'=,=\ *n* [alter. (influenced by *plank*, *sheer*) of *plancher*] **1** : a heavy plank forming the outer edge of the deck of a vessel **2** : the waterway (sense 2b) of a yacht
plank·ter \'plaŋktə(r)\ *n* -S [Gk *planktēr* wanderer, fr. *plang-*, stem of *plazesthai* to stray, wander — more at PLANKTON] : a planktonic organism
plank·tiv·o·rous \(')plaŋk'tivə(w)rəs\ *adj* [*plankton* + *-vorous*] : feeding on plankton
plank·tol·o·gy \plaŋk'tᵻläjē\ *also* **plank·ton·ol·o·gy** \,plaŋktə'nä-\ *n* -ES [*plankton* + *-logy*] : a branch of biology concerned with the study of plankton
plank·ton \'plaŋktən, -ain-\ *n* -S [G, fr. Gk, neut. of *planktos* wandering, drifting, fr. *plang-*, stem of *plazesthai* to stray, drift, pass. of *plazein* to drive astray; akin to L *plangere* to strike — more at PLAINT] : the passively floating or weakly swimming animal and plant life of a body of water consisting chiefly of minute plants (as diatoms and blue-green algae) and of minute animals (as protozoans, entomostracans, and various larvae) but including also larger forms (as jellyfishes and salpae) that have only weak powers of locomotion — compare BENTHOS, NEKTON, TRIPTON — **plank·ton·ic** *also* **plano·ton·ic** \(')plaŋk'tänik\ *adj*
plankton net *n* : a townet usu. made of fine-meshed silk bolting cloth that is used for the capture of plankton
plank·tont \'plaŋk,tänt\ *n* -S [*plankton* + *-ont*] : PLANKTER
plank·ways \'plaŋ,kwāz\ *or* **plank·wise** \-wīz\ *adv* [*plank* + *-ways*, *-wise*] : in the direction of the length of timber : LENGTHWISE
plan·less \'planləs\ *adj* : functioning or taking place without a plan or set goal ⟨a ~ course of study⟩ — **plan·less·ly** *adv* **plan·less·ness** *n* -ES : the quality or state of being without plan : lack of system : DISORGANIZATION ⟨this ~, this indeterminate confusion of purpose —H.G.Wells⟩
planned *adj* [fr. past part. of [2]*plan*] **1** : INTENDED, PROJECTED ⟨his ~ trip abroad⟩ ⟨the ~ revision of the curriculum⟩ **2 a** : designed or carried out according to plan : ORDERLY ⟨a ~ highway system⟩ ⟨a ~ retreat⟩ ⟨~ migration on a vast scale —Stuart Chase⟩ **b** : not spontaneous : PREARRANGED ⟨a ~ demonstration⟩ ⟨a ~ outburst⟩ **3** : subject to regulation and control in terms of a plan : ORGANIZED, SYSTEMATIZED ⟨all the signs are that the village of the next generation will be a ~ community —*Times Lit. Supp.*⟩
planned economy *n* : an economic system in which the elements of an economy (as labor, capital, and natural resources) are subject to government control and regulation designed to achieve the objectives of a comprehensive plan of economic development — compare FREE ECONOMY, FREE ENTERPRISE
Planned Parenthood *service mark* — used for research and dissemination of information on measures (as contraception or the treatment of infertility) designed to regulate the number and spacing of children in a family
plan·ner \'planə(r), -aan-\ *n* -S : one who plans : DESIGNER, PROJECTOR; *specif* : one who supervises, participates in, or advocates social or economic planning ⟨a lawyer turned ~ who is active in New York housing and planning circles —Christopher Tunnard⟩
planning *n* -S [fr. gerund of [2]*plan*] : the act or process of making or carrying out plans; *specif* : the establishment of goals, policies, and procedures for a social or economic unit ⟨city ~⟩ ⟨business ~⟩
planning board *n* : a body of citizens appointed to prepare or administer a plan (as for the growth and development of a city)
pla·no \'plā(,)nō\ *adj* [*[2]plan-*] : having a flat surface ⟨true ~ lenses cannot produce prismatic effects —*Jour. Amer. Med. Assoc.*⟩
plano- — see PLAN-
plan·o·blast \'planə,blast\ *n* [*plan-* + *-blast*] : the medusa form of a hydroid — **plan·o·blas·tic** \,=ə'blastik\ *adj*
[1]**plan·occipital** \,plan+\ *adj* [*[2]plan-* + *occipital*] : having a flattened occiput
[2]**planoccipital** \"\ *n* : a person having a planoccipital skull
pla·no-concave \,plā(,)nō+\ *adj* [*[2]plan-* + *concave*] : flat on one side and concave on the other — see LENS illustration
pla·no-convex \"+\ *adj* [*[2]plan-* + *convex*] : flat on one side and convex on the other — see LENS illustration
plan·o·ga·mete \planəgə,mēt\ *n* [ISV [1]*plan-* + *gamete*] : a motile gamete; *esp* : one that is ciliated
plan·o·gam·ic \,planə'gamik\ *adj* [*planogamete* + *-ic*] : of or relating to a planogamete
[1]**plan·o·graph** \'plānə,graf, -räf\ *vt* -ED/-ING/-S [back-formation fr. *planography*] : to print by planography ⟨a ~*ed* pamphlet⟩
[2]**planograph** \"\ *n* [*[2]plan-* + *-graph*] : a print made by planography
pla·no·graph·ic \,=ə'grafik\ *adj* : produced by or used in planography ⟨~ printing⟩ ⟨printing from a ~ surface⟩
pla·nog·ra·phy \plā'nägrəfē, plə-\ *n* -ES [*[2]plan-* + *-graphy*] : a process (as lithography or offset) for printing from a plane surface; *also* : matter printed by such process — compare INTAGLIO, LETTERPRESS, STENCIL
pla·nom·e·ter \plə'nämədə(r)\ *n* [*[2]plan-* + *-meter*] : a surface plate or other device for gauging a plane surface
pla·nom·e·try \-mətrē\ *n* -ES [*[2]plan-* + *-metry*] : the art or process of producing or gauging a plane surface (as with a planometer)
pla·no·miller \'plānō+\ *n* [*[2]plan-* + *miller*] : a milling machine resembling a planer
pla·no·milling machine \'plānō+ . . . -\ *n* : PLANOMILLER
pla·nont \'plaˌnänt\ *n* -S [*plan-* + *-ont*] : a motile organism (as the amoebula of various protozoans or the gamete of some phycomycetes)
[1]**pla·nor·bid** \plə'nȯrbəd\ *adj* [NL *Planorbidae*] : of or relating to the Planorbidae
[2]**planorbid** \"\ *n* -S : a snail of the family Planorbidae
pla·nor·bi·dae \-bəˌdē\ *n pl, cap* [NL *Planorbis*, type genus, + *-idae*] : a family of freshwater pulmonate snails having a single pair of tentacles with an eye at the base of each and gills as well as lungs and including numerous forms important as intermediate hosts of pathogenic trematode worms — see PLANORBIS
pla·nor·bis \-bəs\ *n, cap* [NL, fr. L *planus* flat + *orbis* ring, disk, orb — more at FLOOR] : a widely distributed genus (the

plan position indicator *n* : PPI
plans *pl of* PLAN, *pres 3d sing of* PLAN
Plan·sifter \'plan,siftə(r)\ *trademark* — used for any of several oscillating sifters arranged one above the other in a flour mill for separating and grading the stocks from the break rolls
[1]**plant** \'plant, 'plaa(ə)nt, 'plaint, 'plänt\ *vb* -ED/-ING/-S [ME *planten*, fr. OE *plantian*, fr. LL *plantare* to plant, fix in place, fr. L, to plant, fr. *planta* plant] *vt* **1 a** : to put in the ground and cover with soil so as to grow ⟨~ corn⟩ ⟨~ seeds⟩ **b** : to set in the ground for growth ⟨~ trees⟩ ⟨~ bushes⟩ **c** : to put plants to grow in : CULTIVATE ⟨cleans up and ~*s* the ground thus regained from the forest —J.G.Frazer⟩ ⟨the river overflowed the ~*ed* land —*Amer. Guide Series: Tenn.*⟩ **d** : IMPLANT ⟨the task of ~*ing* in the native-born generations a knowledge of the ancestral language —Oscar Handlin⟩ **2 a** (1) : to establish or institute in a particular place or region ⟨engaged in ~*ing* a colony of Germans in the valley —H.E. Scudder⟩ ⟨~*ed* the first church in that part of the colony —L. H.Beck⟩ (2) : to settle as a colonist ⟨~*ed* former soldiers in the border regions⟩ **b** : COLONIZE, POPULATE ⟨intending to return and ~ Delaware —John Winthrop⟩ **c** : to place (animals) in a particular locality so as to grow and multiply there ⟨underseas gardens in which the oysters are ~*ed*, cultivated, and harvested —*Amer. Guide Series: Conn.*⟩ ⟨~*ing* beavers for conservation purposes —Willis Peterson⟩ **d** : to stock with animals ⟨~*ed* his ranch with beef cattle⟩ ⟨~*ed* the stream with trout⟩ ⟨~*ed* the bay with clams⟩ **e** : INOCULATE 2a (2) **3 a** : to place in or on the ground ⟨stakes were ~*ed* to determine the ice movement in the mountain region —G. de Q. Robin⟩ ⟨~*ed* a foot in a prairie-dog hole —F.B.Gipson⟩ **b** : to place firmly or forcibly ⟨came boiling out and ~*ed* herself in his path with her hands on her hips —Robert Murphy⟩ ⟨~*ed* a hard blow on his chin⟩ **c** : to set firmly in position : fix in place : ESTABLISH ⟨~*ed* obstruction buoys around a large coral head —K.M.Dodson⟩ ⟨remained ~*ed* in the rocker —J.C.Lincoln⟩ **4 a** : CONCEAL, HIDE ⟨the plunder was ~*ed* under the floor of a restaurant —*London Daily Chronicle*⟩ **b** : to conceal (something) temporarily where discovery may deceive or mislead ⟨~*ed* a gun in the butler's coat⟩ ⟨~*ed* gold nuggets in a worthless mine⟩ **c** : to covertly arrange publication or dissemination of ⟨politicians and officials exploit their intimacy with the press and ~ true or false stories with them —*Times Lit. Supp.*⟩ ⟨a report, undoubtedly ~*ed* by him, that he had gone to South America —Robert Shaplen⟩ **d** : to place or cause to be placed in a position under false colors ⟨~*ed* a spy on the committee's staff⟩ ⟨frequently the gang is not able to ~ a confederate inside the house—Richard Harrison⟩ **e** : to prepare beforehand : PREARRANGE ⟨carefully ~*s* the surprise word —*Britain Today*⟩ ⟨asked an obviously ~*ed* question⟩ **5** : leave behind : ABANDON ⟨~*ed* his family and left them penniless⟩ **6** : BURY, INTER ⟨these people believe in sealed copper coffins in vaults, and they are decidedly not ~*ed* but laid to rest —Mari Sandoz⟩ ⟨death lost some of its terrors when one could be ~*ed* neatly in a corner of one's own farm —Stuart Cloete⟩ ~ *vi* **1** : to perform the act of planting ⟨this is perfect weather for ~*ing*⟩ **2** : to become a plant : GROW
[2]**plant** \"\ *n* -S [MB *plante*, fr. OE, fr. L *planta*, prob. back-formation, fr. (assumed) L *plantare* to tread the ground in planting, fr. L *planta* sole of the foot—more at PLACE] **1 a** (1) : a young tree, vine, shrub, or herb planted or suitable for planting : a vegetable, flower, fruit, or ornamental grown for or ready for transplanting ⟨cabbage ~*s* for sale⟩ ⟨thin the hill to four ~*s*⟩ — see HOUSEPLANT, POT PLANT, WILD FLOWER (2) *obs* : CUTTING, SLIP, SET **b** *archaic* : a sapling used as a cudgel or pole **c** : any of numerous organisms constituting the kingdom Plantae, being typically characterized by lack of locomotive movement or rapid motor response, by absence of obvious nervous or sensory organs though possessing irritability as indicated by specific response to stimuli, by possession of cell walls composed of cellulose, and by a nutritive system in which carbohydrates are formed photosynthetically through the action of chlorophyll and organic nutrients are not required, and exhibiting a strong tendency to alternation of a sexual with an asexual generation though one or the other may be greatly modified or almost wholly suppressed — see ALGA, FERN, FUNGUS, MOSS; ANIMAL, SAPROPHYTE **2** : one thought to resemble a growing plant ⟨a sensitive ~ who must be shielded from shock⟩ **3 a** : the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or a mechanical or other industrial business ⟨to meet the nation's telephone needs we again built a great deal of new physical ~ —C.F.Craig⟩ **b** : a factory or workshop for the manufacture of a particular product ⟨an automobile ~⟩ ⟨an ice-cream ~⟩ **c** : the total facilities available for production or service in a particular country or place ⟨a nation which both in present ~ and in natural resources is probably the richest in the world —*New Republic*⟩ ⟨not just the town's sewers but its streets, its schools—its whole ~— had to be enlarged for the new arrivals —C.W.Thayer⟩ **d** : a piece of equipment or a set of machine parts functioning together for the performance of a particular operation ⟨a couple of experts armed with drills, an oxyacetylene ~, and other strange tools —F.W. Crofts⟩ **e** *chiefly Austral* : the equipment and personnel necessary for an enterprise (as stock raising or mining) ⟨such a ~ may consist of a head stockman, one or two other white men and up to twenty aboriginals —*Australian Veterinary Jour.*⟩ **f** : the physical equipment (as buildings or athletic fields) of an institution (as a college) ⟨several large bequests have enabled the school to expand its ~⟩ **4** [*plant*] **a** : stolen goods; *also* : a place for storing them **b** (1) : UNDERCOVER MAN ⟨joined the criminal ring as a ~⟩ (2) : fixed police surveillance ⟨to put a ~ on a suspect⟩ **c** : a swindling plot : a scheme to defraud **d** (1) : something deliberately placed so that its discovery may deceive or mislead ⟨left muddy footprints as a ~ to confuse the police⟩ (2) : something (as a news story or rumor) whose publication or dissemination is deliberately arranged by an individual or group for a particular purpose ⟨the story had all the earmarks of a propaganda ~⟩ **e** (1) : a seemingly casual statement or action deliberately inserted in a play to prepare the spectator for a later development or effect (2) : a person placed in an audience to take a seemingly spontaneous part in the proceedings **f** : a trap for wrongdoers ⟨the town has set up several ~*s* for traffic violators⟩ **5** [*plant*] : a way of standing : POSE ⟨took up a determined ~ in front of the door⟩ **6** [[1]*plant*] **a** : a crop or growth of something planted ⟨the sugar beet is up to a good ~ once again —A.G.Street⟩ **b** (1) : the stocking of a place with animals (as fish or game) for conservation or sport ⟨the authorities made a small ~ of deer on the islands —C.C.Van Fleet⟩ (2) : an oyster that has been bedded as distinguished from one of natural growth, *also* : a young oyster suitable for transplanting
plan·ta \'plantə\ *n, pl* **plan·tae** \-nˌtē\ [NL, fr. L, sole of the foot — more at PLACE] **1** : the back side of the shank of a bird's leg **2 a** : the flattened end of the proleg of a caterpillar **b** : a sclerite on the insect pretarsus
plant·able \'plantəbəl\ *adj* : capable of being planted ⟨~ trees⟩ ⟨~ fields⟩
plan·tad \'planˌtad\ *adv* [L *planta* sole of the foot + E *-ad*] : toward the sole of the foot
plan·tae \'planˌtē\ *n pl, cap* [NL, fr. L, pl. of *planta* plant]

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…r *Abraham* Martin (1589-1664), an early …iec: site of a battle (1759) of the French … the British under Wolfe defeated the …

…[transl. of ML *cantus planus*] **1** the …ured ritual chant of the early Christian …ant **2** any similar religious chant, as in …

…an) *adj.* speaking or spoken plainly or …ess *n.*

…*te* < OFr < L *planctus*, lamentation, loud …; to beat the breast, lament < IE base …, Gr *plēssein*, to strike] **1** [Old Poet.] …complaint or grievance

…*plaintif* < OFr, mournful, making com… …e: see prec.] a person who brings a suit …ainant

…[ME *pleintif* < OFr *plaintif*: see prec.] …lancholy; mournful; sad —**plain'·tively** …

var. of PLASTER

…*eit* < OFr < VL **plicta* < pp. of L *plicare*, … **2** a braid of hair, ribbon, etc. —*vt.* [ME … **2** to braid or interweave **3** to make by …

…lane, foundation: merging of *plan* (< L … [Fr *plant* < It *pianta* < L *planta*, sole of … rawing or diagram showing the arrange… of a structure, piece of ground, etc. **2** an … making, doing, or arranging something, … etc. *b*) a method of proceeding **3** any …pective, any of several planes thought of … of sight and between the eye and the … **'·ning** **1** to make a plan of (a structure, … devise a scheme for doing, making, or … nd as a project or purpose —*vi.* to make …

… detailed method, formulated before… …g something *[vacation plans]*; **design** … of a plan and implies the use of skill … n unfavorable sense, in executing or … *design* to separate us*]*; **project** implies … agination in formulating an ambitious … sing *project]*; **scheme**, a less definite … often connotes either an impracticable … rhanded intrigue *[a scheme* to enter …

…*m* PLANO- (sense 1): used before a vowel … r pertaining to a point on a surface … o; of or lying in one plane

…*n.* [< ModL *Planaria*, name of the genus … L *planus*, PLANE[2]] any of an order … t-bodied, free-living, turbellarian flat… f cilia

…*n.* [PLANE[2] + -ATION] the reduction of … nearly flat surface

…t) *n.* [Fr *planchette*, dim. of *plan*… be stamped as a coin

…. [Fr: see prec.] a small, heart-shaped … ving as one of its supports a pencil, that … message or, as with a Ouija board, point … oves with the fingers resting lightly on it

Ernst Ludwig) (mäks) 1858-1947; Ger…

…s, plänks) [after prec.] *Physics* a univer… ves the ratio of a quantum of radiant … y (*ν*) of its source: it is expressed by the … pproximate numerical value is 6.6…

anck constant

…Fr *plasne* < L *platanus* < Gr *platanos* … from its broad leaves] any of a … e plane-tree family having mottled … s, and bark that sheds in large …

…*nus:* see PLAIN[1] **1** flat; level; even **2** … that is a plane *b*) of such surfaces … hat wholly contains every straight line … ig in it **2** a flat, level, or even surface … chievement, existence, etc. **4** *short for* … p., a wing of an airplane —*SYN.* LEVEL

…*laine* < LL … make level … carpenter's … surface in … evel, etc. — … l to make … as with a … r as with a … —*vi.* **1** to … the work of …

PLANE

lan'·ing [Fr … surface (term used in falconry) < … wings while soaring) < LL … soar or glide **2** to rise partly …

…ter while in motion at high speed, as a HYDROPLANE (sense 1) …es **3** to travel by airplane

…ane angle an angle made by two straight lines that lie in the …ame plane

…ane geometry the branch of geometry dealing with plane …figures

…ane·load (plān'lōd') *n.* **1** all the freight or passengers that an …airplane can carry or contain **2** the load carried by an airplane

…aner (plā'nər) *n.* **1** a person or thing that planes ☆**2** a machine …hat smooths or finishes the surfaces of wood or metal by planing *3 Printing* a block of wood used with a mallet to level type in a …chase

…ner tree (plā'nər) [after J. J. *Planer*, 18th-c. Ger botanist] a …all tree (*Planera aquatica*) of the elm family, with ovate leaves …and a nutlike fruit, found in the SE U.S.

…anet (plan'it) *n.* [ME *planete* < OFr < LL *planeta* < Gr *planētēs*, …wanderer < *planan*, to lead astray, wander < IE base **plā-*, flat, …spread out > PLAIN[1]] **1** [Obs.] any of the celestial objects with …apparent motion (as distinguished from the apparently still stars), …including the sun, moon, Mercury, Venus, Mars, Jupiter, or Saturn **2** now, a large, opaque, nonluminous mass, usually with its own …moons, that revolves about a star; esp., one of the sun's nine major …planets: Mercury, Venus, Earth, Mars, Jupiter, Saturn, Uranus, …Neptune, and Pluto: see also ASTEROID **3** *Astrol.* any celestial body …thought of as influencing human lives

…ane table a surveying device for plotting maps in the field: it …consists of a drawing board mounted on a tripod with an alidade …that can be moved about over the table to establish a reference …point

…an·etar·ium (plan'ə ter'ē əm) *n., pl.* **-iums** or **-ia** (-ə) [ModL < LL …*planeta*, PLANET + L (*sol*)*arium*, SOLARIUM] **1** ORRERY **2** *a*) the …complex revolving projector used to simulate the past, present, or …future motions or positions of the sun, moon, planets, and stars on …the inside of a large dome *b*) the room or building in which this is …contained

…an·etary (plan'ə ter'ē) *adj.* [Fr *planetaire*] **1** of or having to do …with a planet or the planets **2** terrestrial; global **3** wandering; …erratic **4** moving in an orbit, like a planet **5** designating or of an …epicyclic train of gears, as in an automobile transmission **6** [Rare] …*astrol.* under the influence of a planet

…anetary nebula [from its resemblance, when viewed through a …telescope, to a PLANET] a glowing, expanding nebula that forms …around a collapsing star

…an·etesi·mal (plan'ə tes'i məl, -tez-) *n.* [PLANET + (INFINIT)ESI…AL] in various theories about the origin of the solar system, any …of the small, cold masses of rock or ice that merged to form a …planet

…anetesimal hypothesis any of several theories postulating …that the solar system originated with planetesimals

…an·et·oid (plan'ə toid') *n.* [PLANET + -OID] *former term for* ASTER… (sense 1)

…an·et·ol·ogy (plan'ə täl'ə jē) *n.* the branch of astronomy that …studies and compares the planets and their moons —**plan'·et·ol'·o·…gist** *n.*

…ane tree PLANE[1]

…ane-tree (plān'trē') *adj.* designating a family (Platanaceae, …order Hamamelidales), of deciduous, dicotyledonous trees, consist… …of the plane trees

…anet-stricken (plan'it strik'ən) *adj.* [Archaic] **1** believed to be …adversely affected mentally or physically by the planets **2** PANIC-…STRICKEN Also **plan'et-struck'** (-struk')

…anet wheel a gear that meshes with and revolves around …another gear in an epicyclic train

…an·gent (plan'jənt) *adj.* [L *plangens*, prp. of *plangere*, to beat: …see PLAINT] **1** beating with a loud or deep sound, as breaking …waves, etc. **2** loud or resonant, and, often, mournful-sounding —…**an'·gency** (-jən sē) *n.* —**plan'·gently** *adv.*

…a- (plā'ni, -nə; plan'i, -ə) [< L *planus*, flat: see PLAIN[1]] *combining …form* plane, level, flat *[planisphere]*

…a·nim·eter (plə nim'ət ər, plā-) *n.* [Fr *planimètre:* see prec. & …-METER] an instrument for measuring the area of a regular or …irregular plane figure by tracing the perimeter of the figure —**pla·…nim'·ic** (plā'ni me'trik, plan'i-) *adj.* —**pla·nim'·etry** *n.*

…ish (plan'ish) *vt.* [< MFr *planiss-*, extended stem of *planir*, to …make < *plan*, flat: see PLAN] to toughen, smooth, or polish (metal) …by hammering or rolling —**plan'·isher** *n.*

…sphere (plan'i sfir') *n.* [ML *planisphaerium:* see PLANI- & …SPHERE] **1** a map or chart that is the projection on a plane of all or …part of a sphere **2** a projection on a plane of the celestial sphere, …usually with the N or S celestial pole as the center —**plan'i·spher'·ic** …(-sfir'-) *adj.*

…plank) *n.* [ME *planke* < NormFr < OFr *planche* < LL *planca*, …board, plank < VL *palanca* < Gr *phalangai* < *phalanx* (gen. …*phalangos*), see PHALANX] **1** a long, broad, thick board **2** PLANK… …(sense 2) **3** something that supports or sustains ☆**4** any of the …principles making up the platform or stated program of …a political party —*vt.* **1** to cover, lay, or furnish with planks ☆**2** to …broil and serve (steak, fish, etc.) on a board or wooden platter **3** …*Slang*] *a*) to lay or set (*down*) with force or emphasis ☆*b*) to pay …(often with *down* or *out*) —**walk the plank** to walk blindfolded …off a plank projecting from the side of a ship, as the …pirates were sometimes forced to do

…king (plank'iŋ) *n.* **1** the act of laying planks **2** planks in …**3** the planks of a structure

…ton (plank'tən) *n.* [Ger < Gr *planktos*, wandering < *plazes…thai*, to wander, akin to *planan:* see PLANET] the usually micro… …scopic animal and plant life found floating or drifting in the ocean …or in bodies of fresh water, used as food by nearly all aquatic …animals —**plank·ton'·ic** (-tän'ik) *adj.*

☆**Planned Parenthood** *service mark for* an organization that gives out information on the planning of the number and spacing of the births of one's children, as through the use of birth-control measures

plan·ner (plan'ər) *n.* **1** a person who plans **2** a thing that aids in planning, specif. a small calendar, typically in the form of a booklet, with space at each date for listing appointments and activities

Plano (plā'nō) [Sp *plano*, plane, flat surface: misunderstood as "plain," for the plains in the area] city in NE Tex.: suburb of Dallas: pop. 222,000

plano- (plā'nō, -nə) [< L *planus*, level, flat: see PLAIN[1]] *combining form* **1** plane, flat *[planography]* **2** having one side plane and (the other as specified) *[plano-*concave*]*

plano-concave (plā'nō kän kāv', -kän'kāv') *adj.* having one side plane and the other concave: see LENS, illus.

plano-convex (-kän veks', -kän'veks') *adj.* having one side plane and the other convex: see LENS, illus.

pla·nog·ra·phy (plə näg'rə fē, plā-) *n.* [PLANO- + -GRAPHY] any method of printing from a flat surface, as lithography

pla·no·sol (plā'nə säl', -sōl') *n.* [< PLANO- + L *solum*, SOIL[1]] [*often* **P-**] any of an intrazonal group of soils underlain by B-horizons strongly compacted by material leached from surface horizons, developed on nearly flat uplands

plan position indicator a circular radarscope on which signals are shown at radial distances from the center, which represents the location of the transmitter

plant (plant, plänt) *n.* [ME *plante* < OE < L *planta*, sprout, twig, prob. back-form. < *plantare*, to smooth the soil for planting < *planta*, sole of the foot < IE **plat-*, var. of base **pla-*, broad, flat > PLAIN[1]] **1** any of a kingdom (Plantae) of eukaryotes generally characterized by the ability to carry on photosynthesis in its cells which contain chloroplasts and have cellulose in the cell wall, including all thallophytes and embryophytes **2** a young tree, shrub, or herb, ready to put into other soil for growth to maturity; a slip, cutting, or set **3** an herb, as distinguished from a tree or shrub **4** the tools, machinery, buildings, grounds, etc. of a factory or business **5** the equipment, buildings, etc. of any institution, as a hospital, school, etc. **6** the apparatus or equipment for some particular mechanical operation or process *[*the power *plant* of a ship*]* **7** [Slang] a person placed, or thing planned or used, to trick, mislead, or trap —*vt.* [ME *planten* < OE *plantian* & OFr *planter*, both < L *plantare* < the n.] **1** *a*) to put into soil, esp. into the ground, to grow *b*) to set plants in (a piece of ground) **2** to set firmly as into the ground; fix in position **3** to fix in the mind; implant (an idea, etc.) **4** to settle (a colony, colonists, etc.); found; establish **5** to furnish or stock with animals ☆**6** to put a stock of (oysters, young fish, etc.) in a body of water **7** [Slang] to deliver (a punch, blow, etc.) with force **8** [Slang] *a*) to place (a person or thing) in such a way as to trick, trap, etc. *b*) to place (an ostensible news item) in a newspaper, etc. with some ulterior motive, as in order to mold public opinion **9** [Slang] *a*) to hide or conceal *b*) to place (something) surreptitiously where it is certain to be found or discovered —**plant'·like'** *adj.*

Plan·tag·enet (plan taj'ə nit) *n.* name of the ruling family of England (1154-1399)

plan·tain[1] (plan'tin) *n.* [OFr < L *plantago* < *planta*, sole of the foot (see PLANT): from the shape of the leaves] any of a genus (*Plantago*) of plants of the plantain family, usually with rosettes of basal leaves and spikes of tiny, greenish flowers, including many troublesome weeds —*adj.* designating a family (Plantaginaceae, order Plantaginales) of dicotyledonous plants

plan·tain[2] (plan'tin) *n.* [altered (prob. infl. by prec.) < Sp *plátano*, banana tree, lit., plane tree (< L *platanus:* see PLANE[1]), prob. misused for native name (as in Carib *balatana*)] **1** a hybrid banana plant (*Musa* × *paradisiaca*) that is widely cultivated in the Western Hemisphere **2** the large, firm, curved fruit of this plant: in tropical areas, it is usually cooked while green, before the starch has converted into sugar

plantain lily any of several perennial plants (genus *Hosta*) of the lily family, with broad, strongly ribbed basal leaves and clusters or racemes of trumpet-shaped flowers

plan·tar (plant'ər) *adj.* [L *plantaris* < *planta*, sole of the foot: see PLANT] of or on the sole of the foot

plan·ta·tion (plan tā'shən) *n.* [L *plantatio* < *plantare*, to PLANT] **1** [Archaic] a colony or new settlement ☆**2** an area growing cultivated crops **3** an estate, as in a tropical or semitropical region, cultivated by workers living on it *[*a sugar *plantation]* **4** a large, cultivated planting of trees *[*a rubber *plantation]*

Plan·ta·tion (plan tā'shən) [prob. named for the large town lots, called *plantations* by early settlers] city in SE Fla., near Fort Lauderdale: pop. 83,000

planter (plant'ər) *n.* ☆**1** the owner of a plantation **2** a person or machine that plants **3** a container, usually decorative, for potted or unpotted house plants **4** [Archaic] a colonist or pioneer

planter's punch [prob. because served by planters (see prec., sense 1)] a chilled drink made of rum, lemon or lime juice, and sugar

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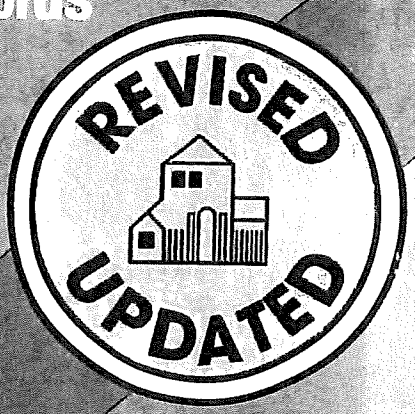

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plains′man, *n., pl.* **-men.** an inhabitant of the plains.
plain′song′, *n.* the ancient traditional unisonal music of the Christian Church.
plaint (plānt), *n.* 1. a complaint. 2. a lament.
plain•tiff (plān′tif), *n.* one who brings a suit in a court.
plain•tive (plān′tiv), *adj.* expressing sorrow or melancholy; mournful. —**plain′tive•ly,** *adv.*
plait (plāt, plat), *n.* 1. a braid, esp. of hair or straw. 2. a pleat. —*v.t.* 3. to braid. 4. to pleat.
plan (plan), *n., v.,* **planned, plan•ning.** —*n.* 1. a scheme or method of acting, proceeding, etc., developed in advance. 2. a drawing made to scale to represent a horizontal section of a structure or machine. 3. an outline, diagram, or sketch. —*v.t.* 4. to formulate a plan for. 5. to draw a plan of, as a building. 6. to have in mind as an intention. —*v.i.* 7. to make plans. —**plan′ner,** *n.*
plane[1] (plān), *n.* 1. a flat or level surface. 2. *Geom.* a surface generated by a straight line moving at a constant velocity with respect to a fixed point. 3. a level of dignity, character, etc.: *a high moral plane.* 4. an airplane or hydroplane. —*adj.* 5. flat or level. 6. of planes or plane figures. —**pla•nar** (plā′nər), *adj.*
plane[2] (plān), *n., v.,* **planed, plan•ing.** —*n.* 1. a woodworking instrument for paring, truing, or smoothing. —*v.t.* 2. to smooth or dress with a plane.
plan•et (plan′it), *n.* 1. any of the nine large heavenly bodies revolving about the sun. 2. a similar body revolving about a star other than the sun. —**plan′e•tar′y** (-i ter′ē), *adj.*
plan′e•tar′i•um (-i târ′ē əm), *n., pl.* **-i•ums, -i•a** (-ē ə). 1. a model representing the planetary system. 2. a device that simulates the heavens by use of moving projectors. 3. the building or room housing such a device.
plane′ tree′, *n.* any of several large, spreading shade trees, esp. the North American sycamore.
plan•gent (plan′jənt), *adj.* resounding loudly, esp. with a plaintive sound.
plank (plangk), *n.* 1. a long, flat piece of timber, thicker than a board. 2. one of the principles or objectives in the platform of a political party. —*v.t.* 3. to lay or cover with planks. 4. to bake or broil and serve (steak, fish, etc.) on a board. 5. PLUNK (def. 2).
plank′ing, *n.* 1. planks collectively. 2. the act of laying or covering with planks.
plank•ton (plangk′tən), *n.* the passively floating organisms in a body of water, primarily comprising microscopic algae and protozoa.
Plano (plā′nō), *n.* a town in N Texas. 128,713.
plant (plant, plänt), *n.* 1. a multicellular organism that produces food from sunlight and inorganic matter by photosynthesis and has rigid cell walls containing cellulose. 2. an herb or other small vegetable growth, in contrast with a tree or shrub. 3. the buildings, equipment, etc., necessary to carry on any industrial business. —*v.t.* 4. to put in the ground for growth. 5. to establish or implant (ideas, principles, etc.). 6. to place or set firmly. 7. to place or station covertly or for purposes of deception: *to plant a spy.*
plan•tain[1] (plan′tin, -tn), *n.* 1. a tropical plant resembling the banana. 2. its fruit.
plan•tain[2] (plan′tin, -tn), *n.* a weed with large, spreading basal leaves and long spikes of small flowers.
plan•tar (plan′tər), *adj.* of the sole of the foot.
plan•ta•tion (plan tā′shən), *n.* 1. a large estate, esp. in a tropical country, on which crops are cultivated, usu. by resident laborers. 2. a group of planted trees.
plant′er, *n.* 1. an implement for planting seeds. 2. the owner or manager of a plantation. 3. a container for growing ornamental plants.
plant′ louse′, *n.* APHID.
plaque (plak), *n.* 1. a thin, flat plate or tablet of metal, porcelain, etc., intended for ornament, as on a wall. 2. an inscribed commemorative tablet, as on a monument. 3. a soft, sticky film formed on tooth surfaces.
plash (plash), *n.* 1. a gentle splash. —*v.t., v.i.* 2. to splash gently.
plas•ma (plaz′mə), *n.* 1. the fluid part of blood or lymph. 2. a highly ionized gas containing an approximately equal number of positive ions and electrons.
plas•ter (plas′tər, plä′stər), *n.* 1. a composition, as of lime, sand, and water, applied in a pasty form to walls, ceilings, etc., and allowed to harden and dry. 2. PLASTER OF PARIS. 3. a preparation spread on cloth and applied to the body for some healing purpose. —*v.t.* 4. to cover or fill with plaster. 5. to lay flat (often followed by *down*). 6. to apply a plaster to (the body). 7. to overspread with something, esp. excessively: *to plaster a wall with posters.* —**plas′ter•er,** *n.*
plas′ter•board′, *n.* a material used for insulating or covering walls, consisting of paper-covered sheets of gypsum and fiber.
plas′ter of Par′is, *n.* calcined gypsum in white, powdery form, used in making plasters and casts.
plas′tic, *n.* 1. any of a group of synthetic or natural organic materials that may be shaped when soft and then hardened. 2. a credit card, or credit cards collectively. —*adj.* 3. made of plastic. 4. capable of being molded. 5. having the power to mold or shape material. [< L *plasticus* that may be molded < Gk *plastikós*] —**plas•tic′i•ty** (-tis′i tē), *n.*
plas′tic sur′gery, *n.* the branch of surgery dealing with the repair, replacement, or reshaping of malformed, injured, or lost parts of the body. —**plas′tic sur′geon,** *n.*
plat (plat), *n., v.,* **plat•ted, plat•ting.** —*n.* 1. a plot of ground. 2. a plan or map, as of land. —*v.t.* 3. to make a plat of.
plate (plāt), *n., v.,* **plat•ed, plat•ing.** —*n.* 1. a shallow dish from which food is eaten. 2. the contents of such a dish. 3. household dishes, utensils, etc., of a

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plant, *n.*1

Pronunciation: Brit. /plɑːnt/, /plant/, U.S. /plænt/

Forms: OE **planta** (*rare*), OE (*Northumbrian*)–ME **plonte**, OE–16 **plante**, OE (*rare*)– **plant** , ME **planet** (perhaps transmission error), ME **planete** (perhaps transmission error), ME **plantte**, ME **plaunte**, ME **plawnt**, ME **playnt** (perhaps transmission error), ME **plonttez** (plural), ME–15 **plaunt**, 19– **plent** (*Irish English* (*northern*)); *Scottish* pre-17 **plaint**, pre-17 **plaunt**, pre-17 **playnt**, pre-17 17– **plant**, 19– **plent**. *N.E.D.* (1907) also records a form lME **plounte**.

Frequency (in current use):

Origin: Either (i) a borrowing from Latin; modelled on a French lexical item. Or (ii) a borrowing from French, combined with an English element; modelled on a French lexical item. **Etymons:** Latin *planta* ; French *plante* , PLANT *v.*

Etymology: In Old English < classical Latin *planta* (see below); subsequently (in branch I.) reinforced by Anglo-Norman *plante*, *plaunte* plant (second half of the 13th cent. or earlier), young shoot (*c*1292 or earlier), young tree (early 14th cent. or earlier) and Middle French *plante*, *plaunte*, *plente* (French *plante*) plant (1342 or earlier; 1377 or earlier in figurative use (compare sense 1b), though apparently not used with reference to people until 1685), young shoot, seedling (1467, now obsolete in this sense) < classical Latin *planta* young plant, seedling, slip, cutting, graft, in post-classical Latin also plant in general (13th cent.), probably < *plantāre* PLANT *v.*; compare Middle French *plant* young shoot (1407), plants collectively (1495; < *planter* PLANT *v.*). Compare Old Occitan, Occitan *planta* (1149 in sense 1, second half of the 13th cent. in sense 2), Catalan *planta* (late 13th cent. in sense 2), Spanish *llanta* (*c*1250 in sense 1, *c*1275 in sense 2), *planta* (*a*1250 in sense 2), Portuguese *planta* (14th cent. in sense 2), Italian *pianta* (beginning of the 14th cent. in sense 2; earlier as †*planti* (plural; 13th cent. in sense 2)). In branch II. < PLANT *v.* (compare especially 4).

The Latin word was also borrowed into other Germanic languages; compare Middle Dutch *plante* (Dutch *plant*), Middle Low German *plant* , *plante* , Old High German *pflanza* , *flanza* (Middle High German *phlanze* , German *Pflanze*), Old Icelandic *planta* , Old Danish *planta* (Danish *plante*), Old Swedish, Swedish *planta* .

Also attested early as a surname:

1301 in R. Stewart-Brown *Cheshire in Pipe Rolls* (1938) 205 Ricardo Plant.

In spite of the apparent implications of quot. 1789 at sense 5a does not appear to have a model in French; however, perhaps compare French *plan* PLAN *n.*

With *plant cot n.* at Compounds 5 compare earlier PLANTIECRUE *n.*

With *plant geography n.* at Compounds 5 compare German *Pflanzengeographie* (1823 or earlier), Danish *plantegeografi* (1852 or earlier; 1822 as †*plantegeographie*).

In *plant of gluttony n.* at Compounds 5 after Gaelic *lus-a'-chraois.*

In *plant pathologist n.* at Compounds 5 after German *Pflanzenpathologe* (1889 in the passage translated in quot. 1894 for *plant pathologist n.* at Compounds 5).

With *plant pathology n.* at Compounds 5 compare German *Pflanzenpathologie* (1807 or earlier).

With *plant physiology n.* at Compounds 5 compare German *Pflanzenphysiologie* (1798 or earlier).

With *plant-plot n.* at Compounds 5 compare classical Latin *plantārium* (in post-classical Latin also in figurative use; see PLANTARIUM *n.*).

I. Senses relating to the living organism.

1.

a. A young tree, shrub, vegetable, or flower newly planted, or intended for planting; a set, a cutting, a seedling. Now chiefly *English regional* (*midlands* and *southern*) and *Irish English* (*northern*): a young cabbage plant.

eOE (Mercian) *Vespasian Psalter* (1965) cxliii. 14 (12) *Quorum filii sicut nouella plantationis stabilita a iuuentute sua* : ðeara bearn swe swe niowe plant steaðelunge gesteaðulfestad from guguðe his.

eOE King Ælfred tr. Gregory *Pastoral Care* (Hatton) (1871) xlix. 381 Sio halige gesomnung Godes folces..eardað on æppeltunum, ðonne hie wel begað hira plantan & hiera impan, oð hie fulweaxne beoð.

*c*1395 G. Chaucer *Wife of Bath's Tale* 763 Yif me a plante of thilke blessed tree, And in my gardyn planted shal it be.

?*a*1425 (▸ *c*1400) *Mandeville's Trav.* (Titus C.xvi) (1919) 32 Men bryngen of þe plauntes [?*a*1425 *Egerton* plantes or slyfynges; Fr. *plaunceons*] for to planten in oþer contrees.

*c*1450 *Alphabet of Tales* (1904) I. 1 (*MED*) Þou sett in my garthyn a yong plante of a tre.

1526 *Bible (*Tyndale*)* Matt. xv. f. xxj^{v} All plantes [Gk. *πᾶσα φυτεία*, L. *omnis plantatio*] which my hevenly father hath nott planted, shalbe plucked vppe by the rotes.

1535 *Bible (*Coverdale*)* Psalms xlvii. 2 The hill of Sion is like a fayre plante [cf. Psalm 48:3 in M. Luther(1534): *Der berg Zion ist wie ein schön zweigelin*].

1574 J. Baret *Aluearie* P 425 A plant: the slippe of a tree that was planted in the earth.

*a*1616 W. Shakespeare *As you like It* (1623) iii. ii. 349 There is a man haunts the Forrest, that abuses our yong plants with caruing *Rosalinde* on their barkes.

1688 R. Holme *Acad. Armory* ii. 86/2 Plants are young Trees fit to be set.

1719 D. Defoe *Farther Adventures Robinson Crusoe* 215 Some Plants of Canes.

1888 F. T. Elworthy *W. Somerset Word-bk.* (at cited word) How be you off vor plants? mine didn come up 'tall; but I've a-got a plenty o' curly greens and that, and I wants to changy way zomebody vor zome plants, vor zome o' they.

1903 *Eng. Dial. Dict.* IV. 538/1 Were I asked by a neighbour 'Can you spare me a few plants?' I should not ask what plants, but answer at once as to cabbages.

1953 M. Traynor *Eng. Dial. Donegal* 214/1 *Plant*,..a young cabbage plant fit for planting out.

†**b.** *figurative.* A thing planted or springing up; a young person; a novice. *Obsolete.*

▸ *a*1393 J. Gower *Confessio Amantis* (Fairf.) ii. 2370 (*MED*) Yit wolden thei a man supplaunte And take a part of thilke plaunte Which he hath for himselve set.

*c*1400 (▸ *a*1376) W. Langland *Piers Plowman* (Trin. Cambr. R.3.14) (1960) A. i. 137 (*MED*) Loue is þe leuest þing þat oure lord askiþ, And ek þe plante [*v.rr.* plaunte, plonte, plente; playnt] of pes.

▸ 1435 R. Misyn tr. R. Rolle *Fire of Love* 5 (*MED*) Fyer of fraward lufe..wastis burionyng of vertu, & norrysches þe plantes of all vyce.

▸ ?*a*1513 W. Dunbar *Poems* (1998) I. 81 Gret Gode ws graunt that we haue lang desirit, A plaunt to spring of thi successioun.

*a*1525 *Contempl. Synnaris* l. 1051, in W. A. Craigie *Asloan MS* (1925) II. 223 O Blissit lady..þou plant of paradyss.

1598 R. Grenewey tr. Tacitus *Annales* xiii. iii. 182 A true and woorthie plant to receiue his fathers Empire, which a graffed sun by adoption now possessed.

1648 T. GAGE *Eng.-Amer.* 175 The Inquisition..considering them to be but new plants useth not such rigour with them.

1706 *Phillips's New World of Words* (new ed.) *Plant*, figuratively a young Man or Maid.

1785 W. COWPER *Task* II. 714 Learning grew Beneath his care, a thriving vig'rous plant.

1812 *Sporting Mag.* **39** 188 A plant from Bristol, a youth of tremendous power.

c. A young tree or sapling used as a pole, staff, or cudgel. *Irish English* (*northern*) in later use. Now *rare* except in ASH-PLANT *n.*

c1400 (▸ c1378) W. LANGLAND *Piers Plowman* (Laud 581) (1869) B. XVI. 50 Þanne liberum arbitrium laccheth þe thridde plante.

*a*1500 (▸ ?c1450) *Merlin* 493 (*MED*) He caught a plante of an appell tre..and toke the barre in bothe handes, and seide he wolde make hem to remeve.

*a*1640 J. DAY & H. CHETTLE *Blind-beggar* (1659) sig. I4ᵛ An ashen Plant, a good Cudgell, what sho'd I ca it?

1697 J. DRYDEN tr. Virgil *Georgics* III, in tr. Virgil *Wks.* 115 Take, Shepherd take, a plant of stubborn Oak; And labour him with many a sturdy stroak.

1712 J. ADDISON *Spectator* No. 335. ¶2 Sir Roger's Servants..had..provided themselves with good Oaken Plants, to attend their Master upon this occasion.

1732 E. HAYWOOD tr. M.-A. de Gomez *Belle Assemblée* II. 121 This magnanimous Spaniard..having under his Habit, a good Sword, and a strong Oaken-Plant.

1900 A. MCILROY *By Lone Craig-linnie Burn* v. 54 (Ulster) The country people came pouring in—each man carrying his ash 'plant'.

2.

a. *gen.* and *Biology.* A living organism other than an animal, able to subsist wholly on inorganic substances, typically fixed to a substrate and moving chiefly by means of growth, and lacking specialized sensory and digestive organs; *spec.* (more fully ***green plant***) such an organism belonging to a group (the kingdom Plantae) which comprises multicellular forms having cellulose cell walls and capable of photosynthesis by means of chlorophyll, including trees, shrubs, herbs, grasses, and ferns (the vascular or higher plants), and also mosses and liverworts (the bryophytes). Frequently *spec.*: a small (esp. herbaceous) organism of this kind, as distinguished from a tree or shrub; (in informal use) such an organism grown for or known by its foliage or fruit, as distinguished from a 'flower'.

Bacteria, formerly classified in the kingdom Plantae, have now been removed to a separate kingdom, and would generally not be referred to as plants. However, in the broadest (non-technical) sense, the term still may include fungi (and lichens), which are now classified in a separate kingdom, but were formerly regarded as lower (non-vascular) plants, together with algae and bryophytes. The position of algae is also equivocal: many scientific writers exclude them from the kingdom Plantae (placing them in the kingdom Protista or Protoctista), but green algae are still sometimes treated as lower plants, and non-technical use of the word 'plant' would often include multicellular algae (e.g. seaweeds).

c1395 G. CHAUCER *Franklin's Tale* 1032 Apollo, god and gouernour Of euery plaunte [*v.r.* planete], herbe, tree, and flour.

▸ *a*1398 J. TREVISA tr. Bartholomaeus Anglicus *De Proprietatibus Rerum* (BL Add.) f. 208 In trees and in plauntes is lif and vertu of lif right as in bestes but dyuersliche; ffor in plauntes lyf is y-hud, and in bestes

openliche y-knowe and complete.

*a*1425 *Bible (*Wycliffite, E.V.*)* (Christ Church Oxf.) Jonah iv. 7 Jonas gladede on þe yuy..& god made redi a werm..& smot þe yuy plaunte, & it driede vp.

▸ *c*1440 S. SCROPE tr. C. de Pisan *Epist. of Othea* (St. John's Cambr.) (1970) 33 Bachus was the man that first planted vynes in Grece;..thei seide that Bachus was a god, the which had youen such strengthe to his plante [*v.rr.* planet, plants].

1551 W. TURNER *New Herball* sig. A ij Yᵉ Knowlege of plantes, herbes, and trees.

1567 J. MAPLET *Greene Forest* f. 26ᵛ Plants be sorted and deuided into three parts: the first is the Herbe: the seconde the Shrub: the third the Tree.

1626 F. BACON *Sylua Syluarum* §608 Generation by Copulation (certainly) extendeth not to Plants.

1696 E. PHILLIPS *New World of Words* (new ed.) *Plant*, a Natural Body that has a vegetable Soul.

1706 J. EVELYN *Sylva* (ed. 4) 353 So astonishing and wonderful is the organism, parts and functions of plants and trees.

*a*1771 T. GRAY *Ess. I* in W. Mason *Mem. Life & Writings* (1775) 193 Sickly Plants betray a niggard earth.

1776 W. WITHERING *Brit. Plants* (1796) II. 180 Betula. Flowers male and female on the same plant.

1830 J. G. STRUTT *Sylva Brit.* (rev. ed.) 36 The original dimensions of this venerable plant.

1869 M. FOSTER in *Nature* 11 Nov. 53/2 Plants unburn what the animal burns; and so the heat of the sun brings back oxygen to the world.

1875 *Encycl. Brit.* III. 691/1 There are other degraded allies of green plants, which are content to work up again the imperfectly broken down products of decay. Such plants are termed *Saprophytes*.

1892 J. TAIT *Mind in Matter* (ed. 3) 81 Plants, because it is their nature to produce leaves, may, by an overplus of food, produce nothing else.

1915 M. ARMSTRONG & J. J. THORNBER *Field Bk. Western Wild Flowers* 2 An attractive..plant, with stout, smooth, hollow flower-stems.

1946 A. NELSON *Princ. Agric. Bot.* xxii. 453 Prickly pear..was introduced into Australia as an ornamental garden plant and escaped into the wild.

1966 F. H. BRIGHTMAN *Oxf. Bk. Flowerless Plants* Introd. p. vii There are no English names for the majority of the plants described here; most people are have been content to speak generally of, say, lichens, seaweeds, or mosses.

1984 S. JOHNSON *Tunnel* iii. 23 In front of the house was a garden full of plants and flowers.

2002 *Horticulture* Nov. 52 Slipper orchids are still some of the most intriguing indoor plants you can grow.

b. *figurative* and in extended use.

▸ *a*1398 J. TREVISA tr. Bartholomaeus Anglicus *De Proprietatibus Rerum* (BL Add.) f. 46a Þe teeþ ben a maner of plauntis I-steked & I-piȝt by rootes & mores in þe bones of þe chekes & of þe chynne.

1597 W. SHAKESPEARE *Richard III* IV. iv. 325 The parents liue, whose children thou hast butcherd, Olde withered plantes, to waile it with their age.

1648 S. DANFORTH *Almanack* 2 Behold a choyce, a rare and pleasant plant, Which nothing but it's parallell doth want.

1844 R. W. EMERSON *Young Amer.* 14 Government has been a fossil; it should be a plant.

1869 W. E. H. LECKY *Hist. European Morals* II. i. 41 Christianity alone was powerful enough to tear this evil plant from the Roman soil.

1926 J. GALSWORTHY *Silver Spoon* vi. 41 Well, sir, the Press is a sensitive plant. I'm afraid you might make it curl up.

1974 M. AYRTON *Midas Consequence* v. 121 All good material for farce but not conducive to the flowering of my genius in the tranquil atmosphere I need to nurture that sturdy but vulnerable plant.

1984 T. C. BOYLE *Budding Prospects* (1985) iv. iv. 282 If Gesh was tangled up in himself, rootbound with frustration, Phil was the sensitive plant.

†**c.** The leafy part of a green plant, as distinguished from the stem. *Obsolete.*

1693 J. EVELYN tr. J. de La Quintinie *Compl. Gard'ner* II. vi. ii. 144 Leeks..Replanted in the Month of May, very deep in the Earth, to make their Stalks and Plants thick and white.

3.

†**a.** A growth of something planted or sown; a crop. *Obsolete.*

1832 E. LANKESTER *Veg. Substances Food* 199 To insure a good crop of barley and a kind plant of clover.

1846 *Jrnl. Royal Agric. Soc.* **7** II. 288 The promising plant of wheat which covered it was laid..by the rough weather.

1898 H. R. HAGGARD in *Longman's Mag.* Oct. 513 There was a very full plant of swedes, which would have produced a fine crop.

†**b.** In abstract sense, without article: growth; esp. in ***in plant***, growing, in leaf; ***to lose plant***, to die off, dwindle away; ***to miss plant***, to fail to germinate. *Obsolete.*

1844 *Jrnl. Royal Agric. Soc.* **5** I. 4 Clover..if sown oftener it is apt to fail in plant; and even when in plant it is not very productive unless highly manured.

1847 *Jrnl. Royal Agric. Soc.* **8** II. 291 The spaces in the..turnips, which have missed plant, are filled up with transplanted swedes.

1852 *Jrnl. Royal Agric. Soc.* **13** I. 58 The wheat often loses plant in the spring.

1889 J. WRIGHTSON *Fallow & Fodder Crops* viii. 178 It is customary to resow with rape if swedes should happen to miss plant or be eaten off with the 'fly'.

1889 J. WRIGHTSON *Fallow & Fodder Crops* ix. 207 Vetches are liable to lose plant in the spring if rolling is neglected.

c. = *plant cane n.* at Compounds 5. Frequently *attributive.*

1866 'M. TWAIN' *Lett. from Hawaii* (1967) xix. 209 Almost everywhere on the island of Hawaii sugarcane matures in twelve months, both ratoons and plant.

1866 'M. TWAIN' *Lett. from Hawaii* (1967) xxiii. 258 This year the 'plant' crop on the Wailuku plantation averages 8,000 [pounds per acre].

1928 F. S. EARLE *Sugar Cane & its Culture* ix. 213 With these four implements alone perfectly satisfactory cultivation can be maintained in both plant and ratoon fields.

1951 *Jrnl. Farm Econ.* **33** 403 The task rate per line of cut cane is then set as a function of the yield estimate, the width of the bank.., and whether the cane is a plant or a ratoon crop.

2003 *Africa News* (Nexis) 3 Dec. Meanwhile, growers seeking SDF funds for purchase of fertilisers and seed cane will be required to repay their loans within 30 months for plant crop and 26 months for ratoon

crop.

II. Senses derived from PLANT *v.*

4.

a. *slang*. A hiding place, *esp.* one for stolen or illicit goods. Also: hidden people or goods; a hoard, *spec.* a drug user's supply or equipment.

1785 *Sessions Papers of Central Criminal Court* Apr. 582/1 He opened a place in the wainscot, which is called 'a plant', it was a secret cupboard.

1796 *Grose's Classical Dict. Vulgar Tongue* (ed. 3) *Plant*, the place in the house of the fence, where stolen goods are secreted.

1819 J. H. VAUX *New Vocab. Flash Lang.* in *Memoirs* II. (at cited word) Any thing hid is called, *the plant*,..such article is said to be *in plant*; the place of concealment is sometimes called *the plant*, as 'I know of a fine plant'; that is a secure hiding-place. To *spring a plant*, is to find any thing that has been concealed by another. To *rise the plant*, is to take up and remove any thing that has been hid, whether by yourself or another.

1829 H. WIDOWSON *Present State Van Diemen's Land* xi. 118 The slabs were very loose; on pulling them up, the plant was sprung and mutton in abundance was discovered stowed away in a large barrel.

1837 J. D. LANG *Hist. Acct. New S. Wales* II. 52 He had found, to his astonishment and disappointment, that some person had *sprung the plant*—a cant phrase for discovering and carrying off property which another person has stolen and concealed.

1846 'LORD CHIEF BARON' *Swell's Night Guide* (new ed.) 57 'Where's the plant, cully?'.. 'Fenced, in a dunniken.'.. 'What? Fenced in a crapping ken?'

1874 *Hotten's Slang Dict.* (rev. ed.) 256 *Plant*, a hidden store of money or valuables. To 'spring a plant' is to unearth another person's hoard.

1926 J. BLACK *You can't Win* xii. 160 The sack contained his 'plant', an eye dropper with a hypodermic needle soldered to it, and a small paper of morphine.

1926 J. BLACK *You can't Win* xx. 314 I could lift the plant and be far away before daylight.

1967 S. LLOYD *Lightning Ridge Bk.* iii. 8 Gibson never located this plant of opal again.

1975 V. PRIDDLE *Larry & Jack* 270 My old mate Tom died a proud man as the police could never find his plant of valuable stones.

b. *slang*. A spy, a detective. Also: a group of (esp. undercover) detectives or police officers.

1812 *Sporting Mag.* **39** 210 He sold forged notes to a plant [*note* A person sent for the purpose of detecting him] which led to his untimely end.

1880 *Daily Tel.* 26 Nov. At Shepperton Lock the keeper..cautioned the defendant as he was going through the lock to take care, as there was a 'plant' out that night.

1903 'J. FLYNT' *Rise of Ruderick Clowd* ii. 80 A boy in a Reform School with a 'plant' on the 'outside' takes a high place among his companions.

1929 D. HAMMETT *Red Harvest* xviii. 179 You'll have to..take a plant on Willsson's... I hear whisper Thaler's holing-up there.

1954 W. TUCKER *Wild Talent* (1955) xiv. 184 Paul wondered if this new woman in the adjoining apartment would be a plant... Slater might be playing it doubly safe and ringing in another operative on him.

1992 J. TORRINGTON *Swing Hammer Swing!* vi. 50 I ice one cruddy little plant and suddenly I'm Public Enemy No. 1.

c. *slang*. A scheme or plot to swindle or defraud a person; an elaborately planned burglary or other illegal act.

1825 C. M. WESTMACOTT *Eng. Spy* I. 241 A regular plant to clear me out.

1836 C. DICKENS *Sketches by Boz* 1st Ser. I. 317 The 'plant' is successful; the bet is made; the stranger of course loses.

1860 T. P. THOMPSON *Audi Alteram Partem* (1861) III. cxliii. 124 When the classes who live by warfare with society, lay a deliberate scheme by which an honest man's house is to be entered, or his property carried off, it takes at the Police Offices the title of a 'plant'.

1884 *Pall Mall Gaz.* 20 Feb. 4 He..charges..Blackburn with having, in language, which has recently become parliamentary, 'put up a plant' on his innocent young friend.

1929 D. HAMMETT *Red Harvest* xiii. 131 The whole thing was a plant, but I fell for it. Honest to Christ! He was to wait upstairs while I put it to you. I didn't know anything about the others.

1958 *Connecticut Hist. Soc.* Jan. 21 Occasionally, due to the boasting of the perpetrators, the story of a successful 'plant' got around.

d. *colloquial*. A person or thing placed surreptitiously; a spy or infiltrator; a thing deposited or introduced so as to incriminate or compromise.

1916 *Variety* 7 Jan. 31/4 But it wasn't through the newspaper writer's ability as an entertainer but to the work of two 'plants', a man and a woman, who sang 'My Mother's Rosary' from a box.

1926 *Amer. Speech* **1** 436/2 *Plant*, a member of an act planted in the audience or the orchestra pit who performs his share of the act from there, or who comes upon the stage from the audience to take part in the performance as a supposed non-member of the profession.

1949 *Newsweek* 3 Oct. 36/3 Fifteen government witnesses, a half-dozen of them FBI 'plants' who infiltrated the Communist Party, had taken the stand.

1952 A. KOESTLER *Arrow in Blue* IV. xxiii. 191 One of her favourite pastimes was to fabricate apocryphal news items... One of the most successful of her plants ran something as follows.

1969 *TV Times (*Austral.*)* 15 Oct. 10/3 One Press agent made an interesting slip of the tongue when he commented: 'The first thing any publicist does in the morning is to read the plants, I mean the trades.'

1978 'G. VAUGHAN' *Belgrade Drop* ii. 15 'Heroin!' the detective shouted... Yardley had never seen the package before... He said: 'That stuff's a plant.'

1978 M. WALKER *Infiltrator* iv. 48 If she was a plant... I would have to take her along,..and find out who had planted her and why.

1989 J. SULLIVAN *Only Fools & Horses* (2000) II. 6th Ser. Episode 6. 132/2 *Danny*... They found the jewels on him. *Tony*. It was a plant. *Danny*. Yeah. It was a right fit-up.

1995 *Q* June 8/3 Q's role was to ask Mr Yarwood a probing question from the audience; in short, I was a 'plant'.

5.

a. The premises, fittings, and equipment of a business or (chiefly *North American*) of an institution; a factory, a place where an industrial process is carried out. In extended use: the workers employed at a business, institution, or factory. Frequently with modifying word.

1789 H. L. Piozzi *Observ. Journey France* I. 133 The ground was destined to the purposes of extensive commerce, but the appellation of a plant gave me much disturbance, from my inability to fathom the meaning.

1838 *Civil Engineer & Architect's Jrnl.* **1** 239/2 There was very little possibility of transferring these implements (technically called the Plant) from one contract to another.

1841 J. Holland *Hist. & Descr. Fossil Fuel, Collieries, & Coal Trade* (ed. 2) 295 The parties..contract to..raise the coal..the owner 'putting down the plant', i.e. finding the machinery.

1867 W. W. Smyth *Treat. Coal & Coal-mining* 110 In Durham and Northumberland a single 'plant' of pits and engines will work the ground for a mile or two on each side.

1881 *Nation* (N.Y.) **32** 437 The college is to him a sort of industrial enterprise,..and the professors are part of the plant.

1882 *Engineer* 24 Feb. 133/2 The plant includes one steam crane, three steam travelling cranes, a steam fire-engine, a steam pump, two steam hammers, seven steam engines, three boilers, and a few hundred nail-making machines.

1894 *Westm. Gaz.* 30 Apr. 5/1 Six plants in the coke region of Pennsylvania are now in operation.

1904 W. T. Mills *Struggle for Existence* III. xvii. 216 The great steel plants maintain great laboratories.

1922 *Managem. Engineering* Feb. 86/2 No more time is lost by having all the plant out on strike for a week than in having a tenth of the force absent for 10 weeks.

1930 J. Buchan *Castle Gay* xii. 194 He made his way round to the back regions, which had once been stables and coach-houses, and housed now the electric plant and a repairing shop for cars.

1949 *Sat. Rev. Lit.* (U.S.) 21 May 4/3 Its guiding genius..has seen this school grow from an abstract idea to a two-million-dollar plant.

1960 *Washington Post* 16 Nov. A 16 The institution has almost never received adequate funds, is understaffed, has an inadequate and deteriorating physical plant and is 'on its way to becoming a second rate municipal zoo'.

1992 *Economist* 4 Jan. 24/1 Rover has tripled its productivity over the past decade: its annual output of 35 cars per employee matches that of most European plants.

b. In extended and *figurative* use: any kind of resource or apparatus used in intellectual or spiritual work.

1861 Ld. Lindsay *Scepticism* 341 We must take stock here, likewise, of our spiritual plant, our intellectual capital.

1887 *Church Times* 21 Jan. 54/3 The policy of increasing the plant of the Roman Catholic body here..is still pursued.

1958 *Times Lit. Suppl.* 10 Oct. 569/2 The new church 'plant'..is one of the most impressive and novel signs of the boom atmosphere. Mormons, Catholics, Methodists, Seventh Day Adventists, all flourish, to judge by the ecclesiastical building boom.

c. *Australian.* The equipment, stock, vehicles, etc., of a drover, a farm, etc.

1867 *S. Austral. Parl. Papers* No. 14. 86 One pound per head for the sheep, with plant and all included.

1903 'T. Collins' *Such is Life* 7 Soon we became aware of two teams coming to meet us... Victorian poverty spoke in every detail of the working plant.

1934 *Bulletin* (Sydney) 31 Jan. 32/2 Although he knew our standard of horsemanship so well, he is so ignorant of our calling as to refer to my plant as my 'herd'.

1954 B. MILES *Stars my Blanket* xxiv. 211 He..was then about to return to Elsey with his 'plant'—a drover's 'plant' being his spare horses and packs.

1963 A. LUBBOCK *Austral. Roundabout* 42 'That'll be Dan Daley with his droving plant,' said Barney, shading his eyes. 'Plant?' I queried. 'Outfit—we call it "plant" here.'

1982 D. HARRIS *Drovers of Outback* 13 In my day most of the big back country plants were about forty to fifty horses and an open wagonette..pulled by four or five horses.

d. As a mass noun: machinery and apparatus, either fixed or movable, used in an industrial or engineering process. Chiefly *North American*: machinery and apparatus used in an institution. Frequently with modifying word.

1925 *Scribner's Mag.* July 31/2 (*advt.*) Irving School for boys... Modern plant, complete equipment.

1927 *Brit. Med. Jrnl.* 3 Sept. 374/1 To those American investigators a school meant buildings, equipment, and machinery, or 'plant' as they themselves would say.

1957 J. H. ARNISON *Pract. Road Constr.* iii. 52 The shafts for the manholes may be cut out by manual labour, and the main trench by mechanical plant.

1963 *Times Rev. Industry* Mar. 51/2 Mr. Justice Pennycuick..said that 'plant', in its ordinary sense, 'includes whatever apparatus is used by a businessman for carrying on his business'.

1971 B. SCHARF *Engin. & its Lang.* xvii. 245 Examples of mobile earthmoving plant are bulldozers, graders and scrapers.

1977 *Jrnl. Royal Soc. Arts* **125** 300/2 With the reduction of teacher training the amount of surplus 'plant' becoming available would eliminate capital construction costs.

2004 *Scunthorpe Evening Tel.* (Nexis) 15 June 23 The company also provides a comprehensive overhaul, repair and maintenance service throughout the UK for turbines, boilers and other mechanical plant and equipment.

6. A person's stance or footing; the action of setting the foot down in a specified way.

1817 *Sporting Mag.* **50** 2 The wide area between his feet, when in a standing position, gave him so firm a 'plant', if I may so say.

1889 *Macmillan's Mag.* Mar. 277/1 There was doggedness and obstinacy in the plant of the figures.

1985 B. WAGNER in H. Payne *Athletes in Action* 117 A vigorous heel-toe plant of the foot.

1994 *Runner's World* Feb. 30/2 To prevent recurrence, make sure your foot plant is straight when running.

7. *North American.* A deposit of fish spawn, fry, or oysters; a bedded oyster, as opposed to a native one.

1869 *Ann. Rep. Commissioner Agric. 1868* 342 in *U.S. Congress. Serial Set* (40th Congr., 3rd Sess.: House of Representatives Executive Doc.) XV There are numbers of men and vessels employed in procuring 'plants' from various places abroad for the artificial beds... The plants are gathered in the months of August, September, and October.

1881 E. INGERSOLL *Oyster-industry* (10th Census U.S.: Bureau of Fisheries) 246 *Plant*, in some localities, a young oyster, suitable for transplanting.

1942 *Sun* (Baltimore) 29 Dec. 13/3 The oyster 'plants', as we call them, are fetched from the Chesapeake Bay around Betterton or from Virginia.

2004 *Vancouver Province* (Nexis) 25 Feb. A6 The recent outbreak of sickness among nearly 50 oyster eaters in B.C. remains a 'real mystery',..testing of the oysters, oyster plants and the waters in the main producing areas by the agency and Environment Canada have yet to turn up a cause.

8. *Billiards*, *Snooker*, and *Pool*. A shot whereby the cue ball strikes one of two touching or nearly touching balls, so that the other ball is potted; (also) the positioning of the balls enabling such a shot.

1884 W. Cook *Billiards* xxiv. 132 There are circumstances under which..the smash becomes..the undoubted game, and this is when there is a 'plant' on.

1896 W. Broadfoot in W. Broadfoot et al. *Billiards* (Badminton Libr. of Sports & Pastimes) iii. 106 The plant is still possible when the line through the centres falls slightly to the right or left of the pocket.

1937 H. Lindrum *Billiards & Snooker* 103 B is called a 'dead plant'. The two reds are touching and in a line with middle of pocket.

1954 *Billiards & Snooker* ('Know the Game' Ser.) 32/2 *Set* or *Plant*. The two terms have become practically synonymous... They apply to a position in which two balls (invariably reds) are touching one another. In such a position it is possible to pot one or other of the balls by contacting..the ball nearer the pocket, or..the further one... Correct contact on the ball further from the pocket gives the necessary direction to the one nearer the pocket.

1985 *Guardian* 29 Apr. 27/5 Taylor..preferring a speculative plant to the middle pocket to an open red playing onto a low value colour for safety.

1995 *Snooker Scene* May 24/2 O'Sullivan made a frame winning 67 but seemed as if he might be going four down with five to play when, having lost position on 32, he attempted a very dicey plant.

Compounds

C1. General *attributive*.
a. (In sense 2.)

plant disease *n.*

1877 *Times* 13 Dec. 7/3 They further recommended that for the future it should be styled 'The Seeds and Plant Diseases Committee'.

1947 *Sci. News* **5** 88 Manganese is essential for healthy plant life. Its deficiency in soil..leads to plant diseases such as grey speck of oats.

2001 H. Holmes *Secret Life Dust* viii. 131 Attacking everything from cereals to apple and coffee trees, the rust fungi cause some of the world's worst plant diseases.

plant egg *n.*

1684 T. Burnet *Theory of Earth* II. 197 This is not necessary in plant-eggs or vegetable seeds.

1898 *Bot. Gaz.* **25** 322 The orientation of the plant-egg is at bottom a phenomenon of adaptation.

1942 J. Needham *Biochem. & Morphol.* iii. 669 Might it be that the reason why the polarity of the plant egg is so readily altered..is because the relevant orienting micelles are..wholly or partly cellulose?

1999 *Houston Chron.* (Nexis) 23 Jan. 1 Pollen is then carried down a stalk, or style, to the ovary where plant sperm is introduced to plant egg.

plant family *n.*

1884 *Harper's Mag.* Feb. 444/1 These plant families..are as curiously diverse as a human family.

1949 J. I. RODALE *Org. Method on Farm* xiv. 72 Bacteria in the root nodes of a certain plant family, the legumes.

2003 *Nature* 15 May 230/1 Other plant families have evolved self-incompatibility mechanisms that are radically different to that found in brassicas.

plant ferment *n.*

1902 *Daily Chron.* 27 Nov. 3/3 It is probable the action of the ordinary plant-ferments is of simpler character than is represented in the animal sphere.

† plant-fetish *n. Obsolete*

1899 *Daily News* 22 Feb. 6/3 The belief in plant-fetishes, wherein the informing spirit or ghost occupies the place of natural property.

plant fibre *n.*

1858 A. M. REDFIELD *Zoöl. Sci.* 334 (*caption*) Nest of the Tailor-bird,..curiously formed by stitching with plant fibres or threads of cotton a dead leaf to a living one.

1955 K. HUTTON & A. SWALLOW *Chem. for Gen. Sci.* xii. 174 Most of our clothes are made from plant fibres, e.g. linen from the stem fibres of flax and cotton from the seed-hairs of the cotton plant.

1997 *Independent* 3 Feb. I. 20/7 *What is the strongest plant fibre?* A fibre called ramie is the strongest. Its fibres are eight times as strong as those of cotton.

plant form *n.*

1854 *Househ. Words* 13 May 304/2 The distribution of plant-forms.

1875 A. W. BENNETT & W. T. T. DYER tr. J. von Sachs *Text-bk. Bot.* 130 In the same manner, from a morphological point of view, stems, leaves, hairs, roots, thallus-branches, are simply members of the plant-form.

1967 E. SHORT *Embroidery & Fabric Collage* iv. 97 The stylized plant forms of the Art Nouveau style were used.

1991 *Ornament* Autumn 16/3 She is delighted when..they are interpreted as having an organic quality, like marine or plant forms.

plant growth *n.*

*a*1855 J. F. JOHNSTON *Chem. Common Life* (1856) Index 371 Convulsions, geological, influence of, on plant growth.

1899 *Appletons' Pop. Sci. Monthly* Nov. 100 As water is a leading factor in plant growth, a classification is made..into the plants of the arid regions called xerophytes.

1994 *Ricky McMountain Buyer's Guide* (Weston, Ont.) Summer 17/2 (*advt.*) Why concrete? It's durable, maintenance free, jointless to eliminate weeds and plant growth and withstands the harsh Canadian climate.

plant label *n.*

1862 *Times* 26 Mar. 14/1 Dunn's gardener's pencil for writing plant-labels on wood.

1934 J. GRAINGER *Virus Dis. Plants* vii. 73 A clean, unused, wooden plant label should be..brought against the underside of a leaf on a plant to be inoculated.

1998 *Sunday Tel.* 25 Jan. (Mag.) 43/1 We decided it would be foolish not to replenish our plant label supply and buy a waterproof pen.

plant life *n.*

1855 *Littell's Living Age* 7 July 11/2 Such is the yearly plant-life, as seen by the ordinary cultivator, or watched with daily care by the lover of vegetable nature.

1894 G. M. L. BELL *Safar Nameh: Persian Pictures* 183 A luxuriant plant-life covered every stem and log.

1984 A. C. DUXBURY & A. DUXBURY *Introd. World's Oceans* xii. 382 Nutrients are required by the sea's plant life.

plant material *n.*

1882 *Gettysburg* (Pa.) *Compiler* 27 Dec. The saving of land and of plant material for plowing down, economy in fencing, increase of manure, and other advantages claimed for soiling, were presented on the one hand, and the extra labor and expense involved on the other.

1937 *Amer. Home* Apr. 149/2 The use of living plant materials as part of the interior decoration scheme.

1996 D. W. BROWN *Aromatherapy* (Teach Yourself Ser.) ii. 11 The heat and steam cause the cell structure of the plant material to burst and break down, thus freeing the essential oils.

plant movement *n.*

1856 L. H. GRINDON *Life* 6 For particulars of various plant-movements of this nature, see Balfour's 'Class-Book of Botany'.

1915 *Indianapolis Star* 25 Apr. (Mag. section) A graphic record of plant movements, however minute, must be made.

1992 M. INGROUILLE *Diversity & Evol. Land Plants* 36 There are also a broad range of slow plant movements, tropisms, which can be revealed by time-lapse photography.

plant name *n.*

1863 R. C. A. PRIOR *On Pop. Names Brit. Plants* pp. xxiii Popular plant names..arise with a higher and more educated class of society, and merely survive in a lower, after they have elsewhere become obsolete.

1935 M. E. HOUTZAGER *Unconscious Sound- & Sense-Assimilations* 14 Plant-names that have been changed.

1992 *Nat. World* Spring 28/4 Some [plant names] are simply baffling on first acquaintance, like the longest of our local plant names 'welcome-home-husband-though-never-so-drunk' for house-leek.

plant oil *n.*

1884 *Science* 28 Nov. 506/1 Besides pine wood, we may mention petroleum, plant-oils, perfumed rice-flour, pomegranate bark, rhinoceros horn, pearls, and musk.

1934 C. C. STEELE *Introd. Plant Biochem.* vi. 58 Stigmasterol, $C_{30}H_{49}OH$, occurs in the Calabar Bean, and in various other plant oils, *e.g.* rape oil and cacao butter.

1996 *Green Bk. Beauty 1996 Catal.* (Yves Rocher) 19/2 A night-time treatment, which contains an exceptional concentration of restructuring plant oils.

plant ornament *n.*

1898 M. A. BUCKMASTER *Elem. Archit.* 26 The acanthus..was the favourite plant-ornament with the Greeks and Romans.

1925 B. RACKHAM tr. E. Hannover *Pott. & Porc.* I. iv. 355 Chinese motives..give way to plant ornament, in which a feather-like leaf..is a constantly-recurring element.

2003 *Ashmolean* Summer 13 The cup..has been 'raised' by hammering up a relatively thin sheet, then elaborately embossed, chased, and punched with plant ornament.

plant pot *n.*

1842 C. MATHEWS *Career Puffer Hopkins* xxi. 163 Down to the plant-pots, and Dutch oven.

1905 *Philos. Trans.* (Royal Soc.) B. **197** 22 The entire plant, soil, and plant-pot were thoroughly sprayed with a solution of permanganate of potassium.

1963 *Times* 21 Jan. 15/1 The Italian company..plans to make plant pots for the horticultural trade.

1990 *Times Educ. Suppl.* 19 Oct. 25/1 There is a proper reception area, plant pots and helpful switchboard staff.

plant remains *n.*

1864 *Philos. Trans.* (Royal Soc.) **154** 280 Where lodgements have been effected out of the direct course of the main stream, plant-remains are more abundant.

1880 A. R. WALLACE *Island Life* 195 Proofs of a mild Arctic climate, in the abundant plant-remains of East Siberia and Amurland.

1990 *Sci. News* 20 Oct. 245/1 Scientists say they have identified the microscopic 'fingerprints' of plant remains on the fossil teeth of *Gigantopithecus*.

plant root *n.*

1671 *Philos. Trans.* (Royal Soc.) **6** 3038 The latter is the Plant-root, which the Radicle becoms in its growth.

1883 'M. TWAIN' *Life on Mississippi* xlii. 432 To glut the earth and the plant-roots and the air with disease-germs.

1993 *Garbage* July 56/1 Lazy-bed gardening..relies on super-rich soil that's dug deeply. This allows plant roots to go down, instead of out, meaning you can plant more veggies in less space.

plant species *n.*

1858 *Times* 24 Sept. 7/2 Observations on the geographical distribution of indigenous plants were generalized..by classifying them by regions defined by the proportion of plant species peculiar to them.

1937 *Discovery* Mar. 83 Not the least puzzling of the specialized animal and plant species of the Hawaiian Islands is the six-foot Silver-sword flower.

1988 *Nature Conservancy* May 32/2 Two plant species under review for federal protection—dune thistle..and dwarf lake iris..—also grow within the sanctuary's boundaries.

plant-spirit *n.*

1876 H. SPENCER *Princ. Sociol.* I. I. xxiii. §182 No explanation of the conceived shape of the plant-spirit.

1915 *Man* **15** 119 For much on plant-spirits and plant-demons in China (whence the Japanese ideas as to such creatures have evidently been largely derived), *see* de Groot.

1985 *Chinese Lit.* 7 106 They do not allow for the place of animals and plants in the hierarchy, though both in the popular lore of animal- and plant-spirits..these play a prominent role.

plant stand *n.*

1862 *Catal. Internat. Exhib., Brit.* II. No. 6070 Ornamental wire plant-stands, model rosery, and verandah.

1903 K. D. WIGGIN *Rebecca* 247 She buried her face in the blooming geraniums on Miss Maxwell's plant-stand.

1996 *Amateur Gardening* 25 May 57/1 (*advt.*) Mini-greenhouses, fruit cages, plant stands.

plant tissue *n.*

1880 A. GRAY *Nat. Sci. & Relig.* I. 30 It [*sc.* the name 'cell'] was given, naturally enough, to the walls circumscribing cavities in ordinary plant-tissue.

1915 T. L. LYON et al. *Soils* viii. 126 The source of practically all soil organic matter is plant tissue.

1995 *Garden* (Royal Hort. Soc.) Nov. 720/1 When soil freezes, it prevents root action, and, in windy conditions, the plant tissue, particularly of evergreens, desiccates.

plant wealth *n.*

1872 *Overland Monthly* Apr. 347/1 The blooming *chaparral* or the flowery plains owe to her [*sc.* the river's] fullness their plant-wealth of purple and gold.

1939 D. C. PEATTIE *Flowering Earth* iii. 25 The whole of modern civilization is based upon a whirlwind spending of the plant wealth long ago and very slowly accumulated.

2004 *Hindu* (Nexis) 19 Feb. This is the first complete translation in English of the 325-year old-Latin treatise on the plant wealth of Asia and the tropics.

plant world *n.*

1860 H. S. OLCOTT *Outl. First Course Yale Agric. Lect.* 22 There are two grand divisions in the plant world—the flowering and the flowerless.

1938 *Amer. Home* Jan. 64/2 Cacti are truly the camels of the plant world.

1996 *Green Bk. Beauty 1996 Catal.* (Yves Rocher) 1/1 Our researchers have just discovered the astonishing resemblance between the defence mechanisms of the plant world and those of our skin.

b. (In sense 5d.)

plant hire *n.*

1937 *Times* 9 Nov. 1/3 Syndicate owning Patent rights covering portable plant and new economical method of rustproofing large-scale steel structures invites management and finance to develop U.K. sales of materials and plant hire to railways.

1976 'L. BLACK' *Healthy Way to Die* xi. 118 There were thirty-five companies ranging from a merchant bank to..a plant-hire outfit.

1995 *Independent* 27 May 6/1 He has sold his plant hire business, apparently handing everything to his wife, and parked four crane lorries and a pick-up outside her home.

C2. Appositive.

plant ancestor *n.*

1876 H. SPENCER *Princ. Sociol.* I. I. xxiii. §181 Now if an animal regarded as original progenitor, is therefore reverentially treated; so..may we expect the plant-ancestor will be.

1936 A. V. KIDDER in B. C. Hedrick et al. *Classic Southwest* (1973) ii. 20 Some other plant ancestor, as yet undiscovered, perhaps even extinct as a result of maize culture in the lands favorable to its growth, may exist, or have existed, in South America.

2003 *Western Morning News* (Plymouth) (Nexis) 25 Aug. 20 Broccoli, turnips, cabbage, radishes, cauliflowers and mustard were all bred by man from a single plant ancestor.

C3. Objective.
a. (In sense 2.)
(a)

plant dispersal *n.*

1880 A. R. WALLACE *Island Life* 250 Fruits eaten by birds afford a means of plant-dispersal.

1961 *Evolution* **15** 55/1 As a student of plant-dispersal I am also tempted to compare our finds with the evolution of fruits, which offers a parallel development of primitive and progressive classes, both crossed and influenced by the dispersing agents.

1999 *Jrnl. Biogeogr.* **26** 393/2 This illustrates the potential of plant dispersal by the drift-ice itself.

plant-dropper *n.*

1898 *Atlantic Monthly* Apr. 504/1 The plant-droppers went ahead,..the main transplanting body followed,..and the waterer brought up the rear.

plant-eater *n.*

1852 C. LYELL *Man. Elem. Geol.* (ed. 4) 31 The mouths of a large proportion of the marine univalves have these notches or canals and almost all such species are carnivorous; whereas nearly all testacea having entire mouths, are plant-eaters.

1927 J. B. S. HALDANE & J. S. HUXLEY *Animal Biol.* iv. 112 Hoofed animals and other plant-eaters.

1994 *Guardian* 10 Nov. (Online section) 11/3 The commonest dinosaur in the region was a plant-eater called protoceratops.

plant-forcer *n.*

1903 *Westm. Gaz.* 19 Feb. 2/1 Being rich in actinic rays, it has been successfully applied as a germ-killer, a plant-forcer, and in the processes of bleaching.

plant growing *n.*

1848 *Times* 7 Aug. 12/1 Single man, age 37, who perfectly understands the forcing of vines, and peaches, also the London system of plant growing.

1897 *Appletons' Jrnl.* Oct. 376/2 The ladies who take up plant-growing might with a little tact greatly stimulate the public taste in this particular.

1993 *Farms for Sale (*Huron, Grey & Bruce Counties, Ont.*)* Aug.–Oct. 9/4 (*advt.*) Modern barn with plant growing area.

plant hunter *n.*

1858 *N. Amer. Rev.* Apr. 595 (*heading*) The Plant-Hunters, or Adventures among the Himalay Mountains.

1921 *Isis* **3** 385 Of course he does not know every plant of every nook as does the plant-hunter.

1991 *Garden* (Royal Hort. Soc.) Apr. 162/2 Plant hunters..sent all the irises they could find to Sir Michael Foster, Professor of Physiology at Cambridge University, for use in hybridisation programmes.

plant-hunting *n.*

1878 J. D. HOOKER & J. BALL *Jrnl. Tour Marocco* 346 Ball enjoyed a capital day's plant-hunting at Tangier.

1979 *Garden* 96/1 The nineteenth century saw a startling growth in plant hunting..new plants for the arboretums and pinetums being established.

1995 *Garden* (Royal Hort. Soc.) Nov. 710/1 She suggested that I made a plant-hunting trip to Poland.

plant naming *n.*

1896 *Q. Rev.* Jan. 239 The precise and accurate system of modern plant-naming.

1901 *Jrnl. Amer. Folk-lore* **14** 319 There are, however, considerable differences among primitive peoples as to the extent of plant-naming.

1992 L. W. BARSALOU *Cognitive Psychol.* ix. 272 In the absence of frequent contact with nature, people from industrial cultures tend to be less adept at plant naming.

plant worship *n.*

1876 H. SPENCER *Princ. Sociol.* I. I. xxiii. §183 Plant-worship,..like the worship of idols and animals, is an aberrant species of ancestor-worship.

1909 *Jrnl. Amer. Folklore* **22** 226 The antiquity of the charm is attested by the plant-worship pointed to, the superstitious lore revealed, and the epic passages introduced.

1993 J. BIRTCHNELL *How Humans Relate* viii. 199 It is also possible to adopt an I–God relationship to a thing, as in tree and plant worship.

plant-worshipper *n.*

1883 *Cent. Mag.* Sept. 720/2 The ornament which we have derived from Chaldean plant-worshippers.

(b)

plant-bearing *adj.*

1859 *Philos. Trans. 1858* (Royal Soc.) **148** 776 At Fasano these plant-bearing tuffs are very regular in their stratification.

1894 *Geol. Mag.* Oct. 473 The Carboniferous plant-bearing strata of Roberts' valley.

1995 *Advocate* (Nexis) 19 Nov. 1 C A bonus, he said, is that his plant-bearing sculptures change with new plants and the seasons of the year.

plant-eating *adj.*

1849 C. LYELL *2nd Visit U.S.* I. xviii. 340 We collected the plant-eating shell *Auricula bidentata.*

1941 J. S. HUXLEY *Uniqueness of Man* vi. 157 The best-analysed cases concern..plant-eating insects adapted to different food plants.

2001 *Pop. Sci.* Aug. 21/2 Both dinosaurs are sauropods, giant plant-eating animals with long necks and tails.

plant-feeding *adj.*

1778 W. MARSHALL *Minutes Agric.* 23 Oct. 1775 The manure is..equally incorporated with the plant-feeding stratum.

1866 S. W. JOHNSON *Peat & its Uses, as Fertilizer & Fuel* 54 The meloriation of the physical qualities of a soil..may be more effective for agricultural purposes, than the application of tenfold as much fertilizing, *i.e.* plant-feeding materials.

1999 *Global Ecol. & Biogeogr.* **8** 323/2 If native shade-tolerant trees largely displaced light-demanders, the diversity of invertebrate species in woods could decline, since the former generally support far fewer plant-feeding species than the latter.

plant-stimulating *adj.*

1898 *Westm. Gaz.* 6 Jan. 2/1 If it [*sc.* the problem] is solved, we shall probably know better how far to go with this artificial plant-stimulating process.

1936 S. A. WAKSMAN *Humus* xv. 355 The plant-stimulating substances found in organic composts were characterized as being water-soluble, fairly stable in aqueous solutions, and active even in small concentrations.

2002 *Advertiser* (Adelaide) (Nexis) 24 May 49 Vermicompost..is highly prized by home gardeners for use as a plant-stimulating additive to potting mix or a valuable soil improver when used as garden mulch.

plant-sucking *adj.*

1908 *Westm. Gaz.* 30 May 7/3 There are very few who realise the enormous number of species that in reality make up this mischievous group of plant-sucking parasites.

1969 *New Scientist* 2 Oct. 19/1 The Australian plantsucking psyllid bug..lives on eucalyptus leaves.

1987 *Philos. Trans.* (Royal Soc.) B. **315** 99 Such micro-organisms have been shown to be present in other herbivorous organisms with a nitrogen deficient diet, such as plant-sucking insects (for example, aphids, scale insects and whitefly).

b. (In sense 5a.)

plant hirer *n.*

1951 *Times* 30 Mar. 1/2 B.E.B. Limited..Plant Hirer Machinery Specialists.

1973 *Times* 11 May 19/5 Plant hirers are able to offer such machines.

1999 *Constr. News* 24 June 20/3 Northumberland plant hirer Hubbway has expanded its operation due to heavy demand in the telehandler and tracked excavators markets.

plant manager *n.*

1917 W. J. LAUCK & E. SYDENSTRICKER *Conditions of Labor in Amer. Industries* v. 232 District or visiting nurses are employed by the mining companies, usually under the direction of a local company physician or plant manager.

1957 C. SMITH *Case of Torches* ii. 17 John Tremlett..was made plant manager when the factory opened.

1984 C. A. HEATON *Introd. Industr. Chem.* i. 32 Sulphuric acid plant managers are probably the only people (excepting the oil producers) who do not like to see the price of oil fall.

C4. Instrumental.

plant-clothed *adj.*

1907 *N.E.D.* at *Plant* Plant-clothed.

plant-grown *adj.*

1902 *Daily Chron.* 29 Apr. 3/3 The wild plant-grown embankments of railway cuttings.

1958 *Renaissance News* **11** 126 Elegant, beautifully proportioned roman capitals, plastically modelled so that they appear like statues and standing, as it were, before plant-grown backgrounds.

C5.

plant bed *n.* *(a) U.S.* a bed of earth used for germinating seeds and growing young plants, formerly esp. tobacco seedlings; *(b) Geology* a stratum containing fossil plants.

1784 J. F. D. Smyth *Tour U.S.A.* II. lviii. 83 Every tobacco planter..generally has several of these plant-beds in different situations, so that if one should fail another may succeed.

1833 *Niles' Reg.* **44** 411/1 He is clearing new grounds; preparing and burning plant-beds.

1881 *Rep. Geol. Explor. N. Zealand* 48 The Mataura series in the Hokanui Hills overlying the plant-beds.

1990 *New Phytologist* **114** 159/2 The plant bed..consists of finely bedded carbonaceous silts bearing abundant pollen and spores.

plant beetle *n. rare* a beetle which inhabits or infests plants; *spec.* a leaf beetle (family Chrysomelidae).

1817 W. Kirby & W. Spence *Introd. Entomol.* II. xxiii. 321 The beautiful tribe of plant-beetles (*Chrysomela*, F.).

1995 *USA Today* (Nexis) 8 May 4 D The plant has been altered to produce a protein that targets the destructive Colorado plant beetle.

plant breeder *n.* a person who cultivates plants in order to improve existing varieties or produce new ones.

1901 *Science* 15 Feb. 258/1 It will be found desirable to cross different hybrid seedlings of the same parentage..rather than inbreed a hybrid with its own pollen, as is somewhat generally directed by plant-breeders.

1948 G. D. H. Bell *Cultivated Plants Farm* p. viii Some of the most important problems facing improved crop production can only be solved by plant breeders.

1995 *Yippy Yi Yea* Apr. 80/1 Plant breeder Luther Burbank developed this stately white Shasta daisy in California where it thrives in the poor soils of hill country.

plant breeding *n.* the cultivation of plants in order to improve existing varieties or produce new ones.

1896 *Science* 25 Sept. 440/2 The speaker..remarked that groups of plants which show marked irregularities in forms are nearly always fertile subjects for plant-breeding.

1970 R. Gorer *Devel. Garden Flowers* i. 21 The essential basis of plant breeding is selection.

1995 *New Scientist* 7 Jan. 23/1 It's by no means certain that genetic engineering of such multigenic traits—still at least a decade away—will beat conventional plant breeding toward this end.

plant cane *n.* (a) sugar cane of one year's growth.

1721 *Acts Assembly Leeward Islands: Antigua* (1734) 195 If the Lands be sold by Out-cry, the plant Canes shall be taken off within Eighteen Months, and if Rattoons, in Fourteen Months.

1853 *Harper's Mag.* Nov. 757 The 'growing crop' in Louisiana consists of three kinds of cane: the first is technically called 'plant cane' and is that which springs directly from the 'seed cane'.

1949 *Caribbean Q.* **1** 5 A cane field was not ripe for its first harvest (the 'plant cane') until the second winter after its planting.

2001 J. ROBINSON *Voices of Queensland* iv. 115 *Plant crop*, also called *plant cane*. The crop harvested from a new planting; the first crop [etc.].

plant case *n. rare* (now *historical*) a container for plants; *spec.* a collector's case for carrying botanical specimens.

1847 R. FORTUNE *Three Years' Wanderings China* iv. 50 Two glazed plant cases filled with plants from Amoy, were dashed to pieces.

1875 *Jrnl. Royal Geogr. Soc.* **45** 3 A small plant-case, suspended over the cabin stove, supplied us every week with a little cress and cabbage for the scorbutic.

1926 *Sci. Monthly* July 86/2 His mutilated remains were found the following day (August 13, 1834) and nearby was his plant-case and the faithful little dog.

1994 *Philadelphia Inquirer* (Nexis) 4 Nov. E1 The Wardian glass plant case for easy transport of ferns and other plants had been accidentally invented in 1830 by Londoner Nathaniel Bagshaw Ward when he left a moth chrysalis in a covered bottle for several months and found that the plants inside survived without water.

plant centre *n.* *(a)* the centre or crown of a plant; *(b)* a place where plants are found, *esp.* a garden centre.

1881 C. WHITEHEAD *Hops* 8 The plant centres being covered with a few shovels of earth.

1894 *Board Agric. Circular* x. 4 These traps..should be placed close to the [hop] hills or plant-centres.

1995 *Garden* (Royal Hort. Soc.) Nov. 730/1 The plant centre is open..each day..and the skills and art of wood-turning will be demonstrated on the weekend of 11–12 November.

† **plant cot** *n. Orkney Obsolete* an enclosed kitchen garden or nursery; cf. PLANTIECRUE *n.*

1686 in *Sc. Hist. Rev.* (1925) **22** 188 Two head rigs above Ja. Ewensones plant coat.

plant cover *n.* vegetation, esp. when growing closely enough to cover or hide the surface of the ground or protect it from erosion.

1906 *Geogr. Jrnl.* **27** 72 In the normal cycle the winds are of little importance, because the plant-cover defends the surface of the ground from their action.

1976 *Field* 18 Nov. 976/3 Where the vegetation has been worn away, the shade of the plant cover lost.., evaporation from the bare surface proceeds apace.

2000 *Land & Water* Sept. 21/1 RECPs are protective mulch blankets..intended to temporarily stabilize and protect the soil surface from raindrop impact and surface erosion until plant cover can become established.

plant covering *n.* = *plant cover n.*

1892 *Proc. Royal Geogr. Soc.* **14** 667 How dense this plant-covering of the alluvial soil is would best be shown by a picture of the curious network of mangrove roots.

1946 *Nature* 2 Nov. 605/1 Nomadism..a mode of life, indeed, in which defacement of the plant-covering by ploughing or digging is the worst of economic offences.

1995 D. R. PALMER *Summons of Trumpet* xvi. 136 At the beginning of the dry season, aircraft saturated the dense jungle with chemical defoliants, killing the luxuriant plant covering.

plant-cutter *n.* *(a)* a passerine bird of the South American genus *Phytotoma* or family Phytotomidae, which habitually bites off the shoots of plants; *(b) U.S. History* (in *plural*) rioters in Virginia who systematically cut down tobacco plants.

1802 J. LATHAM *Gen. Synopsis Birds* Supp. II. 212 Plant-cutter.

1850 *Fraser's Mag.* May 551 *Phytotoma rara*, the Chilian Plant-cutter. It lives on plants which it cuts off close to the root.

1855 C. CAMPBELL in R. Beverley *Hist. Virginia* Introd. 2 A riot-act was also passed, making plant-cutting high treason, the necessity of which act evinces the illegality of the execution of these unfortunate plant-cutters.

1910 *William & Mary Coll. Q. Hist. Mag.* **19** 2 There was trouble in 1682, about an over-production of tobacco..the Governor and Council demanded the journal of the House, which Beverley again refused; and it was partly on this account, as well as on account of his sympathy for the poor plant cutters, that he was subjected to much persecution.

1960 *William & Mary Q.* **17** 5 The best example of a constructive levying of war is the Virginia plant-cutters' rebellion in 1681.

1985 C. M. PERRINS *Encycl. Birds* 329 The southern populations of the White-tipped plantcutter, the smallest and brightest species, migrate to winter in bushy pastures of northeast Argentina and Uruguay.

plant-feeder *n.* *(a)* an animal, esp. an insect, that feeds on plants; *(b)* a feeder of plants (in various senses of FEEDER *n.*, *spec.* any of various devices used for automatic watering, esp. of house plants); (also) = *plant food n.* (a).

1878 *Amer. Naturalist* **12** 214 Ratzeburg..believed that it was a plant-feeder in the immature state.

1886 *Decatur (*Illinois*) Daily Republican* 8 Oct. 4/3 At present he [*sc.* the plant grower] is but little more than a plant feeder and attendant.

1930 *Nature Mag.* Mar. 171/2 The majority of the beetles are plant feeders, and some, such as the ladybirds, are very beneficial.

1975 *Bucks County (*Pa.*) Courier Times* 3 Apr. B23/1 (*advt.*) Cordless electric yard & garden sprayer... Also doubles as a plant feeder.

1994 *Washington Post* (Nexis) 15 Dec. T17 Avoid fertilizing with a plant feeder until the end of February.

2003 *Calgary (*Alberta*) Sun* (Nexis) 5 Apr. 37 A worry-free—and stylish—way to water plants is to use glass 'automatic plant feeders.'

plant food *n.* *(a)* a substance, or the substances collectively, providing the nutrients necessary for plant growth; the food of plants; *(b)* food, or a foodstuff, for humans or animals which consists of plants or plant products.

1853 *Sci. Amer.* 31 Dec. 125/2 Where these elements [*sc.* hydrogen, oxygen, carbon, and nitrogen] are in abundance, science only is wanting to combine and unite them in such a manner as to produce plenty of plant food.

1887 C. A. MOLONEY *Sketch Forestry W. Afr.* 101 Virgin forest soil is considered best..because it contains sufficient plant-food.

1917 M. S. ROSE *Feeding Family* i. 7 Plant foods may be called the original source of human energy. But animals, eating the plants, may work over the protein, fat, and carbohydrate of their plant food in their internal laboratories, the living cells.

1976 'J. M. BERRISFORD' *Backyards & Tiny Gardens* viii. 59 Such a growing medium contains no plant foods, so fertilizers must be added before planting.

1998 R. A. RICKER *Smart Guide to Vitamins & Healing Suppl.* vii. 141 Many plant foods, most notably soy bean, contain natural components called phytoestrogens.

2003 *N.Y. Mag.* 15 Sept. 16/2 They [*sc.* worms] will convert three pounds of leftover arugula stems and eggshells per week into 'black gold'.., which can be used for anything from plant food to potting soil.

plant geographer *n.* = PHYTOGEOGRAPHER *n.*

1883 *Times* 26 Dec. 7/7 It has been shown by Professor Schubeler, a Norwegian plant-geographer, that most plants in high latitudes produce much larger and heavier seeds than in warmer regions nearer the equator.

1973 P. A. COLINVAUX *Introd. Ecol.* ii. 27 On the grand-scale, maps of climate based on the plant geographer's boundaries were useful.

2001 *Hist. Today* May 41/1 This gap was finally filled by pioneer plant geographer and ecologist Andreas Franz Wilhelm Schimper (1856–1901) in his founding work on synecology.

plant geography *n.* = PHYTOGEOGRAPHY *n.*; (also) a description of plant distribution.

1878 *Proc. Royal Geogr. Soc.* **22** 440 The African tropical flora undoubtedly affords indications even in the present fragmentary state of our knowledge about it, of the existence of very difficult problems in the study of its plant-geography.

1903 W. R. FISHER tr. A. F. W. Schimper *Plant-geogr.* p. vi The connexion between the forms of plants and the external conditions at different points on the earth's surface forms the subject-matter of oecological plant-geography.

1934 H. GILBERT-CARTER tr. C. Raunkiaer *Life Forms of Plants* iv. 111 The units of floristic plant geography are the same as those of systematic botany.

1992 P. J. BOWLER *Fontana Hist. Environmental Sci.* (BNC) 370 Oscar Drude..of the Dresden botanical gardens published a plant geography of Germany in 1896.

plant hopper *n.* any of numerous small, leaping, plant-sucking insects (bugs) of the homopteran superfamily Fulgoroidea, including some pests of rice and sugar cane.

1920 *Ecology* **1** 194 The calcar is a very specialized structure in a single subfamily of the plant hoppers (Fulgoridae).

1956 *Nature* **178** 641 (*heading*) Effect of crowding during the larval period on the determination of the wing-form of an adult plant-hopper.

1997 *Guardian* 20 Nov. (Online section) 11/2 Epidemics of pests such as the brown planthopper ran through Asia's new varieties of rice.

plant hormone *n. Botany* = HORMONE *n.* 2.

1932 *Science* 15 July 42/2 Another extremist hypothesis..is..that many highly parasitic micro-organisms have lost their primordial autonomy, and can now multiply only under the influence of certain extraneous plant hormones..or other growth-stimulating factors.

1951 *Jrnl. Chem. Education* **28** 113 We now use plant hormones to propagate plants, prevent preharvest drop of apples,..and defoliate plants without killing the stems.

1959 L. J. AUDUS *Plant Growth Substances* i. 18 Plant hormones are substances which regulate..some aspect of plant growth and which are produced by the organism itself. They may be growth hormones, flowering hormones, and so forth.

1992 *Nat. Hist.* Feb. 56/2 Pollen, delivered to the orchid flower by a visiting insect, carries with it the plant hormone auxin.

plant house *n.* *(a)* a greenhouse or conservatory; *(b)* now *rare*, a building containing industrial plant.

1800 J. ANDERSON *Recreations in Agric.* II. 150 A plant-house, thus considerably elevated, will always be much preferable to those in a lower situation, because they will have less chance of being screened by the shade of higher objects.

1863 *Horticulturist* **18** 306 We again have the satisfaction of presenting two examples of Plant Houses; one a *Green-house*, and the other a *Cold Grapery*.

1909 *Westm. Gaz.* 6 May 5/3 A plant-house is being erected outside the south wall of the provincial capital.

1985 *Austral. Business* 4 Sept. 112/1 A seasonal-oriented solar roof for indoor pools, planthouses and sunrooms has been introduced.

plant kingdom *n.* plants collectively, as one of the major divisions of the natural world (now in *Biology* usually excluding fungi, bacteria, and often algae and protists).

1858 *New Englander* (New Haven, Connecticut) Feb. 93 The institution of the Plant Kingdom,—the appointment and creation of that kind of existence, which we call a plant, or an exhibition of the new principle, *life*, in an organism of the plant type.

1884 R. FOLKARD *Plant Lore, Legends & Lyrics* (title page) Folk-Lore of the Plant-Kingdom.

1984 A. C. DUXBURY & A. DUXBURY *Introd. World's Oceans* xv. 469 Biologists have different opinions on including the algae in the plant kingdom.

2003 *Guardian* 16 Jan. (Online section) 11/4 The combination of two pieces of biomimicry, one from the plant kingdom, one from the animal, shows what a powerful paradigm biomimetics has become.

† **plant-living** *adj. Obsolete rare* that has characteristics of both an animal and a plant; = ZOOPHYTIC *adj.*

1594 T. BOWES tr. P. de la Primaudaye *French Acad.* II. 134 Those creatures which the Græcians and Latins call by a name, which in our language signifieth as much as plant-liuing creatures [Fr. *Plantanimees, ou Plantanimales*], because they are of a middle nature betweene plants and liuing creatures.

plant marker *n.* a small marker set in the ground beside a plant and bearing the plant's name; a plant label.

1907 *N.E.D.* at *Plant* Plant-marker.

1998 *Garden Answers* Sept. 40/4 Old toothbrushes are used as dibbers or plant markers.

† **plant of gluttony** *n. Obsolete rare*[−o] the dwarf cornel, *Cornus suecica* (family Cornaceae), a rhizomatous plant having purple flowers and bright red berries that were supposed to stimulate the appetite.

1866 J. LINDLEY & T. MOORE *Treasury Bot.* I. 333/2 The little red berries..are supposed to increase the appetite, the plant [sc. *Cornus suecica*] being called lus-a-chrasis, or Plant of gluttony.

plant pathologist *n.* = PHYTOPATHOLOGIST *n.*

1894 W. SOMERVILLE & H. M. WARD tr. R. Hartig *Text-bk. Dis. Trees* Introd. 17 The skilled plant-pathologist will seldom fail to recognize with certainty the true character of a disease.

1977 *Daily Tel.* 6 July 2/1 Dr Alan Walker, Ministry Plant Pathologist, said that cereal diseases which could cut yield by up to 15 per cent. were minimal this year.

1999 *BBC Gardeners' World* Apr. 32/3 Australian plant pathologists have developed a natural compound, based on rape-seed oil, that acts as a fungicide, protecting grapevines from powdery mildew.

plant pathology *n.* = PHYTOPATHOLOGY *n.*

1891 *Bot. Gaz.* **16** 188 Dr. A. N. Berlese has been called to the position of professor of botany and plant-pathology at the Royal School of Viticulture, at Avellino.

1973 *Nature* 27 Apr. 595/2 Plant pathology..is to plants what the whole of medicine and veterinary science is to man and animals.

2004 *Financial Times* (Nexis) 10 July 14 Our professor of plant pathology..specialised in diseases of tobacco.

plant physiologist *n.* a scientist specializing in plant physiology.

1888 *Bot. Gaz.* **13** 219 We hardly think that this view will be favorably received by plant physiologists.

1931 W. O. JAMES *Introd. Plant Physiol.* i. 2 The methods used by plant physiologists..are mainly derived from various branches of chemistry and physics.

2001 *Isis* **92** 299 Before World War II, little relation was perceived between poisons like Sinox and plant hormones, even by the plant physiologists most concerned with weed control.

plant physiology *n.* the branch of science that deals with the normal functioning of plants and their parts.

1870 *Amer. Naturalist* **4** 182 In view of the many questions in plant-physiology which are now being asked, it seems to be a sort of botanical dissipation to give up to the name what is due to the plant.

1937 W. H. S. SMITH *Let.* 10 July in *Young Man's Country* (1977) ii. 80 I was interested to see the place where all his [*sc.* Tagore's] disciples are following out the lines of research suggested by his highly original work in plant-physiology.

1968 F. C. STEWARD *Growth & Organization in Plants* p. iii The author's, and indeed a customary, approach to plant physiology is deeply ingrained in the study of cells, their membranes and particulate inclusions, their metabolism and responses to stimuli.

1993 *Edinb. Postgrad. Prospectus 1994* (BNC) 89 It also contains strong research groups working on plant and fungal physiology.

† **plant-plot** *n. Obsolete* a nursery for young plants. Also *figurative*.

1610 P. HOLLAND tr. W. Camden *Brit.* I. 100 Tributes also were imposed..for Corne-grounds, Plant-plots [L. *plantarijs*], Groves or Parks.

1612 J. SPEED *Theatre of Empire of Great Brit.* I. xxiii. 45/2 From Greeke-Lad, a towne in Wilt shire the Academy was translated vnto Oxford, as vnto a Plant-plot, both more pleasing and fruitfull.

plant science *n.* botany or any of its branches, esp. those concerned with the biochemical, genetic, physiological, and evolutionary aspects of plants; cf. BOTANY *n.* 1a.

1846 I. STEINER *Elem. Reader, German & Eng.* II. 139 *Ich studire gern die Pflanzenkunde*: I study gladly the plant-science.

1900 *Glasgow Herald* 13 Feb. 4/5 This book should prove useful in educating children in the elements of plant-science.

1962 *AIBS Bull.* **12** 36/2 The transformation of a normal plant cell to a tumor cell that grows out of control represents a challenge for investigators in various plant sciences.

2011 J. BOYLE in L. Sayre & S. Clark *Fields of Learning* i. 48 Reading about agricultural ecosystems in my plant science textbook is not nearly as powerful as watching those principles in action on a frigid Sunday at the greenhouse.

† **plant stove** *n. Obsolete* a heated greenhouse, a hothouse; = STOVE *n.*[1] 3.

1855 P. NEILL et al. *Pract. Gardener's Compan.* (rev. ed.) 285 The *Plant-Stove* may either be a *dry-stove* or a *bark-stove*, or both combined, and is applied to the cultivation of tropical plants which require an elevated

temperature.

1880 *Encycl. Brit.* XII. 222/2 The *Plant Stove* differs in no respect from the greenhouse except in having a greater extent of hot-water pipes for the purpose of securing a greater degree of heat.

† **plant-tin** *n. Obsolete rare* a plant case made of metal.

1896 *Daily News* 12 Dec. 6/2 In the winter there is no occupation for plant-tin or insect-net.

plant wax *n.* wax obtained from plants; a particular kind of this.

1924 J. A. THOMSON *Sci. Old & New* xviii. 101 There are plant-waxes as well as animal-waxes.

1934 C. C. STEELE *Introd. Plant Biochem.* II. iii. 26 Still higher homologues [of ethyl alcohol] are constituents of both plant and animal waxes.., being mainly combined with acids in the form of esters.

1997 *Biochemist* Feb. 13/1 Plant waxes are a mixture of very-long-chain fatty acids (VLCFAs), primary and secondary alcohols, aldehydes, ketones and esters.

This entry has been updated (OED Third Edition, June 2006).

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STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE

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January 3, 2020

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 (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 Reply to Petitioner's Response in Opposition to Respondent's Motion for Summary Judgment along with Exhibit 1 in connection with the above-referenced matter. Also enclosed is a Proof of Service.

Should you have any questions, please do not hesitate to contact me at 803-898-5623 or marcus.antley@dor.sc.gov.

Respectfully,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Marcus D. Antley, III, Esquire
Counsel for Litigation

MDA/gjm

Enclosures

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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 REPLY TO PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure and Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court (ALC), the undersigned, as attorneys for the Respondent, South Carolina Department of Revenue (Department), file this Reply to Colonial Pipeline Company's (Petitioner or Taxpayer) Response in Opposition to the Department's Motion for Summary Judgment. As a matter of law, the Taxpayer does not qualify for the *ad valorem* exemption in S.C. Code Ann. § 12-37-220(A)(8) (2014) (Pollution Control Exemption), and therefore, the Department is entitled to judgment.

ARGUMENT

The Department incorporates by reference the Stipulation of Facts, and the cited portions of the 30(b)(6) Deposition of Colonial Pipeline Company ("Colonial Depo.") are attached as Exhibit 1.

I. The dictionary definition of "plant" cited by the Department is consistent with South Carolina law.

The Taxpayer asserts the dictionary definition of "plant" cited by the Department is an "alternative" definition that is overly broad and inconsistent with South Carolina law. Although it is true that the Merriam-Webster dictionary offers multiple definitions of "plant," the Taxpayer mischaracterizes the "2.a." definition as the primary definition and the "2.b." definition cited by the Department as an alternative definition.[1] Following the Taxpayer's logic, the first and therefore primary definition of "plant" would be definition 1.a.—"a young tree, vine, shrub, or herb planted or suitable for planting." *See Merriam-Webster* (December 30, 2019, 1:54 PM), https://www.merriam-webster.com/dictionary/plant. The Taxpayer proposes that the 2.a. definition "merely requires a trade or business that is industrial in nature." (Petitioner's Response, p. 2). Adopting this definition would make the phrase "industrial plant" redundant and the term "industrial" meaningless. Interestingly, the Taxpayer later argues that an interpretation that renders a portion of a statute meaningless violates canons of statutory construction. (Petitioner's Response, p. 4-6) Unlike the overly broad 2.a. definition that the Taxpayer considers the primary definition, the 2.b. definition cited by the Department is consistent with South Carolina laws that associate "plants" with manufacturing, producing or outputting. *See* § 12-37-220(A)(8) (references "manufacturers" and describes the valuation of equipment with "a dual purpose of production and pollution control"); S.C. Code Ann. § 12-23-20 (2014) (refers to an "industrial plant manufacturing or generating power"); S.C. Code Ann. § 12-43-220(a)(3) (2014) (refers to the "plant site of the manufacturer"); S.C. Code Ann. Regs. 117-1700.7 (2012) (defines "plant

[1] The definition cited by the Department defines "plant" as "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.

site" as "related to the overall manufacturing operation"); *see also* 42 U.S.C.A. § 6326 (West) (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.")

II. The Taxpayer cannot selectively pick and choose which portion of the sales tax machine exemption it analogizes to the Pollution Control Exemption.

In its initial Memorandum, the Taxpayer claimed the sales tax machine exemption provided by S.C. Code Ann. § 12-36-2120(17) (Supp. 2018) provides an analogous reason why the Taxpayer is entitled to the Pollution Control Exemption. The Taxpayer relied on the Department's conclusions in Revenue Ruling # 91-8 and Revenue Procedure #05-1 granting the sales tax exemption for pollution control to a wastewater treatment facility. The Taxpayer claimed this conclusion necessarily meant the wastewater treatment facility met the definition of an industrial plant, presumably because the water it was treating came from a manufacturer. Thus, it contends these two documents relating to the *sales tax exemption* demonstrate the Taxpayer is similarly an industrial plant because it transports petroleum that comes from a refinery (which is a manufacturer) and therefore it is entitled to the *property tax exemption*. (Petitioner's Memo, p. 18).

In its Response, the Taxpayer now attempts to distance itself from the sales tax machine exemption in § 12-36-2120(17), noting that the two exemptions have "vastly different language." (Petitioner's Response, p. 2). Although the Taxpayer is correct that the two exemptions are worded differently, what is important is that both the Pollution Control Exemption and sales tax machine exemption in § 12-36-2120(17) include language related to *manufacturing* and *producing*. Thus, a reasonable harmonizing of these two statutes is that the General Assembly intended to exempt from taxation the facilities or equipment that are necessary (i.e. required by state or federal law)

to prevent or mitigate any *pollution that may be the byproduct of the manufacturing process*. This is fundamentally different from what the Taxpayer or any other transportation company does, which is to transport already-manufactured products from one point to another (whether by train, tanker, or pipeline). Importantly, the Pollution Control Exemption contains additional language (which the sales tax exemption does not) granting the exemption *only* to "facilities or equipment of industrial plants" – again, indicating the focus of the exemption is on items used at the site where manufacturing-related pollution is most likely to occur. Contrary to the Taxpayer's assertion, this is limiting—not expansive—language.

III. The Pollution Control Exemption is limited to manufacturers or other similar companies.

The Taxpayer again relies on the sales tax machine exemption to contend that "plants" are not limited to manufacturers. The Department mentions in its Memorandum that companies similar to manufacturers may qualify for the Pollution Control Exemption. (Department's Memo, p. 13). The use of the term "water treatment plant" in S.C. Code Ann. Regs. 117-302(B)(8)(h) (2012)—where input is dirty water and output is clean water—is consistent with the Department's position because Regulation 117-302(B)(8)(h) refers to water treatment plants in the context of paper *manufacturers*.

The Taxpayer also looks to the definition of "bulk plant" from S.C. Code Ann. § 12-28-110(7) (2014) in the context of motor fuel user fees to support its position. Importantly, section 12-28-110(7) does not define "industrial plant" and does not apply to property taxes. Therefore, the motor fuel user fee definition of "bulk plant" does little to inform the definition of "industrial plant" as used in the Pollution Control Exemption.

The Taxpayer briefly discusses ancillary activities, like separating Transmix, which it claims treat and output a product. However, the primary purpose of the Taxpayer's property is to move Refined Petroleum Products from one location to another. All the activities in South Carolina relate to moving those Refined Petroleum Products while maintaining their quality so that input equals output.

While the Taxpayer correctly cites canons of statutory construction, it misapplies them to the term "manufacturing plant," which appears nowhere in the Pollution Control Exemption. Instead, the Pollution Control Exemption uses the term "industrial plant," which would include manufacturing plants and other similar plants. For example, an electric power plant owned and operated by a utility may have facilities or equipment that qualify for the Pollution Control Exemption. Therefore, applying the modifier "manufacturing" to "plant" clarifies the specific type of plant referenced.

IV. DHEC does not determine whether a taxpayer is an industrial plant for purposes of the Pollution Control Exemption.

As stated in the Department's Memo, the Department did not request and § 12-37-220(A)(8) does not require that the South Carolina Department of Health and Environmental Control (DHEC) decide whether the claimed property is a facility or equipment of an industrial plant. (Department's Memo, p. 15). DHEC's role is to determine whether facilities or equipment control pollution. DHEC noted in multiple correspondences with the Department that is lacks authority to permit, inspect, or enforce pipeline operations. (Stip. Facts, ¶¶ 20 and 27). Regardless, DHEC's interpretation for regulatory purposes of the term "industrial plants," which the Industrial Stormwater General Permit cited by the Taxpayer never directly defines, does not determine what qualifies as an industrial plant for property tax purposes.

V. The Taxpayer reads the Pollution Control Exemption too broadly.

The Taxpayer attempts to read the words "manufacturer" and "production" out of the Pollution Control Exemption and focuses instead on the word "company" in its expansive reading. As discussed in the Department's Memorandum and Response, exemptions are read narrowly. If "manufacturer" does not inform the interpretation of "company," the use of "manufacturer" is superfluous. The Taxpayer's broad interpretation of company would include a manufacturer and therefore render the term "manufacturer" meaningless. This interpretation contradicts the Taxpayer's own argument about redundant and meaningless words violating the canons of statutory construction. Moreover, the Taxpayer again conflates a sales tax exemption with the Pollution Control Exemption by referencing the language of "manufacturers, electric power companies, and transportation companies" in S.C. Code Ann. § 12-36-2120(9) (2014). However, section 12-36-2120(9) demonstrates that the General Assembly is capable of combining the terms "manufacturers" and "transportation companies" in an exemption statute yet declined to do so in the Pollution Control Exemption.

VI. The Taxpayer's reference to other statutes and regulations actually support the Department's position.

The Taxpayer helpfully points out that the term "plant site" is not only used in conjunction with manufacturing in S.C. Code Ann. Regs. 117-1700.7 (2012) but also in S.C. Code Ann. § 12-43-220(a)(3) (2014). In addition to the regulation promulgated by the Department, section 12-43-220(a)(3), a property tax statute, demonstrates that the General Assembly considers the term "industrial plant" to be related to manufacturers and similar companies for property tax purposes. The Taxpayer cites no instance in the property tax context where the term "plant" relates to non-manufacturing operations.

VII. The Taxpayer's arguments for a broad construction of the Pollution Control Exemption are misplaced.

The Taxpayer admits "there is no clear explanation regarding the legislative intent supporting the adoption of the property tax pollution control exemption." (Petitioner's Response, p. 12). Then, the Taxpayer speculates that the legislative intent behind the Pollution Control Exemption is to encourage the acquisition of pollution abatement equipment and economic development. In categorizing the Pollution Control Exemption as economic development, the Taxpayer attempts to shift the statutory construction in its favor. Despite citing no supporting case law, the Taxpayer claims South Carolina courts follow an expansive view in interpreting economic development statutes. However, as discussed earlier, exemptions are construed narrowly against the taxpayer. Directly addressing the Pollution Control Exemption, the Supreme Court of South Carolina stated "[t]he burden is on claimants to prove their rights to an exemption by bringing themselves 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).

The Taxpayer cites Technical Advice Memorandum #89-14 and Private Letter Ruling #95-3 to support a liberal reading of economic development statutes. Outside the context of property taxes, both policy documents concern corporate income tax credits. Even if these policy documents were relevant and endorsed a liberal reading of economic development statutes, the long-established South Carolina case law on the narrow construction of exemption statutes, including a Supreme Court of South Carolina case on the Pollution Control Exemption, must prevail.

The Taxpayer also cites case law from other states and a law review article to support its expansive reading of the Pollution Control Exemption. The Illinois case cited based its

interpretation of the Illinois exemption on the fact that the taxpayer "received no economic benefit in making the installation." *Illinois Cereal Mills, Inc. v. Dep't of Revenue*, 37 Ill. App. 3d 379, 381, 346 N.E.2d 69, 70 (1976). The law review article, which includes no reference to South Carolina, similarly bases its analysis on testimony of industry representatives that "such investments do not increase productivity, efficiency, cost control or profits, but benefit solely the general public. Therefore, they argued, because pollution investment serves only a social purpose, the public should share the investment cost." Kirk W. Junker, *Tax Exemption for Pollution Control Devices in Pennsylvania*, 34 Duq. L. Rev. 503, 511 (1996).

In contrast, the Taxpayer receives economic benefit in making the installation of the claimed property, and the investment in the claimed property increases productivity, efficiency, cost control, and profit. *See* Colonial Depo. pp. 66:25; 67: 1-4; 271:23-25; 272:1-19; 291:25; 292:1-19 ("it's a good investment. It makes good financial sense and – to protect your asset and to keep the – the product from being released from your pipeline…"). In fact, the Taxpayer even had the claimed assets prior to any legal requirement or ever claiming the Pollution Control Exemption. *See* Colonial Depo. pp. 291:25; 292:1-19; 68:23-25; 69:1-12. In other words, the Taxpayer wants this Court to liberally construe a property tax exemption for assets that provide the Taxpayer an economic benefit and it had/would have regardless of the Pollution Control Exemption while enjoying the lower assessment ratio that South Carolina offers to transportation companies.

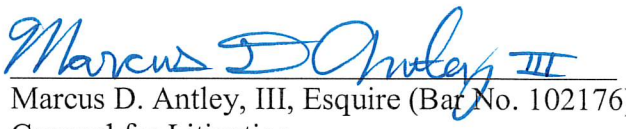
CONCLUSION

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. By not

bringing itself squarely within the parameters of the statute, the Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8).

WHEREFORE, the Department asks that this Court to enter an order denying the Petitioner's Motion for Summary Judgment and granting the Department's Motion for Summary Judgment.

Respectfully submitted,



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Columbia, South Carolina
January 3, 2020

Exhibit 1

considered hazardous materials. Refined petroleum products, they're flammable. So if they get released outside the pipeline through a spill, they can contaminate the water and the ground, but the fumes also contaminate the air. So it's a bit of all -- a bit of both.

Q. Okay. Those three pieces of equipment, are they all required by either state or federal law?

A. They're required by the Code of Federal Regulations for how you operate a pipeline.

Q. Okay. What agency requires those pieces of equipment?

A. Well, that's not my area of expertise --

Q. That's fine.

A. -- but I believe they call it PHMSA, which is the Pipeline Hazardous Materials Safety Administration.

Q. And who's -- do you know who at Colonial would be the expert on that?

A. The expert on cathodic protection and pipe coatings is Josh Stanley and he's here today, so. And then you also have Robert Hughes, who's an environmental engineer, as well. So you've got two people from Colonial that can speak to those.

Q. Okay. So there's -- it sounds like there's

a production purpose in addition to the pollution control purpose; is that correct?

A. I suppose so because it's part of the pipeline itself.

Q. Is there a safety purpose?

A. Sure. I mean -- well, environmental safety, especially, but, otherwise they're -- they're underground, so they're really not out where anybody's going to touch them or -- I don't see a physical safety purpose there, other than protecting the release of product.

Q. Okay. So for people, it's not necessarily a risk. It's just environmental?

A. It's more environmental in nature.

Q. Okay. And just to be clear, I think -- I think we're on the same page about this, but Colonial doesn't dispute the valuation of the property.

A. No.

Q. Is that correct?

A. We do not.

Q. And Colonial does not dispute the valuation method?

A. No, we do not.

Q. What assessment ratio applies to Colonial

Pipeline Company?
A. I believe it's nine and a half percent.
Q. Do you know why that's the assessment ratio that applies?
A. I'm not sure what the history of it is. I just know that's the state assessment ratio for pipelines.
Q. For pipelines, okay. How long has Colonial had these assets -- pipe coatings, cathodic protection, automatic shut-off valves -- that it's claimed as exempt?
A. Oh. Well, there actually are dates on this schedule as to when they were installed. I think the oldest one on this list goes back to '06 and the newest it looks like in '16, maybe, 2016.
Q. Okay.
A. So we didn't go back and try to claim all of the original pipeline because it was old and how do you determine the value of something that's 60 years old? So we -- we only went with things that have -- projects that have been in the last ten to 12 years at the time we filed this.
Q. Okay. So since it's been around since 2006, as late -- as early as 2006, as late as 2016, why did Colonial decide to claim the pollution

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

Q. Is -- is there any part of Colonial Pipeline's Company -- is there anything that -- that you would refer to as a "plant"?

A. Plant? I mean, we -- if you look at our tank farm facilities, they are a self-contained unit of operation. They have their control systems. They have their -- it is a -- it is a unique operation that's, you know, self-sustaining, so to speak.

We've got our maintenance and -- all of our maintenance. We're bringing in contractors and doing work on the facility. All of the processes and everything are -- all of our -- our processes at the facility are around its safety and operation.

So when you -- when you say a "plant," I think that refers to a single location. So for Colonial, we would focus on our bigger locations, which would be our tank farm facilities.

Q. But at Colonial, do you -- in -- in your nomenclature, do you refer to any property as a certain plant? Like the Belton plant? The Spartanburg plant?

A. That's -- that's not a typical term for us, no, the term "plant," no.

used when they're not required by state or federal law?

A. Are they used when they're not required? Yeah, they're used all the time. You're talking about just in our pipeline or just in the industry, in general?

Q. Both.

A. There's -- I mean, there's -- any company you own is an asset that's made of metal and they would want -- want to preserve that asset or prevent a release from their asset, then yes.

Waterlines was the example I gave. Definitely not required, but -- but if you lose water out of your system and that's your business, you lose revenue, so. So it's -- it keeps the asset safe.

Power plants use them. There's companies that transport air and I don't believe they're required, but they -- they use it, so.

Q. So water, air, those are things that wouldn't cause pollution, right?

A. I'm not -- well, if it's straight nitrogen or straight carbon dioxide, I guess there could be some pollution associated with that, but that's not really my line of expertise, so I

don't --

Q. And -- but water, there wouldn't be any pollution from that, would there?

A. From water? It depends what kind of water they're -- they're transporting, so. Obviously, drinking water, no, but -- but there is -- there may be some sewer lines that -- that use cathodic protection that -- there's cast iron sewer lines out there and definitely don't want that being released into our -- our water supply.

MR. ANTLEY: I think that's all I have.

MR. CARTIN: Just got a couple quick questions for you.

CROSS-EXAMINATION

BY MR. CARTIN:

Q. What is this coating made out of? Is it like plastic or is it some sort of like thick, metallic paint?

A. So over the years, the coating has evolved. Originally, our original system has what's called an "asphalt enamel." It's an asphalt petroleum-based coating. It's probably maybe a quarter-inch thick.

Q. Uh-huh (affirmatively responds).

A. In some cases, it could be a half-inch

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.)

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

DEPARTMENT OF REVENUE

OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

PO Box 12265
Columbia, SC 29211-9979

April 20, 2020

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 Motion to Amend Respondent's Prehearing Statement in connection to the above-referenced matter. Also enclosed is a Proof of Service. The Department filed the Second Amended Prehearing Statement on September 4, 2019. In the Petitioner's Reply to Respondent's and Intervenors' Responses to Petitioner's Motion for Summary Judgment, the Petitioner raised a procedural concern that the Department did not include a Motion with the Second Amended Prehearing Statement. To alleviate that concern, the Department is filing the enclosed Motion.

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 **MOTION TO AMEND PREHEARING STATEMENT**

Pursuant to Rule 18 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, formally moves to amend its prehearing statement (Exhibit A). The Department filed Respondent's Second Amended Prehearing Statement on September 4, 2019 via first class mail with the accompanying cover letter and proof of service. The purpose of the amendment 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 communicated this clarification with the parties prior to filing Respondent's Second Amended Prehearing Statement. The amendment is consistent with the Department Determination in this matter that "[t]he Taxpayer is not entitled to a property tax

exemption pursuant to § 12-37-220(A)(8)." Because this amendment is a clarification, no party will be prejudiced in the presentation of its case.

Respectfully submitted,

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Columbia, South Carolina
April 20, 2020

Exhibit A

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.**

Marcus.Antley@dor.sc.gov

Respectfully submitted,

Marcus D. Antley, III

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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, Respondent, and Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Intervenors.	)	Docket No. 18-ALJ-17-0443-CC **PROOF OF SERVICE**

I, the undersigned employee of the South Carolina Department of Revenue, Office of General Counsel, do hereby certify that I have served the South Carolina Department of Revenue's, Respondent's Second Amended Prehearing Statement in connection with the above-captioned matter by causing a copy of the same to be deposited in the United States Mail on the below date, postage prepaid to the following parties at their address of record:

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Columbia, South Carolina
September 4, 2019

NEXSEN|PRUET

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

April 30, 2020

VIA EMAIL AND US MAIL
The Honorable Ralph King Anderson III
Chief Administrative Law Judge
South Carolina Administrative Law Court
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 an original and one copy of the Petitioner's Motion in Opposition to Respondent's Motion to Amend Prehearing Statement, related Certificate of Service and $25.00 check for filing in the above-referenced matter.

I would appreciate if you would please file the original and return a clocked copy to me in the enclosed postage paid envelope.

Thank you for your attention to this matter.

Sincerely,

Jim Rourke

JR/mw

Enclosure – Petitioner's Motion
cc: Marcus D. Antley III, Esq.
Michael Kozlarek, Esq.
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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 AND MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION TO AMEND PREHEARING STATEMENT**

Petitioner Colonial Pipeline Company submits this brief Motion and Memorandum of Law in Opposition to the Respondent Department of Revenue's Motion to Amend its Prehearing Statement, which was filed on April 20, 2020. Respondent's proposed amendment add four new categories of equipment which it had previously reviewed and determined to be exempt from property tax. Petitioner believes this improper expansion of the Department's Proposed Assessments and Department Determination effectuated through the proposed amendment violates the SCALC Rules and the Revenue Procedures Act.

I. FACTS

As stipulated by the parties:

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.

...

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.

...

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.

In sum, the Department's 2017 and 2018 Proposed Assessments granted property tax exemptions for Petitioner's wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs based on Petitioner's original application for exemption. The Proposed Assessments, which form the basis of this litigation, identified a taxable value of property that excluded the value of the property listed above. The Department Determination, issued in response to Petitioner's protest of the Proposed Assessments, also made no mention of the equipment identified above because they were not part of the dispute.

II. LAW

a. The Department's Proposed Amendment Should be Denied Based on Rule 18, SCALCR.

Rule 18, SCALCR, provides:

> 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.

Under the plain language of the Rule, if the amendment serves to prejudice any other party in the presentation of its case, it may not be amended, even upon motion. In this case, the addition of four categories of equipment previously determined to be tax-exempt surely prejudices Petitioner's presentation of its case because it creates an added burden of proof for Petitioner to overcome, despite the fact this equipment was not part of the dispute with the Department at the agency level. Therefore, the motion to amend should be denied in full.

The only relevant case applying Rule 18, SCALCR, is *International Paper Company, Inc. v. South Carolina State Energy Office*, Docket No. 12-ALJ-30-0086-CC (filed December 19, 2012). In that case, this Court found that International Paper's protest of a S.C. State Energy Office's decision regarding the biomass fuel credit was not properly before the Court as a contested case under S.C. Code Ann. § 1-23-600(A), but could have been heard as an appeal of a final decision under § 1-23-600(D). The Court rejected International Paper's request to apply Rule 18 to amend the original request for contested case hearing into a procedurally-effective appeal. The Court found 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." In a footnote, the Court noted: "Not only could this lead to abuse of the rules but it would also undermine the timeliness safeguards of the Court's appellate procedure."

Similarly, the Department's retroactive denial of a previously-granted exemption by means of an amended prehearing statement could surely lead to similar abuses. For example, as discussed above, the Department originally granted the pollution control property tax exemption for the 2017 and 2018 tax years. Under Department's proposal, it can simply ignore other procedural bars (as described below) and the statute of limitations to bring previously-exempt equipment within this dispute. Further, the Department's auditors in charge of issuing Proposed Assessments and lawyers in charge of issuing Department Determinations could simply agree to avoid complex or troublesome issues at the agency level, and then spring those issues onto the taxpayer once the matter progresses to the Administrative Law Court.

b. The Department's Approach Violates the Revenue Procedures Act.

S.C. Code Ann. § 12-60-20 provides:

> It is the intent of the General Assembly 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. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

This "straightforward procedure" is described in Article 5 of the Revenue Procedures Act. First, under § 12-60-420(A), the Department is authorized to sends a proposed assessment to the taxpayer when it determines there is a deficiency in a state or local tax administered by the Department. That proposed assessment must "explain the basis for the . . . proposed assessment." Next, § 12-60-450(A) authorizes the taxpayer to appeal a proposed assessment by preparing a written protest containing certain information, including a statement of facts and law supporting the position and outlining the reasons for appeal. The Department then prepares a Determination in response to the taxpayer's protest pursuant to § 12-60-450(E). Finally, Section 12-60-460

provides that "A taxpayer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court."

In this case, Petitioner timely filed its 2017 and 2018 property tax returns, claiming the pollution control exemption for seven categories of equipment on each return: pipe coatings, cathodic protection, automatic shut-off valves, wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs. After reviewing each return, the Department granted the exemption for four categories and denied the exemption for the remaining three categories. After Petitioner timely protested the denial of the exemption on each Proposed Assessment, the Department issued its Department Determination for the 2017 and 2018 tax years. The Department Determination only identified the three categories for which the exemption was denied (*see* Department Determination at pp. 1-2: "On April 19, 2017, the Department of Revenue (the 'Department') received a 2017 application for an ad valorem tax exemption passed 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."). Consistent with § 12-60-460, Petitioner requested a contested case hearing before this Court in an effort to "seek relief from the department's determination" which was limited to the exemption for pipe coatings, cathodic protection, and automatic shut-off valves.

The appeals procedures outlined in the Revenue Procedures Act are designed to be straightforward and to promote predictability. Respondent's use of an amended prehearing statement to retroactively deny a previously-granted exemption is anything but straightforward—it is an end-around the statutory assessment and appeal procedure. Taxpayers should be afforded the opportunity to know with specificity and precision the nature of the tax dispute. Whether

Petitioner is entitled to the exemption for the wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs for the 2017 and 2018 tax years is not currently before this Court. Petitioner sought and the Department granted an exemption for that property when it filed its 2017 and 2018 property tax returns. Petitioner never addressed that property in its protest of the Department's Proposed Assessment because the Department agreed with Petitioner at the time that the property was exempt as pollution control property.

III. CONCLUSION

Based on the foregoing, this Court should deny the Department's Motion to amend its prehearing statement and find the sole dispute before this Court is whether Petitioner is entitled to the pollution control property tax exemption for pipe coatings, cathodic protection, automatic shut-off valves. Simply, the Department is barred procedurally from retroactively revising its Department Determination to include property it originally classified as exempt. It can, subject to other procedural limitations (e.g., the statute of limitations), issue a new Proposed Assessment denying a previously-granted exemption. To allow otherwise would give the Department near-unfettered ability to use an unresolved Department Determination as an entryway to infinitely expand the scope of an audit.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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Attorneys for Petitioner Colonial Pipeline Company

Date: April 30, 2020

STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE

OFFICE OF THE GENERAL COUNSEL

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May 4, 2020

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 Reply to Petitioner's Motion and Memorandum of Law in Opposition to Respondent's Motion to Amend Pre-Hearing 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 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/anh
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 **REPLY TO PETITIONER'S MOTION AND MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION TO AMEND PREHEARING STATEMENT**

Pursuant to Rule 19(A) of the Rules of Procedure for the Administrative Law Court (SCALC), the Respondent, South Carolina Department of Revenue (Department) submits the following in Reply to Petitioner's Motion and Memorandum of Law in Opposition to Respondent's Motion to Amend Prehearing Statement.

I. Facts

"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." Stipulation of Facts ¶ 31. The Department communicated this clarification with the parties prior to filing Respondent's Second Amended

Prehearing Statement. *See* Cover Letter to Respondent's Second Amended Prehearing Statement. In Section C of the Stipulations of Facts, the Assessment in Dispute which contains the Property Tax Assessment without any of the Petitioner's property considered exempt.

II. Analysis

The issue before the Court remains: "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)?" *See* Department Determination issued November 19, 2018; Respondent's Prehearing Statement filed January 4, 2019; Respondent's Amended Prehearing Statement filed June 19, 2019; and Respondent's Second Amended Prehearing Statement filed September 4, 2019. The Department Determination in this matter is: "The Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8)." Consistently, the Department's initial and both amended prehearing statements state: "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." Logically, if the Taxpayer does not qualify for the pollution control exemption because it is fails to meet the threshold element by not having an industrial plant, none of the Taxpayer's property would qualify for the exemption.

Because this amendment is a clarification, no party will be prejudiced in the presentation of its case. Notably, the Petitioner did not raise any concerns to the Court over the Department's Second Amended Prehearing Statement until January 3, 2020 in Petitioner's Reply to Respondent's and Intervenors' Responses to Petitioner's Motion for Summary Judgment. Further mitigating any potential prejudice, the Petitioner has nearly a year to prepare to present its case

from the date of the Second Amended Prehearing Statement on September 4, 2019 to the contested case hearing scheduled on August 4, 2020.

In opposition to the Department's Motion to Amend Prehearing Statement, the Petitioner cites this Court's decision in *International Paper Company, Inc. v. South Carolina State Energy Office*, Docket No. 12-ALJ-30-0086-CC (filed December 19, 2012). However, the petitioner in that case attempted to convert a request for a contested case into a notice of appeal—"an entirely different document" with "entirely different procedural rules." *Id.* at 5. Here, the Prehearing Statement remains a Prehearing Statement.

Even if the amended Prehearing Statement constituted a new argument rather than a clarification, this Court has made 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. *See* Order on Cross Motions for Summary Judgment in *Amazon Services, LLC v. South Carolina Department of Revenue*, Docket No. 17-ALJ-17-0238-CC (filed January 29, 2019) at 15-16. The Petitioner's suggestion that the Department must restart the administrative process by issuing a new Proposed Assessment to effect such a clarification disregards judicial economy.

III. Conclusion

For the reasons above, the Department has shown good cause and the amendment of the Department's Prehearing Statement will not prejudice any other party in the presentation of its case. Therefore, the Department asks the Court grant Respondent's Motion to Amend Prehearing Statement.

{Signature on following page}

Respectfully submitted,

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Columbia, South Carolina
May 4, 2020

KOZLAREK LAW LLC

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May 27, 2020

By United States Postal Service
Stephanie Michelle Perez, Esq.
Law Clerk to 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-17-0443-CC

Dear Ms. Perez:

On behalf of Intervenors Abbeville County, Anderson County, Greenville County, York County, Aiken County and Laurens County, please find enclosed an original and one copy of the Joint Motion to Alter or Amend Order of May 20, 2020, 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.
Walter H. Cartin, Esq.
J. Evan Phillips, Esq.
Madison Felder, Esq.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Colonial Pipeline Company, Petitioner, vs. South Carolina Department of Revenue, Respondent. Abbeville County, Aiken County, Anderson County, Greenville County, Laurens County, and York County, Intervenors.	)	Docket No. 18-ALJ-17-0443-CC **JOINT MOTION TO ALTER OR AMEND ORDER OF MAY 20, 2020**

Intervenors Abbeville County, Anderson County, Greenville County, York County, Aiken County and Laurens County (collectively, "Counties"), acting by and through their counsel, move this Court pursuant to Rule 19 and Rule 68 of the South Carolina Administrative Law Court Rules ("SCALCR"), and Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP"), to alter, or amend this Court's order, dated May 20, 2020, received by the undersigned on May 20, 2020, to clarify that the Court's Order is not intended to limit Counties' 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.

The Department of Revenue's Department Determination, dated November 19, 2018 (a copy of which was attached to Petitioner's Request for Contested Case Hearing Form, dated December 5, 2018), succinctly provides the entirety of the subject matter of this dispute:

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

(p.1).

In each County's respective Motion to Intervene (Abbeville and Anderson: March 20, 2019; Greenville: May 17, 2019; York: May 28, 2019; Aiken and Laurens: May 28, 2019), each County noted that County's understanding of the actual nature and scope of the pending contested case into which that County intended to intervene:

> As the Taxing Entities understand the situation, Colonial requested an exemption from the Department regarding **100% of its "pipeline" property**.

(each Motion to Intervene, p.1, emphasis added). While each County's motion was pending, Petitioner did not object to Counties' understanding of the breadth of the contested case and nothing in this Court's Orders granting each Motion to Intervene limited the scope of County's understanding of this contested case. Rather, Counties were granted the status of intervenors to challenge an exemption of "100% of [Petitioner's] 'pipeline' property." Counties have always understood their position in the contested case to be that of challenging, as Counties deem appropriate, ***any*** property tax exemption Petitioner has received for the two (2017/2018) tax years in question.

The Counties' understanding is consistent with the Court's Order and its discussion of South Carolina Code Annotated section 12-60-2130, which provides "A . . . local governing body who disagrees with the department determination may request a contested case hearing . . . ."[1] Because a contested case was pending, Counties had no need to seek a second contested case. Rather, Counties moved for (and were granted) the status of intervenors in the existing contested case. As a result, 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 none, some, or all of Petitioner's exemption either as the petitioner of that County's own contested case or as an intervenor in the existing contested case. This conclusion is consistent with the *de novo* standard of review that the Court will apply in this case. *See, e.g.*,

[1] Further, unlike Petitioner's position in this contested case, there would have been no need for Counties to exhaust any administrative remedies before challenging Petitioner's request for an exemption of any or all of Petitioner's property. S.C. Code Ann. § 12-60-2130 ("If a **taxpayer requests** . . . without exhausting his prehearing remedy . . . ." (emphasis added)).

Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control, 358 S.C. 573, 579, 95 S.E.2d 851, 854 (2004).

CONCLUSION

For the foregoing reasons, Counties merely desire to clarify their understanding of the Court's Order of May 20, 2020, to ensure the Court's Order is not intended to limit Counties' challenging 100% of Petitioner's exemption request.

[SIGNATURE PAGE AND CERTIFICATE OF SERVICE FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

Respectfully submitted,

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Counsel for Intervenors Abbeville County, Anderson County, Greenville County, and York County

May 27, 2020
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Respectfully submitted,

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Attorneys for Intervenors Aiken County and Laurens County

May 27, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
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June 1, 2020

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 **Respondent's Motion to Alter or Amend Order of May 20, 2020** 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 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. Abbeville County, Aiken County, Anderson County, Greenville County, Laurens County, and York County, Intervenors.	)	Docket No. 18-ALJ-17-0443-CC **RESPONDENT'S MOTION TO ALTER OR AMEND ORDER OF MAY 20, 2020**

Respondent, South Carolina Department of Revenue (Department), acting by and through its counsel, moves this Court pursuant to Rule 19 and Rule 68 of the South Carolina Administrative Law Court Rules (SCALCR), and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP), to alter, or amend this Court's order filed May 20, 2020 and grant the Respondent's Motion to Amend Prehearing Statement.

FACTS

The Petitioner applied for a pollution control exemption pursuant to S.C. Code Ann. § 12-37-220(A)(8) (2014) for property tax years 2017 and 2018 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. ¶¶ 15 and 22). The Government Services Division partially granted and partially denied the pollution control exemption application. (Stip. ¶¶ 16 and 24). The Petitioner protested the proposed assessment for property tax years 2017 and 2018. (Stip. ¶ 17 and 25).

The Department issued a Department Determination on November 19, 2018 that provides:

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)?

* * *

Determination:

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

The Court correctly notes in its order filed May 20, 2020 that the Department Determination only mentions the three items denied by the Government Services Division. The undersigned Department representative became aware of the potential confusion regarding the scope of the Determination based on certain questions by the Petitioner's counsel in the 30(B)(6) deposition of the Petitioner on August 6, 2019. To avoid any confusion, the Department representative contacted all the parties shortly after the deposition and indicated he intended to amend the Department Determination to clarify that none of the Petitioner's property qualifies for the pollution control exemption – including the property that was initially exempted by the Government Services Division. (*See* Exhibit A). The Department stated that it viewed the amendment as a clarification of its determination—not a new position. At that time, Petitioner's counsel raised no objection to the inclusion of the other assets as part of this contested case hearing. Instead, Petitioner's counsel only expressed a procedural concern that if the Department issued an amended Determination the Petitioner would have to appeal the amended Determination by requesting a second contested case hearing.

In order to address the procedural concerns raised by Petitioner[1] and in light of this Court's

[1] If the Department had amended its Determination, counsel for Petitioner indicated that he believed he would have had to request another contested case hearing to appeal the Amended Determination. The affected counties would then have had to file a motion to intervene in the new matter, and the parties would have then had to move to consolidate the two contested cases or dismiss the older contested case. The Department ultimately chose simply to amend its Prehearing

recent ruling in a separate matter (a copy of which the undersigned emailed to counsel for Petitioner and Intervenors on August 29, 2019), the Department instead chose to amend its Prehearing Statement rather than amending its Department Determination. *See* Order on Cross Motions for Summary Judgment in *Amazon Services, LLC v. South Carolina Department of Revenue*, Docket No. 17-ALJ-17-0238-CC (filed January 29, 2019) at 15-16. The Department filed its Second Amended Prehearing Statement on September 4, 2019. (Stip. ¶ 31). The Petitioner raised no objections to the Department's Second Amended Prehearing Statement until its Reply to Respondent's and Intervenors' Responses to Petitioner's Motion for Summary Judgment on January 3, 2020 when—for the first time—it asserted the Department could not amend its Prehearing Statement without a motion. At the hearing on the Motions for Summary Judgment on January 6, 2020, the Department orally moved the Court to amend the Department's Prehearing Statement. To eliminate any lingering procedural concerns, the Department filed a written Motion to Amend Respondent's Prehearing Statement on April 20, 2020.

ARGUMENT

The Petitioner's protest of the Department's partial denial of the pollution control exemption allows the Department to review the division decision regarding the entire exemption application. The Petitioner cannot bifurcate its appeal. The Petitioner must understand the logic that if it does not qualify for the pollution control exemption because it is fails to meet the threshold element by not having an industrial plant, none of the its property would qualify for the exemption. In fact, the Petitioner makes the converse of this argument that if it qualifies for the pollution control exemption by having an industrial plant for some property, its other property may qualify

---

Statement to avoid the additional time and expense that would have resulted from amending its Determination.

for the exemption. Because the Petitioner protested the Department's assessment, eligibility for the pollution control exemption for any of the Petitioner's property was not a decided matter.

In its Order on Cross Motions for Summary Judgment, this Court addressed the Department's original determination granting the pollution control exemption for some items while its amended prehearing statement argued none of the items qualify for the exemption. The Court stated that "[s]ince 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." Order on Cross Motions for Summary Judgment (filed March 6, 2020) at 13. The Revenue Procedure Act allows review of a division decision, so the Department Determination can reach a conclusion different from the division decision. *See* S.C. Code Ann. § 12-60-2120(D). Further, the Department is not estopped from invoking the correct elements of the Pollution Control Exemption even if its employees incorrectly or inadvertently misapplied those elements by granting the Pollution Control Exemption. *See TNS Mills,* 331 S.C. at 621-22, 503 S.E.2d at 477. Similarly, the Department is able to amend its Department Determination to correct errors and omissions. This Court has made 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. *See* Order on Cross Motions for Summary Judgment in *Amazon Services, LLC v. South Carolina Department of Revenue*, Docket No. 17-ALJ-17-0238-CC (filed January 29, 2019) at 15-16. Here, the argument is the same: "the claimed property fails the first element [of the pollution control exemption] because the claimed property is not a facility or equipment of an industrial plant." Department Determination at 4. Therefore, the Department has not changed its argument, but even if the Court considers the amended prehearing statement to be a new argument, such a change is permissible.

The Court cites *Mead v. Beaufort Cty. Assessor* to limit this action to the items originally

denied by the Government Services Division. However, the Court of Appeals allowed the Administrative Law Court (ALC) decision granting an exemption to include subsequent years that were unchallenged with a contingency. *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 141, 796 S.E.2d 165, 174 (Ct. App. 2016) ("we modify the ALC's order to provide Mead's eligibility to the homestead exemption in subsequent years is contingent on no change in his circumstances."). The Court of Appeals was most concerned that no evidence regarding subsequent years was presented at the ALC hearing because changes could occur in subsequent years that would affect the taxpayer's eligibility for the exemption. Here, the taxpayer will have the opportunity to present evidence as to all items it claims are eligible for the pollution control exemption at the hearing on the merits. Because, unlike in *Mead v. Beaufort Cty. Assessor*, this case only involves certain limited property tax years, the circumstances are not subject to change. Whether the Petitioner has an industrial plant for the periods involved does not change if the four items initially granted the exemption by the Government Services Division are included in the action. Therefore, *Mead v. Beaufort Cty. Assessor* actually supports the Department's assertion that the four items not mentioned in the Department Determination are justiciable.

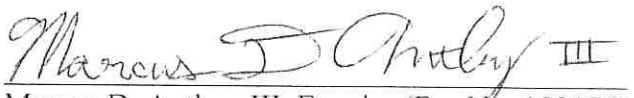
In addition, if the original prehearing statement initially filed by the Department in January 2019 had contained content identical to the Second Amended Prehearing Statement currently at issue, the Petitioner would have had no basis to object to the issues and action requested by the Department. In addition to being distinguishable from the instant case, *International Paper Company, Inc. v. South Carolina State Energy Office* would not apply without invocation of Rule 18. The prehearing statement remains a prehearing statement. This is a mere amendment of a pleading, paper, or document, and not a different document and does not implicate any different procedural rules.

The Respondent's Motion to Amend Prehearing Statement does not prejudice the Petitioner in the presentation of its case. The Petitioner will likely present the same evidence regardless of whether the action includes only three or all seven of the items for which it claims the pollution control exemption. The burden remains on the Petitioner to prove it has an industrial plant and meets the threshold element of the pollution control exemption.

CONCLUSION

For the foregoing reasons, the Department requests the court alter or amend its order and grant the Respondent's Motion to Amend Prehearing Statement.

Respectfully submitted,



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Columbia, South Carolina
June 1, 2020

EXHIBIT A

Marcus 'Trey' Antley, III

From: Maybank, Burnet R. III <BMaybank@nexsenpruet.com>
Sent: Thursday, August 29, 2019 1:52 PM
To: Marcus 'Trey' Antley, III
Cc: Rourke, Jim; Cartin, Walt H.; Jason Luther; Michael Kozlarek
Subject: Re: Amended DD

Follow Up Flag: Follow up
Flag Status: Completed

We would oppose a new DD; even if amended I suppose we would have to appeal

Can you forward us the Order referenced below?

Sent from my iPhone

On Aug 29, 2019, at 1:45 PM, Marcus 'Trey' Antley, III <Trey.Antley@dor.sc.gov> wrote:

{EXTERNAL EMAIL}

All,

As you know from my call to each of you yesterday, the Department is prepared to issue an amended Determination to clarify that none of Colonial's property qualifies for the pollution control exemption – including the property that was initially exempted by the Property Division. Based on my conversation with Jim, I understand that Colonial has concerns about the potential procedural impact of the Department issuing an Amended Determination. The original Department Determination stated: "The Taxpayer is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8)." That determination would not change in an Amended DD. In my opinion, the Amended Determination is a non-substantive change that would have no impact on the case procedurally. Therefore, Colonial would not need to request another contested case hearing to challenge the Amended DD; the pending contested case hearing covers it.

Even if the Amended DD were a substantive change, I still do not think that creates any procedural issues. Judge Anderson recently ruled in another Department matter that because a contested case hearing is de novo, any issues raised in the Pre-Hearing Statement are ripe for consideration (even if not specifically addressed in the Determination) and that the PHS can be amended at any time prior to trial. I intend to file an amended PHS, so perhaps amending the DD is unnecessary. It is certainly not my intent to create any additional work or procedural hoops for everyone to jump through; however, in my view, issuing an Amended DD consistent with the amended PHS ensures that the issues in dispute are clearly before the Court and makes for a cleaner record for the Court to rule on.

Regardless, I think we can head off any procedural problems if the parties all consent in advance that the issuance of an amended DD does not require Colonial or the Counties to request a new contested case hearing, but that all of the issues in the amended DD are preserved and ripe for consideration in the current pending contested case. Please let me know your thoughts; I would like to send both of these out sooner rather than later.

Thanks,
Trey

Marcus 'Trey' Antley, III
Counsel for Litigation
Litigation & Appeals
803-898-5623 | Trey.Antley@dor.sc.gov
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NEXSEN | PRUET

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

June 4, 2020

VIA EMAIL AND US MAIL
The Honorable Ralph King Anderson III
Chief Administrative Law Judge
South Carolina Administrative Law Court
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 an original and one copy of the Petitioner's Response to Intervenors' Joint Motion to Alter or Amend Order of May 20, 2020 and related Certificate of Service for filing in the above-referenced matter.

I would appreciate if you would please file the original and return a clocked copy to me in the enclosed postage paid envelope.

Thank you for your attention to this matter.

Sincerely,

Jim Rourke

JR/mw

Enclosure – Petitioner's Response to Motion
cc: Marcus D. Antley III, Esq.
Michael Kozlarek, Esq.
Walter Cartin, Esq.
Madison Felder, Esq.

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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 RESPONSE TO INTERVENORS' JOINT MOTION TO ALTER OR AMEND ORDER OF MAY 20, 2020**

Petitioner Colonial Pipeline Company ("Petitioner") files this response to the Motion to Alter or Amend filed by Intervenors Abbeville County, Anderson County, Grenville County, York County, Aiken County, and Laurens County (collectively, "Intervenors") on May 27, 2020. Intervenors challenge whether the eligibility for the property tax exemption for Petitioner's wastewater pollution control equipment, storm water pollution control, secondary containment, and tank internal/external floating roofs ("Previously-Exempted Equipment") for the 2017 and 2018 tax years is currently before this Court. Intervenors ignore the long procedural history of this property tax dispute and now attempt to re-open matters which were resolved years ago. Thanks to the wisdom of the General Assembly, Intervenors lack the procedural mechanisms to direct the Department's tax assessment in this case by merely intervening in this matter.

A. The Property Assessment Notice Controls the Matters at Issue.

Intervenors contend the property tax exemptions for the Previously-Exempted Equipment were part of the Department Determination by reference to § 12-37-220(A)(8) and thus before this Court. However, Intervenors ignore the more complete procedural history of this matter.

Petitioner timely filed applications for exemption with the Department for the 2017 and 2018 tax year. *See* Stipulation of Facts ¶ 15, 22. These applications sought property tax exemptions for seven types of equipment. *Id.* In response, the Department issued Property Assessment Notices on August 15, 2017 for the 2017 tax year and on July 27, 2018 for the 2018 tax year. *Id.* at ¶ 16, 24. Those assessments listed the proposed taxable value of Petitioner's property. The Proposed Assessment Notices expressly excluded the values of the Previously-Exempted Equipment, but included the values for pipe coatings, cathodic protection, and automatic shut-off valves. This means the 2017 and 2018 Property Assessment Notices granted Petitioner's exemption request for the Previously-Exempted Equipment, but denied exemptions for the remaining equipment. Thereafter, Petitioner timely protested those denials, *Id.* at ¶ 17, 25, by filing a statutory appeal, which is required under § 12-60-1730 ("A property taxpayer may appeal any property tax assessment or denial of exemption if a written protest is filed in accordance with this article.").

Because the Property Assessment Notices granted Petitioner's exemption request for the Previously-Exempted Equipment, the only issue for Petitioner to appeal was the denial of the exemption for the remaining equipment. The limitations period for contesting the Department's Proposed Assessment would have been 90 days from the issuance of the Property Assessment Notices, which means any matters which were not protested became final in November 2017 for the 2017 tax year and October 2018 for the 2018 tax year. §§ 12-60-450, 12-60-2110. Therefore,

the applicability of the exemption to the Previously-Exempted Equipment for the 2017 and 2018 tax years was definitively determined in November 2017 and October 2018, respectively, and thus could not possibly have been before the Department when it issued its determination on November 19, 2018.

There is simply no basis for allowing Intervenors to re-open this closed audit by means of a Motion to Intervene filed years after the deadline for contesting the Property Assessment Notices. In fact, according to Chapter 60, counties have limited opportunities to challenge determinations made by the Department. Pursuant to § 12-60-3120, that authority appears limited to appealing Department Determinations. Counties are statutorily required to receive notice a taxpayer is protesting a Property Assessment Notice, § 12-60-2120(A)(2), but do not have the authority to appeal them. The General Assembly's limitation is intentional—otherwise, counties could essentially usurp responsibility for the administration and assessment of tax from the Department. Limiting county involvement at the assessment level promotes uniformity and efficiency, which are hallmarks of a functioning taxation regime.

B. Intervenors Never Protested the Department Determination.

Even assuming *arguendo* that the exemption status of all seven pieces of equipment was before the Department when it issued its Department Determination, Intervenors failed to challenge the Department Determination in a timely manner. Section 12-60-2130, which was cited by Intervenors in their Motion to Alter or Amend, provides that "[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" (emphasis added). The Department Determination was issued on

November 18, 2018. Intervenors never requested a contested case before this Court, but instead moved to intervene between March 20, 2019 and May 28, 2019.

Intervenors' failure to timely protest the Departments Determination to this Court is fatal to their attempted expansion of the issues before this Court. Because no party protested whether Petitioners were entitled to the property tax exemption on the Previously-Exempted Equipment, that matter is simply not before this Court at this time. As previously cited by this Court, the *Mead* case is equally applicable:

> 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.

C. At the Time of Intervention, Intervenors Agreed with the Result of the Department Determination.

Moreover, it is vital to note that each Intervenor declared in their Motions to Intervene that each "agree[s] with the result of the final Department Determination." See Abbeville and Anderson County Motion at 1 (filed March 20, 2019); Greenville County Motion at 1 (filed May 17, 2019); York County Motion at 1 (filed May 28, 2019); and Aiken and Laurens County Motion at 2 (filed May 28, 2019). For more than eight months after its issuance, the "result of the final Department Determination" was that Petitioner was granted the property tax exemption for the Previously-Exempted Equipment, but denied the exemption for pipe coatings, cathodic protection, and automatic shut-off valves. "The result" only changed on September 4, 2019, when the Department attempted to amend its Department Determination by means of an amended Prehearing Statement to deny exemptions for property which were previously granted.

This Court's Order dated May 20, 2020 makes clear that "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." In a footnote, the Court offers more clarity:

> 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 nonexempt, 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.

Based on the foregoing, the fact the Intervenors now disagree with the Department Determination is irrelevant to the adjudication of this case,

D. Granting Intervenors' Motion Would "Eviscerate the Purpose of the Revenue Procedures Act."

Intervenors' attempted end-around the Department Determination forming the basis of this matter creates the same policy concerns this Court warned about in its prior Order denying Respondent's attempts to re-open its Department Determination. To wit:

> 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.*

The Department should not benefit from a county's mere intervention in a lawsuit to essentially re-open a prior decision. To allow so would violate traditional notions of equity and fairness which this Court is designed to uphold.

E. Intervenors Lack Standing to File Motion to Alter or Amend.

Although Rule 29(D), SCALCR, allows any party to move for reconsideration to alter or amend a final decision, the Motion forming the basis of this Court's May 20 Order involves the Department's attempt to amend its own prehearing statement. Therefore, it would appear that Intervenors have no standing to seek the reversal of an Order related exclusively to another party's procedural filing (i.e., the prehearing statement), especially where the original movant (i.e., the Department) had not previously sought alteration or amendment of that Order.[1]

F. Intervenors Cannot Seek Reconsideration of an Interlocutory Appeal

Intervenors seek reconsideration of this Court's Order pursuant to Rule 59 of the S.C. Rules of Civil Procedure. The practical effect of their Motion is they are seeking this Court to reconsider

[1] The Department has since filed a Motion to Alter or Amend on June 1, 2020.

its Order. However, the Motion is premature because there has not been a "final decision" in this matter, as required by Rule 29(D), SCACR. No party may appeal an interlocutory order until a final decision has been rendered by this Court.

G. Conclusion

Based on the foregoing, Petitioner respectfully requests this Court deny Intervenors' Motion to Alter or Amend its May 20, 2020 Order, which appropriately limits the issues before this Court to the applicability of the pollution control property tax exemption under § 12-37-220(A)(8) to Petitioner's pipe coatings, cathodic protection, and automatic shut-off valves for the 2017 and 2018 tax years.

Respectfully submitted,

Burnet R. Maybank, III
Jim Rourke
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Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorneys for Petitioner Colonial Pipeline Company

Date: June 4, 2020

KOZLAREK LAW LLC

CHRISTIE B. SATTER
Senior Paralegal/Office Manager
SC: 864.527.5979
christie@kozlareklaw.com

December 11, 2020

Via Courier
South Carolina 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 Sir/Madam:

On behalf of the Respondents Abbeville County, Anderson County, Greenville County, and York County, please find enclosed a Motion for Reconsideration with related Certificate of Service for the referenced Contested Case. We understand that as a government entity, there is no fee for this filing.

Please return an executed, clocked copy to the courier.

Thank you for your assistance. Do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Christie B. Satter

Enclosure: stated

cc: Burnett R. Maybank, III, Esq.
Jim Rourke, Esq.
Jason Luther, Esq.
Marcus D. Antley, III, Esq.
Walter H. Cartin, Esq.
J. Evan Phillips, Esq.
Madison Felder, Esq.

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 **RESPONDENTS ABBEVILLE COUNTY, ANDERSON COUNTY, GREENVILLE COUNTY, AND YORK COUNTY'S MOTION FOR RECONSIDERATION**

Respondents Abbeville County, Anderson County, Greenville County, and York County ("Counties") hereby move the Court pursuant to Rules 29(D) and 68 of the Rules of Procedure for the Administrative Law Court and Rule 59(e) of the South Carolina Rules of Civil Procedure, to Reconsider, Alter, or Amend ("Motion") the Court's December 1, 2020, Final Order ("Order"). In support of this Motion, the Respondents respectfully ask that the Court reconsider and alter or amend portions of the Order in the following respects:

I. Petitioner is Not entitled to a "Pollution Control Exemption" for any of Petitioner's Equipment

A. Statutory Construction/Burden of Proof

In South Carolina, property tax exemptions are strictly construed against the exemption claimant; taxation is the rule, and exemption the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E. 337 (1920). Exemption statutes are narrowly construed, and taxpayers who claim exemptions under an exemption statute must prove they come clearly within such exemptions. *Henry P. Moses Co. v. S.C. Tax Comm'n*, 224 S.C. 193, 78 S.E.2d 187 (1953). 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 the taxpayer relies. *Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949).

In its Order, the Court seemingly recognized the appropriate level of statutory construction and scrutiny for an exemption claim, but then strained to find an exemption by using certain dictionary definitions, while ignoring others, relying on some pieces of evidence while ignoring others, and ignoring the likely absurdity of the result, as well as casting aside other aspects of statutory interpretation and evidentiary necessity, all in an apparent attempt to grant an exemption in contravention of the strict construction *against* an exemption claimant. Petitioner, without the Court's assistance, must "clearly bring itself within the exemption upon which it relies." *Id.* Petitioner failed to do so in this case, and the Court should reconsider its ruling and alter or amend its Order to reflect the appropriate level of strict construction warranted in a tax exemption case, which would necessitate a finding against Petitioner.

The Order correctly cites South Carolina Code Annotated § 12-37-220(A)(8) for the proposition that if the equipment sought to be exempted serves a function apart from pollution control, then the utility of that function must be recognized before allowing the exemption. Order, p. 30. The Order continues by describing Petitioner-presented evidence of putatively exempt equipment serving several different functions, only one of which was pollution control. *Id.* In a number of instances, the Court lamented that the evidence Petitioner presented left the Court "unclear" as to what function was primarily served and as to whether the benefit and savings of the equipment outweighed the cost and maintenance. Order, p. 31. Further, the Court admitted it was "left to speculate" as to the extent to which the equipment served a business purpose. *Id.* Any "speculation" must be construed against, and not in favor, of Petitioner. Accordingly, Petitioner did not meet its burden under the rule of strict construction against an exemption claim. Any "speculation" would be left to the Court if, and only if, Petitioner did not meet its burden of proof clearly to bring itself within the claimed exemption. As such, the Court should have held that Petitioner failed to meet its burden to establish Petitioner was entitled to any exemption.

Despite this lack of evidence from Petitioner, the Court (implicitly and) improperly

transferred the burden of proof to the Respondents to either prove a negative or to disprove Petitioner's claim by holding that "because neither the Department nor the Counties provided evidence that cathodic protection serves a purpose other than pollution control," the Court must conclude that this equipment is solely used for pollution control. *Id.* However, Petitioner, not Respondents, bore the burden of proving Petitioner's exemption claim. *See, e.g., Nat'l Health Corp. v. S.C. Dep't of Health & Envtl. Control*, 298 SC 373, 380 S.E.2d 841 (Ct. App. 1989). Respondents are not required to prove or disprove any aspect of Petitioner's claim. As a result, the Court erred in finding Petitioner had met its burden.

B. Failure to Obtain DHEC Determination

The facts in the record show the following:

In 2018, the South Carolina Department of Revenue ("DOR") contacted the South Carolina Department of Health and Environmental Control ("DHEC") to determine whether DHEC considered Petitioner's equipment to be "pollution control equipment" under section 12-37-220(A)(8). According to section 12-37-220(A)(8), DHEC, when asked by DOR, is the agency charged by State law with providing a decision as to that aspect of the "pollution control exemption." In response to DOR's request, on August 27, 2018, DHEC sent DOR a letter explaining that interstate petroleum pipeline operations were beyond DHEC's purview, as these operations are regulated exclusively by the United States Department of Transportation ("USDOT"). Tr. p. 71, Joint Exhibit 16. DHEC also indicated that "[DHEC] is unable to speak for those [federal] agencies with regard to the purpose of any specific requirements promulgated by those agencies." Tr. p. 314; Joint Exhibit 16. Rather, DHEC, in its letter, expressly limited any commentary to "the context of USTs [underground storage tanks]," which are neither present in any of Petitioner's operations nor the subject matter of Petitioner's exemption request.[1] These facts

[1] If DHEC's letter were a court's opinion, then the sole holding of that letter would be "The Court does not have jurisdiction over this matter." The remainder of the opinion, including the discussion of USTs, would be cocktail-

are undisputed.

However, the Court's Order states precisely the opposite when the Court determines that DHEC not only rendered an opinion on the issue, but also that DHEC's opinion was "clearly favorable to the taxpayer." Order, p. 14. On the contrary, DHEC's letter unambiguously states that DHEC did not see itself as having any authority to determine the issue. Absent a DHEC determination, the statutory language is clear that no "pollution control exemption" may be granted. Because Petitioner did not challenge DHEC's failing to issue a determination in Petitioner's favor, no "pollution control exemption" could have been granted by DOR or by the Court.

C. Petitioner's Equipment is Not an Industrial Plant

The facts in evidence show as follows:

Petitioner is a transportation company that moves refined petroleum products (e.g., jet fuel, gasoline, diesel, heating oil, and kerosene). As such, it is regulated as a "transportation company" by the USDOT. Tr. pp. 182-184. Petitioner refers to itself as a "transportation company." Tr. p. 63. On the company web site, Petitioner claims that its mission is to ***move*** energy where it is needed. Tr. p. 63. In various regulatory materials submitted by Petitioner, as part of the USDOT requirements, Petitioner represents itself to be a "transportation company." Tr. p. 60. Petitioner did not introduce any evidence to present Petitioner as either an "industrial company" or a "plant." Despite recounting the numerous employees that Petitioner employs, Petitioner admittedly has no plant managers and no facilities designated as "plants." Tr. p. 162. Petitioner does not conduct any of its blend stock operations in South Carolina. Tr. p. 163. No customers pay Petitioner to manufacture, fabricate, or "create" any products in South Carolina. Tr., p. 45. Petitioner sells no products in South Carolina. Tr. p. 45. Rather, Petitioner takes finished products from one location

party-worthy *dicta*. A court cannot claim a lack of authority to opine on a dispute and then ostensibly render a decision on the substance of that same dispute on which another court would then rely.

and ***moves*** them to another location.

All of Petitioner's activities in South Carolina, whether ***moving*** products through the pipeline, injecting lubricant to assist in ***moving*** the products through the pipeline, or separating transmix at "junction" areas because of how Petitioner elects to ***move*** products through the pipeline, relate to Petitioner's chosen operation of ***moving*** finished fuel products through a pipeline. Tr. pp. 60, 63, 67, 162, 168; Joint Exhibit 3.

Petitioner has two tank farms: one in Belton, South Carolina, and one in Spartanburg, South Carolina. These tank farms fall under the USDOT jurisdiction and are, once again, related to the ***moving*** Petitioner's energy products. Tr. p. 65; Joint Exhibit 3. In fact, Petitioner, itself, in regulatory documents, describes the tank farm at Belton as consisting of "20 USDOT regulated pipeline breakout and/or relief tanks." Tr. p. 66; Joint Exhibit 6. Petitioner does not refer to the tank farm as a "plant" and Petitioner did not introduce any evidence to suggest that the USDOT considers the tank farm as a "plant." Portable tanks at these facilities are described by Petitioner as "transportation related and USDOT regulated." Tr. p. 68, 215, 217; Joint Exhibit 7. Once again, Petitioner does not refer to the portable tanks as a "plant" and Petitioner did not introduce any evidence to suggest that USDOT considers the portable tanks as a "plant." Rather, Petitioner admits that every part of the pipeline is regulated as a transportation company by the USDOT because Petitioner ***moves***, rather than produces, someone else's products. Tr. p. 219. Specifically, the parts of Petitioner's operations at issue in the present case, i.e., cathodic protection, pipe coatings, and automatic shutoff valves are all regulated, according to Petitioner and DEHC, by the USDOT.

There was substantial testimony at the hearing about the federal regulations under which Petitioner operates. Petitioner admitted that its regulatory scheme is overseen by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the Office of Pipeline Safety, which are divisions of the USDOT. Tr. pp. 182-184. PHMSA regulates and establishes the standards for

the ***movement*** of hazardous materials. There was also substantial testimony about Petitioner's "transmix." Transmix is not the creation of a finished product or the intermediary to a finished product, but rather is solely an unhappy result of how Petitioner elects to ***move*** products through Petitioner's pipeline: to ***move*** products faster. Tr. p. 186. Petitioner's customers do not pay Petitioner to create transmix, to move transmix, or to separate transmix back into component parts. See, 30(b)(6t) Deposition of Peitioner, Joint Exhibit 19, pp.145-146. Rather, customers pay Petitioner to ***move*** products through the pipeline, but leave the details of how the products ***move*** to the transportation company doing the moving. See, 30(b)(6t) Deposition of Peitioner, Joint Exhibit 19, pp.145-146. The same applies to drag resistant agents that Petitioner elects to inject into the pipes to ***move*** the materials faster. Tr. p. 187. These operations that Petitioner claims as "plant" operations do nothing more than assist in Petitioner's sole function as a transportation company: ***moving*** product from one place to another.

Petitioner's competition includes companies that run barges, trucks, and trains. Tr. pp. 175-176. No other pipeline companies have been granted an exemption for "pollution control equipment" in 2019 or after. Although the Order references statutes from other states (Order p. 18, n. 14), none of these states has language like South Carolina's relating to "industrial plants." Manufacturers are assessed at a tax rate of 10.5% in South Carolina. Transportation companies are assessed at a rate of 9.5%. Petitioner is, and has always been, assessed at the 9.5% rate as a transportation company. Tr. p. 51. The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments The NAICS Code assigned to Petitioner is a transportation company. See, 30(b)(6t) Deposition of Peitioner, Joint Exhibit 19, pp. 69-70,

The Order not only ignores this evidence, but also fails to consider the pertinent definitions and interpretations of "industrial plant" that have been correctly set forth by Respondents. Assuming, arguendo, that one can separate the words "industrial" and "plant" as the Court's Order

does (apparently in an effort to find a tax exemption in contravention of the rule of statutory construction cutting against the exemption claimant), none of Petitioner's claimed property is located on a "plant site." "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 (emphasis added). Referring to federal statutory law for guidance, "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***." 42 U.S.C.S. § 6326(5) (emphasis added). By way of contrast, Petitioner is a "'Transportation compan[y, which are . . . (1) Railroad companies; (2) ***Pipeline companies***; and (3) Express companies." S.C. Code Ann. Regs. 117-1700.4 (emphasis added). Petitioner is most akin to a wastewater collection pipe, rather than a sewage treatment plant or a manufacturer which would qualify as industrial plant.

As seen from the statutory and regulatory definitions above, whether Petitioner is a "transportation company" should have been part of the Court's determining whether Petitioner is also an "industrial plant." Further, the Court should have availed itself of technical definitions of "plant" from statutory and regulatory schemes existing in South Carolina and other states' statutes with similar tax schemes not purely from a dictionary definition unfettered by any of the other considerations that would accompany whether something is a "plant" for tax purposes, specifically for purposes of the "pollution control exemption."

Contemplating the review standard regarding tax exemptions, Petitioner's burden of proof, and the appropriate definitions, coupled with the evidence admitted by Petitioner's own witnesses

about how Petitioner defines its own operations, the Court should have found that the equipment Petitioner owns and operates is not an "industrial plant" or located on a "plant site."

II. The Court's Order Creates an Absurd Result

The Order's conclusion that a pipeline such as Petitioner's constitutes an "industrial plant" leads to an absurd result. In construing a statute, the court must look to the statutory language as a whole in light of its manifest purpose. *Jones v. State Farm Mut. Auto. Ins. Co.,* 364 S.C. 222, 612 S.E.2d 719(Ct. App. 2005). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *Browning v. Hartvigsen*, 307 S.C. 122, 414 S.E.2d 115 (1992). The real purpose and intent of the lawmakers will prevail over the literal import of the words. *Id.* Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. *Id.* (*citing Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000)).

The Court's Order, in determining that a pipeline is an "industrial plant," opens *the* Pandora's box to nearly every type of business claiming that it, too, does business, it, too, is an "industry," and, if it owns equipment of any kind, it, too, is a "plant." Separating the words of the statute, instead of taking them together as they are placed in the statute, lends itself to this type of absurd result. One can imagine, for example, a restaurant that is part of a "group of productive or profit-making enterprise(s)" (Definition in Order, p. 16) that has a grease trap to dispose of food waste ("total facilities available for production or services" or "apparatus . . . employed in carrying on a trade") (Definitions cited in Order, p. 18-19) could consider applying for exemption as an "industrial plant." Clearly, this was not the intent of the legislature. A reading of the statute that might allow a restaurant, which may be an "industry," operating a "plant," to claim a "pollution control exemption" is not a reading that this Court should consider as valid.

III. Joinder

Respondents join in any motion of similar tenor that may be filed by the South Carolina Department of Revenue, Aiken County, or Laurens County, or any combination of the same.

IV. Conclusion

Respondents respectfully request that the Court reconsider and alter or amend its Order in accordance with the evidence and authorities cited above.

[ONE SIGNATURE PAGE AND CERTIFICATE OF SERVICE FOLLOW]
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Respectfully submitted,

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December 11, 2020
Greenville, 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 **AIKEN COUNTY'S AND LAURENS COUNTY'S MOTION FOR RECONSIDERATION**

Aiken County and Laurens County hereby move the Court pursuant to Rules 29(D) and 68 of the Rules of Procedure for the Administrative law Court and Rule 59(e), SCRCP, to Reconsider, Alter or Amend ("Motion") the Court's December 1, 2020 Final Order ("Order"). Aiken and Laurens County respectfully ask the Court to reconsider and alter or amend the Order by finding that Colonial's cathodic protection equipment and automatic shutoff valve are not eligible for the exemption and finding that Colonial's operations do not qualify as an "industrial plant" under the plain language of section 12-37-220(A)(8). In support of this Motion, Aiken and Laurens County show unto the Court the following:

INTRODUCTION

In cases involving a tax exemption, the burden is on the taxpayer "to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute." *E.g., 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)). Additionally, 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).

When the Court analyzed whether Colonial's pipeline coatings qualified for the exemption, the Court strictly construed section 12-37-220(A)(8)'s valuation requirements for dual purpose

equipment against Colonial.[1] The Court properly placed the burden on Colonial to bring itself within the conditions imposed by the statute. Specifically, the Court concluded the following with respect to Colonial's pipeline coatings:

> Colonial's purchase of pipes coated with asphalt enamel before it was required by federal regulation reflects that purchasing pipe with 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**.

[Order 31 (emphasis added)].

Essentially, the Court determined that because (1) Colonial's pipeline coatings served a business purpose unrelated to pollution control; (2) Colonial was incapable of buying pipeline without coatings; and (3) Colonial presented no evidence of how to breakdown the cost, Colonial's pipeline coatings were **not** eligible for the exemption. Aiken and Laurens County believe the Court should apply this same line of reasoning to its analysis of whether Colonial's cathodic protection equipment and automatic shutoff valve qualify for the exemption.

First, both cathodic protection equipment and the automatic shutoff valve serve business purposes in addition to pollution control purposes. Second, there is no evidence in the record to show that Colonial would be capable of buying equipment with similar production capacity or capability without the ability to control pollution.

Third, the statute requires 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." S.C. Code Ann. § 12-37-220(A)(8) (emphasis added). Thus, the burden was on Colonial to provide the Court with evidence showing the difference in cost between Colonial's cathodic protection equipment and automatic shutoff valve and equipment with similar production capacity or capability without the ability to control pollution. However, Colonial failed to present any evidence of how the Court should breakdown the cost to reflect the fact that

[1] For the avoidance of doubt, Aiken and Laurens County respectfully maintain that the Court did not strictly construe the terms of section 12-37-220(A)(8) when it concluded that Colonial's operations qualify as an "industrial plant," as that term is used within the statute. Aiken and Laurens County briefly readdress this issue within Section III of this Motion.

Colonial's cathodic protection equipment and automatic shutoff valve serve dual business and pollution control purposes.

Any speculation the Court engaged in regarding the difference in cost between Colonial's current equipment and equipment without the ability to control pollution was due to the failure by Colonial to present any evidence on this issue. Consequently, Colonial failed to meet its burden of proving that its cathodic protection equipment and automatic shutoff valve are eligible for the exemption. Therefore, Aiken and Laurens County request that the Court reconsider its decision and alter or amend the Order to deny Colonial's application for the pollution control exemption for cathodic protection equipment and the automatic shutoff valve for the 2017 and 2018 tax years.

I. CATHODIC PROTECTION EQUIPMENT IS NOT ELIGIBLE FOR THE EXEMPTION BECAUSE IT SERVES A BUSINESS PURPOSE AND COLONIAL FAILED TO PROVIDE EVIDENCE OF A CALCULABLE VALUE DIFFERENTIAL.

Colonial's cathodic protection equipment is not eligible for the exemption because Colonial's cathodic protection equipment serves dual business and pollution control purposes, and Colonial failed to provide any evidence of a calculable value differential. The Court concluded that (1) there was no evidence showing Colonial would construct its pipeline with this equipment if the cathodic protection equipment was not required by federal law; (2) the evidence indicates the sole purpose of the cathodic protection equipment is to prevent pollution; (3) there was no evidence presented that cathodic protection equipment serves a function other than pollution control aside from an "unsubstantiated conclusory statement that a pipeline cannot function without cathodic protection." [Order 31–32].

However, the Court's conclusions with respect to the business purposes served by Colonial's cathodic protection equipment are inconsistent with the evidence presented in this case. The record is replete with statements from Colonial's own witnesses showing that (1) Colonial installed cathodic protection equipment on its pipeline when the pipeline was first constructed and before the equipment was required by federal law; (2) cathodic protection equipment is integral to Colonial's total business operations because the equipment protects Colonial's pipeline assets from deterioration and preserves the Refined Petroleum Products[2] Colonial is paid to transport; and (3) Colonial's pipeline would not function as efficiently without cathodic protection equipment.

[2] Capitalized words used in this Motion not otherwise defined herein shall have the same meaning ascribed to them in the Court's Order.

A. The Court Should Have Found That Colonial Used Cathodic Protection Equipment When Not Required By Federal Law.

The Court specifically concluded that there was no evidence showing Colonial would construct its pipeline with cathodic protection equipment if not required by federal law, and that "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." [Order 31].

However, the record shows that cathodic protection equipment was installed on Colonial's pipeline when the pipeline was first constructed, which was before federal law required cathodic protection equipment. [*E.g.*, Trial Tr. 295:1–13;[3] Colonial's 30(b)(6) Dep. 180:24–181:5[4] (Mr. Brown stating that cathodic protection has been present on Colonial's pipeline "since original construction"); Colonial's 30(b)(6) Dep. 263:18–19 (Joshua Stanley, Colonial's Manager of Corrosion Prevention, stating that "cathodic protection has always been on our system")].

The record also shows that the benefit (and savings) related to the extended life of the pipe and the preservation of the Refined Petroleum Products being transported outweighed Colonial's cost of purchasing and installing cathodic protection equipment and its maintenance. Joshua Stanley testified at Colonial's 30(b)(6) deposition on this specific issue. When asked why Colonial would have used cathodic protection equipment and pipeline coatings prior to any kind of regulatory requirement that those pieces of equipment be used, Mr. Stanley stated the following:

> **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 -- 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**. . . .

[*Id.* at 291:6–17 (emphasis added)].

The Court relied on a similar fact when it analyzed whether the pipeline coatings were eligible for the exemption. [Order 31 ("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.")]. The same is true for Colonial's cathodic protection equipment. The fact that Colonial purchased and installed cathodic protection

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[3] The portions of the trial transcript cited in this Motion are attached hereto as **Exhibit A**.

[4] The entire transcript of Colonial's 30(b)(6) deposition was admitted into evidence as Stipulated/Joint Exhibit 19. The specific portions cited in this Motion are attached hereto as **Exhibit B**.

equipment before it was required to do so by federal law reflects that purchasing and installing cathodic protection equipment served business purposes unrelated to pollution control.

B. The Court Should Have Found That Colonial's Cathodic Protection Equipment Currently Serves A Business Purpose.

The Court concluded that no evidence was provided showing "that cathodic protection equipment serves a function other than pollution control." [Order 32]. However, substantial evidence was presented to the Court showing that Colonial's cathodic protection equipment serves a substantial business purpose. In addition to the fact that Colonial installed cathodic protection equipment when the pipeline was first constructed and before it was required by federal law, the record also shows that the use of cathodic protection equipment currently preserves Colonial's assets, prevents Refined Petroleum Products being transported from being lost out of the pipeline, and helps Colonial transport Refined Petroleum Products more efficiently than it otherwise could if there was no cathodic protection equipment. The relevant testimony on this issue is set forth below and is arranged by Colonial witness.

Joshua Stanley

Mr. Stanley testified in detail about Colonial's cathodic protection equipment, as well as the pipeline coatings and automatic shutoff valve. With respect to cathodic protection equipment, Mr. Stanley stated that "[t]he main purpose is -- is to keep the product in the pipeline and keep the product from releasing." [Colonial's 30(b)(6) Dep. 265:25–266:2]. In addition to protecting the public from hazardous waste, Mr. Stanley stated that "**it preserves the asset**" and "**it's something that's in our best interest, as well.**" [*Id.* at 266:7–9 (emphasis added)].

Further, Mr. Stanley stated that cathodic protection equipment is used "all the time" when not required by federal law for all different types of companies that use a metal pipeline to transport a product in order to avoid losing product out of the pipeline, even if that product does not cause pollution. [*Id.* at 271:3–272:10]. And, when asked why Colonial would have used cathodic protection equipment, along with pipeline coatings and automatic shutoff valves, prior to any kind of regulatory requirements that those pieces of equipment be used, Mr. Stanley stated that "**it's in the best interest to protect the asset and keep the product in the pipeline** . . . [,]" and "**it's a good investment. It makes good financial sense** . . . **to protect your asset.**" [*Id.* at 291:6–17 (emphasis added)].

Keith Fuqua

Keith Fuqua, Colonial's Director of Tax, testified at the hearing that the cathodic protection equipment protects Colonial's investment by protecting the steel pipe from corrosion and preventing product loss. [Trial Tr. 56:25–57:13]. Additionally, at Colonial's 30(b)(6) deposition, Mr. Fuqua was specifically asked whether pipe coatings, cathodic protection, and automatic shutoff valves were purely for pollution control. In response, Mr. Fuqua stated: "**No, they serve a function for operating the pipeline, as well.**" [Colonial's 30(b)(6) Dep. 65:7–13 (emphasis added)]. When Mr. Fuqua was asked what other purposes cathodic protection equipment, pipeline coatings, and automatic shutoff valves were used for, he stated that "they're all part of the pipeline system, . . . [and] they're there to protect the pipeline from leaking and to keep it -- keep the product in the pipeline." [*Id.* at 35:7–15].

Mr. Fuqua also stated that both "cathodic protection and pipe coatings are scattered along the pipeline and in all situations. They're -- they're means of protecting steel." [*Id.* at 59:22–25]. And, when asked specifically to describe the purpose of the cathodic protection equipment, Mr. Fuqua stated that "[t]he cathodic protection is there to protect the integrity of the outerwalls of the pipeline to keep them from deteriorating to the point where they leak, and that's the same thing with pipe coatings. [*Id.* at 64:8–23].

Buster Brown

Buster Brown, Colonial's Director of Commercial Affairs and Special Projects, was also questioned in detail about Colonial's cathodic protection equipment and the business purposes the equipment serves. When asked how cathodic protection, pipe coatings, and automatic shutoff valves fit into Colonial's pipeline infrastructure, Mr. Brown stated that "**they're part of a total package of things that we must do as an operator to -- to manage and perform our services** . . ." and "all of those things are put together in a total package of what we are and how we operate" and "they all have some involvement with any of our operations. **We have to -- we have to protect our assets**. . . ." [Colonial's 30(b)(6) Dep. 131:1–22 (emphasis added)].

Mr. Brown further stated that "cathodic protection and your coatings, all of those are integral to . . . ensure the integrity of the operation of all of your piping, your manifolding; also, your underground conduit and things of that nature that we're trying to protect. **All of those things are very critical to the operation of the pipeline.**" [Colonial's 30(b)(6) Dep. 132:2–9 (emphasis added)]. When asked whether cathodic protection helps Colonial prevent the loss of product, Mr. Brown stated, "Oh, most certainly." [*Id.* at 168:12–14]. And, in response to being asked whether

cathodic protection helped Colonial to transmit its product efficiently, Mr. Brown responded with "Yes." [*Id.* at 168:15–17]. Mr. Brown further testified that the pipeline coatings, cathodic protection, and automatic shutoff valves were all "an integral part that allows our facilities and our equipment and everything to operate. So as far as how they're tied together, **we need those core foundation things to be able to operate our equipment and perform the services that we do.**" [*Id.* at 179:3–11 (emphasis added)].

The evidence is clear: if Colonial did not have cathodic protection equipment, its pipelines would deteriorate at a much faster rate, Refined Petroleum Products would be lost from the pipeline, and Colonial would not be capable of transporting Refined Petroleum Products as efficiently as it currently does so. Equipment that is used to preserve Colonial's assets, preserve Refined Petroleum Products from being lost, and help Colonial more efficiently transport Refined Petroleum Products is inarguably equipment that serves a business purpose. Indeed, Colonial installed cathodic protection equipment on its pipeline when the pipeline was first constructed (before required by federal law) because "it's a good investment" and "makes good financial sense."

Colonial's failure to provide the Court with any evidence relating to the extent to which the cathodic protection equipment serves a business purpose and the associated cost differential to similar equipment without the ability to control pollution is a failure by Colonial to meet its burden of bringing itself clearly within the conditions imposed by section 12-37-220(A)(8). Therefore, Aiken and Laurens County request that the Court reconsider its decision and alter or amend its Order to deny Colonial's application for the pollution control exemption for cathodic protection equipment for the 2017 and 2018 tax years.

II. COLONIAL'S AUTOMATIC SHUTOFF VALVE IS NOT ELIGIBLE FOR THE EXEMPTION BECAUSE IT SERVES A BUSINESS PURPOSE AND COLONIAL FAILED TO PROVIDE EVIDENCE OF A CALCULABLE VALUE DIFFERENTIAL.

Similar to both pipeline coatings and cathodic protection equipment, the record shows that Colonial's automatic shutoff valve serves a business purpose in addition to pollution control purposes. First, like pipeline coatings and cathodic protection equipment, automatic shutoff valves were installed when Colonial first constructed its pipeline and prior to being required by federal law. [*E.g.*, Trial Tr. 295:1–13]. This alone is evidence that the automatic shutoff valve serves a business purpose unrelated to pollution control. [*See* Order 31 ("Colonial's purchase of pipes

coated with asphalt enamel before it was required by federal regulation reflects that purchasing pipe with coating served a business purpose unrelated to pollution control.")].

Further, the testimony at Colonial's 30(b)(6) depositions shows that, like pipeline coatings and cathodic protection equipment, the automatic shutoff valve is not purely for pollution control. Instead, they serve a substantial business purpose because the valves help Colonial operate the pipeline, perform maintenance, and prevent the loss of Refined Petroleum Products [*E.g.*, Colonial's 30(b)(6) Dep. 35:7–15, 65:7–14, 131:2–11, 131:25–132:23].

Because automatic shutoff valves serve a business purpose, like pipeline coatings and cathodic protection equipment, it is improper for 100% of the cost associated with purchasing the automatic shutoff valves to be assigned to the cost of pollution control. *See* S.C. Code Ann. § 12-37-220(A)(8) (stating that "the value eligible for the ad valorem exemption is the difference in cost of the equipment and equipment of similar production capacity or capability without the ability to control pollution"). Colonial failed to present any evidence as to a calculable value differential, and the Court was "again left to speculate about the value of the automatic shutoff valve for pollution control purposes compared to business purposes." [Order 32]. Thus, Colonial failed to meet its burden of bringing itself clearly within the conditions imposed by section 12-37-220(A)(8). Therefore, Aiken and Laurens County request that Court reconsider its decision and alter or amend its Order to deny Colonial's application for the pollution control exemption for the automatic shutoff valve for the 2017 and 2018 tax years.

III. COLONIAL'S OPERATIONS DO NOT QUALIFY AS AN "INDUSTRIAL PLANT."

Aiken and Laurens County respectfully disagree with the Court's construction of the term "industrial plant," and would ask that the Court reconsider its conclusion that "Colonial's operations, as a whole, fit within the **broad** definition of 'industrial plant.'" [Order 27–28 (emphasis added)]. In addition to the arguments set forth in Aiken and Laurens County's Proposed Final Order at pp. 17–25, which are reincorporated fully herein by reference, the Court's Order applied a very broad interpretation when determining that Colonial's operations fit within the definition of "industrial plant." Aiken and Laurens County argue that the Court erred by applying such a broad and liberal construction to the meaning of the words used in a South Carolina tax exemption statute.

In this instance, the Court liberally construed the term "industrial plant" in Colonial's favor. While it is true that the rule of 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," it is equally true that tax exemption statutes "**will not be strained or liberally construed in the taxpayer's favor.**" [Order 11 (citing *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74–75, 716 S.E.2d 877, 881 (2011) (emphasis added)].

Notably, rather than applying or discussing the primary definition of "industry," which means "**manufacturing activity as a whole,**"[5] the Court focused primarily on only two of the four potential definitions. The two definitions focused on by the Court could apply to almost any business activity. [Order 16–17]. If, however, the primary definition of "industry" is applied alongside the primary definition of the term it modifies ("plant"), the definition of "industrial plant" means the land, buildings, machinery, apparatus, and fixtures employed in carrying on manufacturing activity as a whole. Yet, the Court overlooked this reasonable construction in favor of one that disregards all references to the terms "manufacture," "manufacturing," "creation of something of value," "manufacture of a particular product," and "total facilities available for production," which are contained throughout the definitions of "industry" and "plant."

The Court's construction of "industrial plant" is a liberal construction. Aiken and Laurens County are not asking this Court to search for an interpretation in an instance where the statute's "plain and unambiguous language leaves no room for construction." *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881. Indeed, the Court's own analysis of the term "industrial plant" encompasses 13 pages of the Court's 33 page Order. Clearly, there is room for disagreement about the construction of section 12-37-220(A)(8), and the Court's ultimate construction is far too broad and liberally construed in a situation where South Carolina law requires that the statute be "strictly construed against [Colonial]." *See, e.g., CFRE*, 395 S.C. at 74, 716 S.E.2d at 881. Therefore, Aiken and Laurens County request that the Court reconsider its decision and alter or amend its Order to find that Colonial's operations do not fall within the meaning of "industrial plant," as that term is used in section 12-37-220(A)(8).

CONCLUSION

For the above-stated reasons, Aiken and Laurens County respectfully request that the Court reconsider and alter or amend its Order in accordance with the principles outlined above.

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[5] *Industry*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited Feb. 19, 2020) (emphasis added).

Respectfully submitted,

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December 11, 2020

EXHIBIT A

Trial Transcript Excerpts
August 4-5, 2020

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

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

HEARING

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

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

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Also Present:
Stephanie Perez, Judicial Law Clerk
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mainlines.
Q: Okay.
A: So, I think, if someone could help me with that, but I believe it's 102 miles for each of the two mainlines and there's about 50 miles of lateral line that goes down to -- toward Augusta.
Q: Okay, perfect. And the maps that were provided would depict all of that pipeline; is that fair?
A: I believe so.
Q: Okay. And just to be really clear, the cathodic protection, the automatic shutoff valve and the pipe coatings would be all along that pipeline; is that correct?
A: Yeah. They -- the valve is in one particular location, but the other two are on all pipelines.
Q: Okay, perfect. Thank you. Just a few more questions about the pipeline itself. My understanding is that cathodic protection, pipe coatings and automatic shutoff valves are not just pollution control property; is that fair?
A: I ---
Q: Let me re -- rephrase it. They have an

alternative purpose?
A: Well, they keep the pipe from leaking is what they do.
Q: They protect the steel, right?
A: They protect the pipe, yes.
Q: Okay. They protect the -- Colonial's investment in the asset; is that fair?
A: It does that too, yes.
Q: Okay. Keeps it from deteriorating because corrosion is always sort of trying to take the pipeline back to nature, right?
A: Yeah. I don't know if it keeps it from deteriorating. It just slows it down.
Q: Okay.
MR. CARTIN: That's all I've got for this particular witness.

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

Q: Mr. Fuqua, my name is Kim Wooten and I'm here on behalf of four of the counties ---
A: Okay.
Q: --- in this case. We haven't met before. But I just have a few follow-up questions for you. What Colonial Pipeline does, in your own words is, it is a transporter of refined petroleum products, that's what you do; isn't that true?

and with these automatic shutoff valves, is it?
A: It's the primary.
Q: Okay. It was the primary prior to the regulations being installed, was it?
A: There were no regulations in '62 that said we had to have it.
Q: But yet you did have it?
A: Since then a lot of things have happened in the world which changed the way we think about things and changed the regulations to prevent release from the pipe.
Q: But you had them before the regulations?
A: We did.
Q: Okay. All right. Now with regard to -- you looked at a couple of exhibits. One was Exhibit 3 from the petitioner and that was a description that you read about cathodic protection, correct?
A: Yes.
Q: Do you remember that?
A: Yes.
Q: Reading that? That is a United States Department of Transportation publication, correct?
A: Yes.

EXHIBIT B

Colonial Pipeline Company
Rule 30(b)(6) Deposition Excerpts

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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an asset before we put together a lot of time and effort.

Q. Why didn't you think it would be granted for those?

A. Their statute says that all -- that the assets have to be only for pollution control.

Q. What other purposes are the assets used for, the three, the cathodic protection, pipe coatings, and automatic shut-off valves?

A. Well, they're all part of the pipeline system, too. So they're -- they -- they're there to protect the pipeline from leaking and to keep it -- keep the product in the pipeline. But they did not consider them to be purely pollution control.

Like, in my days in natural gas, there are things that you put on engines that control pollution. Even in your car, you have things that control pollution. Those are 100 -- those are for the purpose of pollution control and that's the only kind of assets they approve.

Q. Okay. Were there other states?

A. Let's see. We tried New Jersey and Tennessee with test assets in both of those. Well, Tennessee denied them, then asked for more

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.

A. These look like just the assets that were denied.
Q. Okay. And what are those assets?
A. The automatic shut-off valve at Gaffney Station and then several pipeline cathodic protection projects and pipeline coating projects.
Q. Okay. And let me know if this is going beyond what you can talk about, but could you describe exactly the purpose of pipe coatings, cathodic protection, and automatic shut-off valves?
A. I can describe them in general, but it probably won't be the -- the textbook version of what they do. Like I said, the automatic shut-off valve is there to isolate a station in case of emergency to prevent further leakage.
Q. Uh-huh (affirmatively responds).
A. The cathodic protection is there to protect the integrity of the outer walls of the pipeline to keep them from deteriorating to the point where they leak, and that's the same thing with pipe coatings.
Q. Okay. And earlier, we were talking about -- I think it was in Georgia, it has to be a hundred

percent pollution control.
A. Uh-huh (affirmatively responds).
Q. So -- and you didn't apply in that case because those assets were not considered a hundred percent pollution control; is that right?
A. No.
Q. So -- so just so I'm clear, so pipeline -- I'm sorry. Pipe coatings, cathodic protection, and automatic shut-off valves are not purely for pollution control or a hundred percent pollution control.
A. No, they serve a function for operating the pipeline, as well. But, yes, I guess I'd agree with that.
Q. Could you -- and if you can't, that's -- I understand, but could you assign a percentage to the amount of it that's for pollution control versus some other purpose?
A. I have no idea.
Q. Okay. What kind of pollution is it supposed to control? Is it air? Water? Noise? And I'm asking about all three. If they're different, let me know.
A. I think they're all for air and water. If you'll -- you know, the products we carry are

Q. How do cathodic protection, pipe coatings, and automatic shut-off valves, how do they fit into that infrastructure? What part -- what part of that infrastructure are they connected with?
A. Well, I'm not sure what you mean by that. I mean, they're -- they're tart of -- they're part of a total package of things that we must do as an operator to -- to manage and perform our services and -- and, you know, all of that is part of an overall process to ensure integrity of the pipe.

Safe operations, ensuring that we don't pollute the environment, all of those things are put together in a total package of what we are and how we operate.
Q. Are those three assets, are those part of the production role of Colonial Pipeline in producing those -- those blend -- like the blending operations?
A. Again, they -- they all have some involvement with any of our operations. We have to -- we have to protect our assets. A lot of the things that you were -- the three elements that you listed there, could you repeat those?
Q. Cathodic protection, pipeline coatings, and

automatic shut-off valves.
A. So your cathodic protection and your coatings, all of those are integral to -- to -- to ensure the integrity and the operation of all of your piping, your manifolding; also, your underground conduit and things of that nature that we're trying to protect.

All of those things are very critical to the operation of the pipeline. Without those things, you know, so to speak, bad things happen. Everything's working together to ensure the integrity, the safe operation of the pipeline.
Q. Would you be able to assign some kind of percentage to those three things? I guess their contribution to -- to Colonial's transportation purpose versus preventing pollution?
A. Oh, gosh.
Q. And if you can't, it's okay.
A. No, I -- I don't think I could.
Q. Okay.
A. It's almost like asking what makes my wife pretty. Everything. That answer is "everything."
Q. So just to confirm, you said at least primarily, Colonial Pipeline Company is a

answer that question.
Q. Okay. From an operation standpoint, is Colonial Pipeline ever undergone an analysis to determine from a monetary impact perspective how cathodic protection, pipeline coatings, and the other pollution control -- I can't remember off the top of my head -- automatic shut-off valves impact the bottom line at Colonial Pipeline? Not necessarily -- setting aside the environmental concerns, but --
A. I'm not aware of a study like that.
Q. Okay. Does it help you prevent the loss of product?
A. Oh, most certainly.
Q. Does it help you make sure that product is transmitted efficiently?
A. Yes.
Q. If you have these things, I'm guessing there's some protection from lawsuits that you get as a result of -- you get sued less if you cause less problems, right?
A. Not having problems is a good thing.
Q. Okay. So there are benefits to Colonial Pipeline aside from the environmental impact, correct?

product is that you sort of got to either dispose of or re-separate in some way?

A. The three items that you mentioned, the cathodic coating and the -- the pressure valves, those are an integral part that allows our facilities and our equipment and everything to operate.

So as far as how they're tied together, we need those core foundation things to be able to operate our equipment and perform the services that we do. I --

Q. All right. Let me try to ask it --

A. I'm not sure that --

Q. Let me try to ask it a different way. If the pipe coating was not on the pipe, would the pipe still transmit fluid?

A. The pipe coating -- well, yes, the pipe coating could -- I mean, the pipe could. But, again, without the coating, the pipe would cease to operate correctly. So I'm not -- I'm not sure what you mean. Hypothetically --

Q. I think you do know what I mean, but --

(Simultaneously Speaking)

A. Hypothetic -- yeah.

Q. Without the pipe coating, the pipe would

still be a pipe --
A. Yes --
Q. -- and fluid would still flow through the pipe.
A. Correct. Pipe -- yes, a piece of pipe, correct.
Q. With the cathodic protection, correct?
A. Correct. Correct.
Q. And the same with -- and the same with the shut-off valves. As I understand the testimony earlier, those -- that those assets have not been in place since as late or as early as 2006 and as most -- the most recent, I think, installation was in 2016.

So the pipeline built in the fifties, I think it was, or the sixties, operated as a pipeline without any of those assets, correct?
A. No. No, that's not correct. You're saying that our pipeline in the sixties did not have those types of things?
Q. I'm asking. I believe the testimony from Mr. Fuqua was that those assets were installed between 2006 and 2016.
A. I believe -- I believe the specific assets that he's requested were installed from that, but

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.

metal in the ground, it will -- it will corrode back to its iron ore state; that's just a natural phenomenon.

Essentially, iron ore has a very -- very low energy level. And then when we refine steel and we process it and make a pipeline out of it, we're putting a lot of energy into it.

As soon as you put it back into the ground, the energy wants to -- wants to release. So -- so that natural phenomenon is going to -- it's going to corrode the pipe almost immediately.

So we are required by -- by PHMSA to install cathodic protection on any new pipelines, pipeline or asset within a year after installation to ensure that the corrosion doesn't -- doesn't occur, so.

So we install it on new -- on new pipes, we install it immediately. And cathodic protection has always been on our system.

We've -- we've -- we've definitely enhanced and beefed up our cathodic protection over time. As we learn more, do more surveys across our system, we -- we -- we continue to add more cathodic protection. So, today, we have a lot more than we had 20 years ago.

Q. Okay. So even companies that are not pipeline companies would be required to have that kind of protection?

A. So pipe -- so natural gas companies are required. They -- they file 49 CFR 192. Liquids cover -- or have to abide by 49 CFR 195.

Waterlines are not -- do not require to have cathodic protection. Some of them do because they like to protect their asset and they don't want to lose money with the water leaking out of the pipes, but it's not required. So there's chemical pipelines that -- that require cathodic protection, so yeah.

Q. Do you know if refineries are required to have cathodic protection?

A. Refineries are regulated by someone other than PHMSA.

Q. Okay.

A. So I -- I don't know what those requirements are specifically.

Q. Is the purpose of pipeline coatings, cathodic protection, and automatic shut-off valves, is it purely pollution control or are there other purposes?

A. It is. The main purpose is -- is to keep

the product in the pipeline and keep the product from releasing. The main purpose of -- of PHMSA is -- is public safety. So that's -- that's the main concern. That's why the regulations are in place.

Q. So when you say --

A. So it -- it preserves the asset. So it's -- it's something that's in our best interest, as well. Preserve the asset, but ultimately it's keeping the public safe by keeping the hazardous product in the pipeline; that's the main purpose.

Q. You said keep the public safe. Does -- does that mean not just pollution, but just --

A. Well --

Q. -- people?

A. Yeah, the public and environment, I should say, the -- yeah. So, obviously, there -- there could be explosions and things associated with a release, so that's -- that's a different concern. But contamination into the groundwater or into a waterway or into the air is -- is -- is also a major concern with public safety of the -- of the environment and people.

Q. So I'm going to -- you kind of got into it there, but for each -- for each of those,

used when they're not required by state or federal law?

A. Are they used when they're not required? Yeah, they're used all the time. You're talking about just in our pipeline or just in the industry, in general?

Q. Both.

A. There's -- I mean, there's -- any company you own is an asset that's made of metal and they would want -- want to preserve that asset or prevent a release from their asset, then yes.

Waterlines was the example I gave. Definitely not required, but -- but if you lose water out of your system and that's your business, you lose revenue, so. So it's -- it keeps the asset safe.

Power plants use them. There's companies that transport air and I don't believe they're required, but they -- they use it, so.

Q. So water, air, those are things that wouldn't cause pollution, right?

A. I'm not -- well, if it's straight nitrogen or straight carbon dioxide, I guess there could be some pollution associated with that, but that's not really my line of expertise, so I

don't --

Q. And -- but water, there wouldn't be any pollution from that, would there?

A. From water? It depends what kind of water they're -- they're transporting, so. Obviously, drinking water, no, but -- but there is -- there may be some sewer lines that -- that use cathodic protection that -- there's cast iron sewer lines out there and definitely don't want that being released into our -- our water supply.

MR. ANTLEY: I think that's all I have.

MR. CARTIN: Just got a couple quick questions for you.

CROSS-EXAMINATION

BY MR. CARTIN:

Q. What is this coating made out of? Is it like plastic or is it some sort of like thick, metallic paint?

A. So over the years, the coating has evolved. Originally, our original system has what's called an "asphalt enamel." It's an asphalt petroleum-based coating. It's probably maybe a quarter-inch thick.

Q. Uh-huh (affirmatively responds).

A. In some cases, it could be a half-inch

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

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

December 11, 2020

VIA ELECTRONIC AND U.S. MAIL
The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

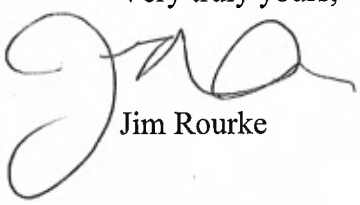
Re: Colonial Pipeline Company vs. South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County and York County
Docket No. 18-ALJ-17-00443-CC

Dear Judge Anderson:

Enclosed please find the original and one copy of the Petitioner's Motion for Reconsideration under the ALC Rule 29(d) to Alter or Amend under SCRCP Rule 59(E) and Petitioner's Memorandum of Law in Support of Motion for Reconsideration, along with the $50.00 filing fee for the above-referenced case. Please return a clocked copy via the enclosed self-addressed, postage paid envelope.

Thank you for your attention to this matter.

Very truly yours,



Jim Rourke

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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-17-00443-CC **MOTION FOR RECONSIDERATION UNDER THE ALC RULE 29(D) TO ALTER OR AMEND UNDER SCRCP RULE 59(E)**

Pursuant to South Carolina Rule of Civil Procedure 59(e) and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, Petitioner Colonial Pipeline Company, requests that this Court reconsider and alter or amend a portion of its Order dated December 1, 2020 ("Order"), a copy of which is attached hereto as **Exhibit 1**, which held that pipeline coatings were not entitled to the pollution control exemption. Petitioner respectfully requests that this Court withdraw this portion of the Order and hold that pipeline coatings are exempt for the reasons outlined in the attached Memorandum of Law.

Respectfully submitted,

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December 11, 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-17-00443-CC **PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION**

I. INTRODUCTION

Colonial Pipeline Company (the "Petitioner") has moved this Court for a Motion for Reconsideration of a portion of its Order.

On December 1, 2020, this Court filed an Order granting Petitioner's claim for the pollution control exemption on two types of equipment at issue but denying its claim for pipeline coatings (**Exhibit 1**). Petitioner files this Motion for Reconsideration and memorandum in support pursuant to Rule 59(e), SCRCP, and/or SCALC Rule 29(D). Petitioner requests this Court withdraw the portion of its Order which denies the pollution control exemption for pipeline coatings. Petitioner (wholeheartedly) agrees with the remainder of the Order.

The basis of the Court's ruling denying the exemption for pipeline coating is on the dual use doctrine. The Order first states:

> 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 Order concludes pipeline coatings are not exempt for the foregoing reason:

> 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 regulations 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.

The Court erred for two reasons: (1) pipelines and specifically pipeline repairs to recoating are not used for "production", and thus the dual use doctrine does not apply; and (2) the Court overlooked that Petitioner's claim for exemption for pipeline coatings was limited to only those coatings used to repair or recondition existing pipelines. Petitioner made no claim for pipelines themselves – only for the cost of repairing the pipeline coating. Such repairs are required by federal law.

A. The dual use doctrine does not apply.

The pollution control exemption is found in the S. C. Constitution, S.C. Const. Art. X, §3(b). Importantly, the Constitution does not contain the dual use doctrine. Section 12-37-220(A)(8), however, limits or modifies the constitutional provision by providing "[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, arguably the constitutional exemption supersedes the statutory exemption.

Notwithstanding the foregoing, the dual use doctrine is limited to "equipment that serves

a dual purpose of *production* and pollution control." (emphasis added) It does *not* involve "business cost" as relied upon by the Court. The Court characterized the test as follows: "*If the equipment serves a function apart from pollution control*, the utility of that function must be recognized before allowing the property tax exemption." Order at p. 30 (emphasis added). However that characterization of the dual use doctrine belies the plain language of the statute – in other words, the "function apart from pollution control" *must be a production activity* in order for the dual use doctrine to apply.

South Carolina has no legislative history but one can assume the dual use doctrine was inserted by the General Assembly as some manufacturing equipment internally contains pollution control equipment. Where a manufacturer purchases a $40 million boiler which contains a $2 million pollution control component, only the $2 million would be exempt – not the full $40 million.

The statute does not define "production." Dictionary definitions are as follows:

> **Oxford Dictionary:**
>
> Production: The action of making or manufacturing from components or raw materials, or the process of being so manufactured.
>
> **Black's Law Dictionary:**
>
> Production: The act or process of making or growing things, esp. those to be sold <the production of consumer goods>.
>
> **Merriam-Webster:**
>
> Production: (1) something produced; product
> (2) (a) the act or process of producing
> (b) the creation of utility especially: the making of goods available for use.
>
> **MyAccountingCourse.com:**
>
> Production: Production is the method of turning raw materials or inputs into finished goods or products in a manufacturing process.

In other words, it means the creation of something from basic inputs.

Vocabulary.com:

Production: Production is the process of goods being made or manufactured.

Dictionary.com:

Production: (1) the act of producing; creation; manufacture.
(2) something that is produced; a product.

YourDictionary.com:

Production is the process of making, harvesting or creating something or the amount of something that was made or harvested.

The full dictionary definitions are attached as **Exhibit 2**. These dictionary definitions make plain that "production" is a manufacturing concept.

While Petitioner is not aware of any South Carolina statute that explicitly defines "production", several define "manufacturing" and "processing." The SC Job Tax Credit Act, 12-6-3360, distinguishes manufacturers from processors, although both qualify for the JTC. A "manufacturer" is defined in 12-6-3360 as follows:

> (5) "Manufacturing facility" means an establishment where tangible personal property is *produced* or assembled. (emphasis added)

A "processor" in that same statute is defined as:

> (6) "Processing facility" means an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property.

Section 12-6-3588, the South Carolina Renewable Energy Tax Incentive Program defines "manufacturer" as follows:

> (2) "Manufacturing" means fabricating, *producing*, or manufacturing raw or unprepared materials into usable products, imparting new forms, qualities, properties, and combinations. (emphasis added)

All sides agreed that Colonial is a transportation company, which is subject to different tax

treatment (including property taxes) than manufacturers. While Colonial processes portions of the products is ships, it manufacturers or produces no finished products from basic inputs.

Indeed, the thrust of the Counties' and Department's argument was that the pollution control exemption is limited to manufacturers, and Colonial is not a manufacturer, and engages in no production.

For example, the proposed Order submitted by Aiken and Laurens Counties states at page 18:

> The Department argues that none of Colonial's 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 (which have a clear productive function) 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 simply allows Colonial to continuously transport different products while retaining the integrity of the product at the final destination.
>
> Similar to the Department, Aiken and Laurens 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). These Counties further argue that based on the statutory and regulatory scheme as a whole, *it is clear the exemption was intended for companies engaged in industrial production, not a transportation company like Colonial.* (emphasis added)

Their Order further states (page 19):

> The majority of the definitions of the term industry include expressly, or allude to, a production element. Definition (a) specifically references "manufacturing." Definition (c) expressly references the creation of products and, again, includes the term "manufacture." Definition (d) goes even further, referencing the "creation of something of value."

Thus, Aiken and Laurens Counties agree with the dictionary definitions cited above – that "production" equates to "manufacturing," and that Colonial engages in no form of manufacturing

or production.

Similarly, the Department's proposed Order states (page 11):

> However, the Department contends that an "industrial *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 form one point to another without engaging in any kind of production.* (emphasis added)

Thus, the Department's proposed Order unequivocally states that the dual use doctrine does not apply.

The Court's own Order makes this plain:

> 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. The Department asserts Colonial's business is transporting fuels form 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.
>
> Aiken and the Other Counties argue that 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 argue that the exemption was intended for companies engaged in industrial production, not a transportation company like Colonial.

Order at pp. 15-16 (footnotes omitted). Later, the Court appeared to reject the Department's and Counties' assertion that the presence of the dual use doctrine excluded those taxpayers who, like Petitioner, "may not be producers":

> 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 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.

Id. at pp. 22-23 (emphasis added). If the Order should be interpreted as a determination that Petitioner *is* a producer, then it is unclear why the Court would go to such lengths to find non-producers could be eligible for the pollution control exemption.

In summary, the Counties, the Department, and indeed the Court all agree – Colonial performs no "production" as it is a transportation company and not a manufacturer and "production" is performed by manufacturers. As such the dual use doctrine does not apply.

B. The Court overlooked that the exemption was claimed only for recoating – not for the pipeline itself.

The Court was perhaps concerned that Petitioner could claim all 512 miles of pipeline in South Carolina as exempt under the pollution control exemption. In fact, Petitioner only claimed the exemption for the capitalized costs of recoating existing pipeline that needed to be repaired, as discovered through Petitioner's extensive internal (PIGS) and external (planes, close interval) surveys.

Attached as **Exhibit 3** is an excerpt from Petitioner's Exhibits 1 and 4, which shows the applicable portions of Petitioner's 2017 and 2018 Public Utility Tax Returns, Form: Schedule X – Pollution Control Equipment. The column for claiming the exemption for pipeline coatings is limited in every instance to "recoat" and states as follows:

3. Pipeline Coatings

Pipeline Coatings	*Recoat* Loc 701 Line 2 Vulcan
Pipeline Coatings	Line 760-7 And 760-8 *Recoat* Project
Pipeline Coatings	703 *Recoat*
Pipeline Coatings	Line 02 Location 702 *Recoat*
Pipeline Coatings	2011 Sc Remediation Project – *Recoats*
Pipeline Coatings	*Recoat* – West Prong Broad Mouth Creek Loc
Pipeline Coatings	Hunter Road *Recoat* of Line 01 And 02
Pipeline Coatings	2015 South Carolina *Recoats* on Line 02 Loc 701 to 703
Pipeline Coatings	2016 Kings Mountain South Carolina Line 02 *Recoat*

Pet. Ex. 1 & 4 (emphasis added). As may be seen above, the exemption was only claimed for pipeline recoating. Attached as **Exhibit 4** is a portion of the trial transcript covering the testimony of James K. Fuqua, Petitioner's Tax Manager. He testified:

> Q: Okay. And so, your exemption claim was for the re-coating?
>
> A: Yes.

(Tr. Transcript, p. 36, lines 1-3) He also testified:

> Q: All right. The pipeline coating – is the pipeline already on the pipe or do you buy the pipeline coating on brand new pipes?
>
> A: I think you can do it both ways. I think typically when we get ours, it's already been coated, but.
>
> Q: Okay. And so – so, it's already been coated. Was – was the – your exemption claim for repairs or was it the actual coating – new coating?

A: It was for the repairs for the pipe itself –

Q: Right.

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

(Id. at p. 37, lines 4-16)

Repairs of the pipeline coating hardly serve the "dual purpose of production and pollution control." They are done when needed to prevent leaks of petroleum. This is why both surveys and repairs are required by federal law – to prevent leaks.

The recoating costs are capitalized and accordingly found their way into the property tax base. (See Fuqua testimony attached.) Upon further analysis, Petitioner felt that costs of recoating the pipeline were covered by the Pollution Control exemption, as the Court has agreed.

In summary, even if the dual purpose doctrine applies to transportation companies, the recoating of pipelines does not serve the dual purpose of production and pollution control.

C. Although Colonial contends that the dual use doctrine is inapplicable, research has uncovered several dual use cases, all dealing with manufacturers.

In *Commonwealth Edison Co. v. Dept. of Local Government*, 425 N.E.2d 817 (Ill. 1981) at issue under a unique statute was whether 12 pollution control facilities owned by a manufacturer were properly assessed. The Court noted that the statute in that case looked at whether the pollution control facility (1) results in the production of a commercially saleable by-product; or (2) increases the production; or (3) reduces the production costs of the products or services otherwise sold.

Recoating Colonial's pipeline (1) does not result in the production of commercially saleable by-products; (2) does not increase production; and (3) does not reduce production costs of the products being sold (other than by stopping leakage.)

In *International Paper co. v. Board of Environmental Protection*, 737 A.2d 1047 (Me.

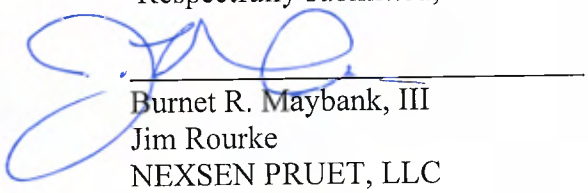
1999) the Maine Supreme Court rejected the Environmental Board's refusal to consider whether the installation of certain equipment was the primary purpose of the installation once it determined that the system's basis function was to increase production. The Court noted that "New equipment may have a primary function of production, but that production equipment change may qualify for the exemption if the applicant can demonstrate that the primary purpose of its installation was to reduce pollution rather than improve production." Petitioner's primary purpose in recoating the pipeline was to comply with federal law, which required such repairs.

See also *Weyerhaeuser Co. v. State Dept. of Ecology*, 545 P.2d 5 (Wash. 1976) and *Mont. Belvieu Caverns, LLC v. Texas Com'n on Environmental Quality*, 382 S.W.3d 472 (2012).

II. CONCLUSION

Based on the foregoing, Petitioner requests this Court withdraw its Order and grant Petitioner's claim for the pollution control exemption in full – that is, for the repairs to pipeline coatings, the cathodic protection equipment, and the automatic shut off valves. Petitioner concurs with the remainder of the Court's Order.

Respectfully submitted,



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December 11, 2020
Columbia, South Carolina

EXHIBIT 1

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.

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[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

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[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

EXHIBIT 2

ROA 0803

servicen w
Go from slow and siloed to agile team.
Where are you on the journey to business agility?
Find Out Now

servicen w
Go from slow and siloed to agile team.
Where are you on the journey to business agility?
Find Out Now

Definition of production in English:

production

Pronunciation /prəˈdəkSH(ə)n/ /prəˈdəkʃ(ə)n/

See synonyms for production

Translate production into Spanish

NOUN

1 The action of making or manufacturing from components or raw materials, or the process of being so manufactured.
'the production of chemical weapons'
More example sentences Synonyms

1.1 The harvesting or refinement of something natural.
'nonintensive methods of food production'
More example sentences

1.2 The total amount of something that is manufactured, harvested, or refined.
'steel production had peaked in 1974'
More example sentences Synonyms

Gain confidence with the MycoSEQ™ solution
Move forward
applied biosystems
by Thermo Fisher Scientific

WORD OF THE DAY

ging
/ gɪŋ /
NOUN

These Foreign Words And Phrases Are Now Used In English

Feedback
Does English Have More Words Than Any Other Language?

ROA 0804

1.3 The creation or formation of something as part of a physical, biological, or chemical process.

'excess production of collagen by the liver'

More example sentences

1.4 *[as modifier]* Denoting a car or other vehicle that has been manufactured in large numbers.

'a production model'

More example sentences

2 The process of or financial and administrative management involved in making a movie, play, or record.

'the movie was still in production'

More example sentences

2.1 A movie, play, or record, especially when viewed in terms of its making or staging.

'this production updates the play and sets it in the sixties'

More example sentences | Synonyms

2.2 *[in singular]* The overall sound of a musical recording; the way a record is produced.

'the record's production is gloriously relaxed'

More example sentences

Phrases

make a production of

informal

Do (something) in an unnecessarily elaborate or complicated way.

More example sentences

Origin

Late Middle English via Old French from Latin productio(n-), from producere 'bring forth' (see produce).

Synonyms for Colours

Fawn is a shade of which colour?

O brown

O blue

NEXT 0/10

TRENDING WORDS

Most popular in the world

1. xerophyte
2. juvenilia
3. ratioed
4. komatiite
5. Christendom

Feedback

Black's Law Dictionary (11th ed. 2019), production

PRODUCTION

Bryan A. Garner, Editor in Chief

Preface | Guide | Legal Maxims | Bibliography

production (15c) **1.** The act or process of making or growing things, esp. those to be sold <the production of consumer goods>. **2.** The amount of goods that are made or grown; esp., the tangible result of industrial or other labor <annual production>. **3.** The creation of economic value; the making available of goods to satisfy human desires <the production and consumption of wealth>. **4.** The action of exhibiting or bringing forward a document or other piece of evidence <production of documents>. **5.** Collectively, the written documents or other things brought forward in support or defense of an action or prosecution <the defendant's production in this case>. **6.** A play, film, broadcast, etc. that is made for public viewing or consumption <a production of Coffee and Language Inc.>. **7.** *Mining.* The quantity or amount of natural resources actually extracted or mined <oil and gas production>. **8.** *Oil & gas.* The capability of being produced in paying quantities.

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Merriam-Webster
SINCE 1828

- GAMES
- BROWSE THESAURUS
- WORD OF THE DAY
- WORDS AT PLAY

- LOG IN
- REGISTER
-
  settings
- SAVED WORDS

production

dictionary
thesaurus
view recents

Login or Register
Hello

- GAMES
- BROWSE THESAURUS
- WORD OF THE DAY
- WORDS AT PLAY
- SETTINGS
-

- SAVED WORDS view recents

production

noun

Save Word

To save this word, you'll need to log in.

Log In

pro·duc·tion | \ prə-'dək-shən , prō- \

Definition of *production*

1a : something produced : product
b(1) : a literary or artistic work
(2) : a work presented to the public (as on the stage or screen or over the air)
c : something exaggerated out of proportion to its importance
2 a : the act or process of producing
b : the creation of utility, especially : the making of goods available for use
c : total output especially of a commodity or an industry
4 often attributive : something not specially designed or customized and usually mass-produced a production car production housing

Other Words from *production* Synonyms More Example Sentences Learn More about *production*

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What is Production?

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Definition: Production is the method of turning raw materials or inputs into finished goods or products in a manufacturing process. In other words, it means the creation of something from basic inputs.

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Financial Statements
Financial Ratio

ROA 0808

production

Production is the process of goods being made or manufactured. If people like the cupcakes you sell about school events, you might have to increase *production* by baking in both your kitchen and your neighbor's.

Anything that's made or grown is the result of production, from the harvesting of grains, vegetables, and fruits to the drilling of oil. Even your crafty friend handles the production of the handmade bookmarks she sells. Another common meaning of *production* is the work that goes into the making of a movie, play, or album. From this meaning comes the phrase *make a production of*, to do something in an overly complicated, or theatrical, way.

Primary Meanings of production

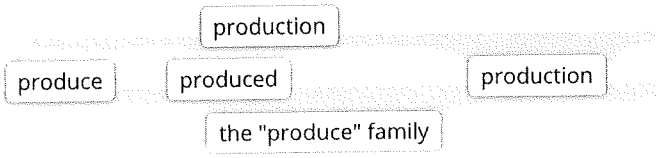
1. *n* the act or process of producing something
2. *n* a presentation for the stage or screen or radio or television

Full Definitions of production

1.

n the act or process of producing something

Word Family



Usage Examples

"The biggest problem is external interference into the TV station's news **production** and broadcasts," Chen said in announcing the denial of the license renewal.
Seattle Times Dec 11, 2020

"We're very lucky in that we chose this as our **production** site years ago," he added.
BBC Dec 11, 2020

It is increasing its **production** capacity by the end of 2021 to over 2.5 billion doses a year to cope with future

ROA 0809

*"Shakespeare's **production** of poetry was enormous"*

*"the **production** of white blood cells"*

Types: show 11 types...

Type of: act, deed, human action, human activity
something that people do or cause to happen

n (economics) manufacturing or mining or growing something (usually in large quantities) for sale

*"he introduced more efficient methods of **production**"*

Types: show 26 types...

Type of: industry, manufacture
the organized action of making of goods and services for sale

---

n the creation of value or wealth by producing goods and services

Type of: creation, creative activity
the human act of creating

---

n the quantity of something (as a commodity) that is created (usually within a given period of time)

*"**production** was up in the second quarter"*

Synonyms: output, yield

Types: pick, picking
the quantity of a crop that is harvested

Type of: indefinite quantity
an estimated quantity

disease outbreaks, Poonawalla said in a telephone interview with The Associated Press.

Seattle Times Dec 11, 2020

It is increasing its **production** capacity by the end of 2021 to over 2.5 billion doses a year to cope with future disease outbreaks, Poonawalla said in a telephone interview with The Associated Press.

Washington Times Dec 11, 2020

ROA 0810

n an artifact that has been created by someone or some process

"they export most of their agricultural production"

Synonyms: product

Examples: *show 4 examples...*

Types: *show 63 types...*

Type of: creation
an artifact that has been brought into existence by someone

2.

n a presentation for the stage or screen or radio or television

*"have you seen the new **production** of Hamlet?"*

Types: staging, theatrical production
the production of a drama on the stage

coup de theatre
a highly successful theatrical production

summer stock
theatrical productions performed by a stock company during the summer

Type of: presentation
the act of making something publicly available; presenting news or other information by broadcasting or printing it

---

n (law) the act of exhibiting in a court of law

*"the appellate court demanded the **production** of all documents"*

Type of: exhibition
the act of exhibiting

ROA 0811

n a display that is exaggerated or unduly complicated

*"she tends to make a big **production** out of nothing"*

Type of: display
behavior that makes your feelings public

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YOUR DICTIONARY

production

Definitions Synonyms Sentences Quotes Spanish

Production definitions prə-dŭk'shən, prō-

Filters

Production is the process of making, harvesting or creating something or the amount of something that was made or harvested.

An example of production is the creation of furniture.

An example of production is harvesting corn to eat.

An example of production is the amount of corn produced.

noun

7 0

The act or process of producing.

noun

5 0

Something produced; a product.

noun

2 0

The definition of a production is a theatrical performance or a piece of music.

An example of a production is a play.

EXHIBIT 3

Petitioner's Exhibit 1

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

April 2017

Colonial Pipeline Company
SC 1120U: Public Utility Tax Return
Form: Schedule X - Pollution Control Equipment

PC Control Facility Type	Long Asset Description	Federal Environmental Requirement	State Environmental Requirement	Asset ID	In-Service	Age	Cost	Depreciated Value	Assessed Value
I. Transmission Pipeline									
A. Water Pollution Control Facilities									
1. Automatic Shutoff Valves									
Automatic Shut-off Valves	Add Upstream Isolation Valve At Gaffney Station	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)]	13053	02/01/11	6.00	$ 528,630	$ 454,399	$ 43,168
Subtotal - Automatic Shut-off Valves							$ 528,630	$ 454,399	$ 43,168
2. Pipeline Cathodic Protection									
Pipeline Cathodic Protection	703 Double Bridge 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 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)]	13320	06/01/06	11.00	$ 85,000	$ 72,144	$ 8,654
Pipeline Cathodic Protection	702 Bullman Road Linear Anode System	See Above	See Above	13310	06/01/06	11.00	79,746	58,271	5,536
Pipeline Cathodic Protection	703-bethlehem Road Linear Anode System	See Above	See Above	13545	12/01/08	11.00	148,177	113,296	10,762
Pipeline Cathodic Protection	701 Cathodic Protection Systems	See Above	See Above	13563	04/01/09	8.00	1,309,560	1,028,394	97,697
Pipeline Cathodic Protection	Remote Monitor Installations In South Carolina (105)	See Above	See Above	14890	10/01/09	8.00	368,178	307,506	29,213
Pipeline Cathodic Protection	Sc Cp Mitigation Project	See Above	See Above	14986	12/01/09	8.00	1,080,074	904,273	85,906
Pipeline Cathodic Protection	South Carolina Cp Mitigation Project Part Ii	See Above	See Above	14910	12/01/10	7.00	1,608,062	1,383,436	131,427
Pipeline Cathodic Protection	2011 Rectifier Replacement Program Sc/nc	See Above	See Above	15126	06/01/11	6.00	172,728	148,536	14,114
Pipeline Cathodic Protection	2011 Sc Cp Upgrade Project	See Above	See Above	15206	12/01/11	6.00	707,030	705,079	66,982
Pipeline Cathodic Protection	0700494 Scuffletown Road	See Above	See Above	15448	07/01/12	5.00	23,613	21,392	2,032
Pipeline Cathodic Protection	Sc Mainline Monitoring Project	See Above	See Above	15965	12/01/14	3.00	453,296	430,843	40,911
Pipeline Cathodic Protection	2015 Sc Mainline Delivery Line Cp Upgrades	See Above	See Above	16324	12/01/15	2.00	587,229	99,736	9,475
Subtotal - Pipeline Cathodic Protection							$ 4,718,264	$ 5,273,148	$ 500,949
3. Pipeline Coatings									
Pipeline Coatings	Recoat Loc 701 Line 2 Vulcan	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(a), 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)(8)]	13413	08/01/06	11.00	$ 97,484	$ 74,015	$ 7,031
Pipeline Coatings	Line 703-7 And 703-8 Recoat Project	See Above	See Above	14358	01/01/08	9.00	85,378	74,671	7,113
Pipeline Coatings	703 Recoat	See Above	See Above	14801	05/01/09	8.00	1,325,790	1,243,740	118,155
Pipeline Coatings	Line 02 Location 702 Recoat	See Above	See Above	15087	12/01/10	7.00	101,995	88,265	8,385
Pipeline Coatings	2011 Sc Remediation Project - Recoats	See Above	See Above	15203	01/01/12	5.00	809,320	716,041	68,109
Pipeline Coatings	Recoat - West Piney Grove Meyers Creek Loc	See Above	See Above	15078	12/01/14	3.00	133,641	128,975	12,063
Pipeline Coatings	Hunter Road Recoat Of Line 01 And 02	See Above	See Above	16228	12/01/15	2.00	1,513,550	1,489,100	130,565
Pipeline Coatings	2015 South Carolina Recoats On Line 02 Loc 701 To 703	See Above	See Above	16325	05/01/16	1.00	3,759,109	3,703,750	351,656
Pipeline Coatings	2016 Kings Mountain South Carolina Line 02 Recoat	See Above	See Above	16827	08/01/16	1.00	2,936,060	2,908,121	276,272
Subtotal - Pipeline Cathodic Protection							$ 10,881,330	$ 10,405,788	$ 988,550
Subtotal - Transmission Pipeline							$ 16,223,215	$ 16,133,333	$ 1,532,667
II. Storage & Terminals									
A. Water Pollution Control									
1. Waste Water Pollution Control Facilities									
Waste Water Pollution Control Facilities	Gaffney Facility Drain Valve Upgrade	N/A	Consent Agreement 02-007-W Section 9	15383	12/01/12	5.00	$ 349,302	$ 313,927	$ 29,823
Waste Water Pollution Control Facilities	Simpsonville Drain Valve Upgrade	N/A	Permit No SCG530000 Part VIII Limitations and Monitoring Requirements	16013	12/01/15	2.00	201,407	192,270	18,266
Subtotal - Secondary Containment							$ 547,709	$ 506,197	$ 48,089
2. Storm Water Pollution Control Facilities									
Storm Water Pollution Control	Install New Dike Drain Lines @ Belton	40 CFR 112.3 "The owner or operator of an onshore or offshore facility subject to this section must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter "SPCC Plan" or "Plan"), in accordance with § 112.7 and any other applicable section of this part." SPCC Section 2.2 Evaluation of Discharge Potential	NPDES Permit No SC3400020 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)]	13316	11/01/06	11.00	$ 16,248	$ 12,019	$ 1,142
Subtotal - Secondary Containment							$ 16,248	$ 12,019	$ 1,142
3. Secondary Containment									
Secondary Containment	Line 21 Sump Replacement	40 CFR 112.3 "The owner or operator of an onshore or offshore facility subject to this section must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter "SPCC Plan" or "Plan"), in accordance with § 112.7 and any other applicable section of this part." SPCC Section 3.5 Containment and Diversionary Structures	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)]	13740	03/01/07	10.00	$ 125,767	$ 98,411	$ 9,169
Subtotal - Secondary Containment							$ 125,767	$ 98,411	$ 9,169
B. Air Pollution Control									
1. Tank Floating Roofs									
Tanks - Roofs	Tank 630 Internal Floating Deck Replacement & Floor Coating	40 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."	State Operating Permit No. 0280-0210 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)(8)]	13309	03/01/07	10.00	$ 163,035	$ 153,186	$ 14,564
Tanks - Roofs	Tank 651 External Floating Roof Seal Replacement	40 CFR 63.1063 (a)(1) "Internal floating roof. An EFR shall be equipped with one of the seal configurations listed in paragraphs (a)(1)(i)(A) and (a)(1)(ii)(D) of this section. (A) A liquid-mounted seal and a secondary seal. (B) A mechanical shoe seal and a secondary seal. The upper end of the shoe(s) shall extend a minimum of 61 centimeters (24 inches) above the stored liquid surface."	See Above	13390	10/01/07	10.00	59,625	41,144	3,904
Subtotal - Tank Floating Roofs							$ 222,660	$ 194,330	$ 18,468
Subtotal - Storage & Terminals							$ 929,384	$ 806,956	$ 76,652
Form Total							$ 19,197,809	$ 16,942,289	$ 1,609,518

Colonial 0906

ROA 0816

Petitioner's Exhibit 4

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

Appendix A

Colonial Pipeline Company
SC 1120U: Public Utility Tax Return
Form: Schedule X - Pollution Control Equipment
TAX YEAR 2018

PC Control Facility Type	Long Asset Description	Federal Environmental Requirement	State Environmental Requirement	Asset ID	In-Service	Age	Cost	Depreciated Value	Assessed Value
I. Transmission Pipeline									
A. Water Pollution Control Facilities									
1. Automatic Shut-off Valves									
Automatic Shut-off Valves	Add Upstream Isolation Valve At Gaffney Station	49 CFR §195.260(e): A valve must be installed at each of the following locations: (e) 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) .]	15053	07/01/11	7.00	$ 628,600	$ 442,027	$ 44,203
Subtotal - Automatic Shut-off Valves							$ 628,600	$ 442,027	$ 44,203
2. Pipeline Cathodic Protection									
Pipeline Cathodic Protection	703 Double Bridge Road Linear Anode System	49 CFR §195.563(e): Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in §196.401(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) .]	13320	03/01/03	12.00	$ 95,020	$ 79,064	$ 8,856
Pipeline Cathodic Protection	702 Bullman Road Linear Anode System	See Above	See Above	13319	03/01/03	12.00	79,748	$ 66,601	$ 6,376
Pipeline Cathodic Protection	703-bellhaven Road Linear Anode System	See Above	See Above	13340	12/01/03	12.00	149,177	$ 110,114	$ 10,461
Pipeline Cathodic Protection	701 Cathodic Protection Systems	See Above	See Above	13663	04/01/00	9.00	1,396,500	$ 993,619	$ 94,304
Pipeline Cathodic Protection	Remote Monitor Installations In South Carolina (105)	See Above	See Above	14099	10/01/09	9.00	365,178	$ 299,924	$ 28,493
Pipeline Cathodic Protection	Sc Cp Mitigation Project	See Above	See Above	14098	12/01/10	8.00	1,080,574	$ 882,223	$ 83,611
Pipeline Cathodic Protection	South Carolina Cp Mitigation Project Part Ii	See Above	See Above	14918	12/01/10	8.00	1,608,062	$ 1,351,349	$ 128,378
Pipeline Cathodic Protection	2011 Rectifier Replacement Program Scmo	See Above	See Above	15120	08/01/11	7.00	172,728	$ 145,020	$ 13,778
Pipeline Cathodic Protection	2011 Sc Cp Upgrade Project	See Above	See Above	15256	12/01/11	7.00	767,908	$ 609,396	$ 56,512
Pipeline Cathodic Protection	0702404 Southtown Road	See Above	See Above	15448	07/01/12	6.00	23,513	$ 20,945	$ 1,990
Pipeline Cathodic Protection	Sc Mainline Monitoring Project	See Above	See Above	15985	12/01/14	4.00	453,208	$ 423,091	$ 40,104
Pipeline Cathodic Protection	2015 Sc Mainline Delivery Line Cp Upgrades	See Above	See Above	16324	12/01/15	3.00	587,220	$ (144,008)	$ (13,681)
Subtotal - Pipeline Cathodic Protection							$ 6,718,254	$ 4,898,541	$ 465,391
3. Pipeline Coatings									
Pipeline Coatings	Recoat Loc 701 Line 2 Vulcan	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) .]	13413	08/01/06	12.00	$ 97,484	$ 71,001	$ 6,629
Pipeline Coatings	Line 700-7 And 700-8 Recoat Project	See Above	See Above	14350	01/01/08	10.00	95,376	$ 72,503	$ 6,896
Pipeline Coatings	700 Recoat	See Above	See Above	14601	05/01/09	9.00	1,555,700	$ 1,204,752	$ 114,450
Pipeline Coatings	Line 02 Location 702 Recoat	See Above	See Above	15067	12/01/10	8.00	101,995	$ 80,304	$ 8,100
Pipeline Coatings	2011 Sc Remediation Project - Recoats	See Above	See Above	15283	01/01/12	6.00	900,259	$ 693,675	$ 65,174
Pipeline Coatings	Recoat - West Prong Broad Mouth Creek Loc	See Above	See Above	16018	12/01/14	4.00	133,041	$ 124,764	$ 11,852
Pipeline Coatings	Hunter Road Recoat Of Line 01 And 02	See Above	See Above	16728	12/01/15	3.00	1,813,650	$ 1,448,884	$ 137,454
Pipeline Coatings	2015 South Carolina Recoats On Line 02 Loc 701 To 703	See Above	See Above	16325	05/01/16	2.00	3,739,109	$ 3,068,391	$ 348,497
Pipeline Coatings	2016 Kings Mountain South Carolina Line 02 Recoat	See Above	See Above	16827	08/01/16	2.00	2,936,099	$ 2,660,144	$ 273,614
Subtotal - Pipeline Cathodic Protection							$ 10,891,399	$ 10,254,398	$ 974,164
Subtotal - Transmission Pipeline							$ 18,238,218	$ 15,594,927	$ 1,483,918
II. Storage & Terminals									
A. Water Pollution Control									
1. Waste Water Pollution Control Facilities									
Waste Water Pollution Control Facilities	Gaffney Facility Drain Valve Upgrade	N/A	Consent Agreement 02-062-W Section 9.	16303	12/01/12	6.00	$ 346,302	$ 307,482	$ 29,208
Waste Water Pollution Control Facilities	Simpsonville Drain Valve Upgrade	N/A	Permit No SCG830000 Part VII. Limitations and Monitoring Requirements	16013	12/01/15	3.00	201,407	$ 187,702	$ 17,832
Subtotal - Secondary Containment							$ 547,709	$ 495,184	$ 47,040
2. Storm Water Pollution Control Facilities									
Storm Water Pollution Control	Install New Dike Drain Lines @ Belton	40 CFR 112.3 "The owner or operator of an onshore or offshore facility subject to this section must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter "SPCC Plan" or "Plan")," in accordance with § 112.7 and any other applicable section of this part." SPCC Section 2.2 Evaluation of Discharge Potential	NPDES Permit No SC340020 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) .]	13316	11/01/06	12.00	$ 16,248	$ 11,854	$ 1,126
Subtotal - Secondary Containment							$ 16,248	$ 11,854	$ 1,126
3. Secondary Containment									
Secondary Containment	Line 21 Sump Replacement	40 CFR 112.3 "The owner or operator of an onshore or offshore facility subject to this section must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter "SPCC Plan" or "Plan")," in accordance with § 112.7 and any other applicable section of this part." SPCC Section 3.5 Containment and Diversionary Structures	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) .]	13749	06/01/07	11.00	$ 125,767	$ 93,476	$ 8,886
Subtotal - Secondary Containment							$ 125,767	$ 93,476	$ 8,886
B. Air Pollution Control									
1. Tank Floating Roofs									
Tanks - Roofs	Tank 630 Internal Floating Deck Replacement & Floor Coating	40 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..."	State Operating Permit No. 0260-0018 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) .]	13360	06/01/07	11.00	$ 183,885	$ 150,211	$ 14,270
Tanks - Roofs	Tank 651 External Floating Roof Seal Replacement	40 CFR 63.1063 (a)(1) "Internal floating roof. An IFR shall be equipped with one of the seal configurations listed in paragraphs (a)(1)(i)(A) and (a)(1)(i)(D) of this section. (A) A liquid-mounted seal and a secondary seal. (D) A mechanical shoe seal and a secondary seal. The upper end of the shoe(s) shall extend a minimum of 61 centimeters (24 inches) above the stored liquid surface..."	See Above	13350	10/01/07	11.00	80,625	$ 32,896	$ 3,782
Subtotal - Tank Floating Roofs							$ 390,000	$ 169,986	$ 18,052
Subtotal - Storage & Terminals							$ 938,324	$ 780,671	$ 76,997
Form Total:							$ 19,157,599	$ 16,354,967	$ 1,560,575

EXHIBIT 4

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

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

HEARING

****

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

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

Q: Okay. And so, your exemption claim was for the re-coating?
A: Yes.
Q: Okay. And prior -- in 27 [sic] and 2018, did Colonial expense or capitalize those repairs for pipeline coating?
A: Capitalized them.
Q: Okay. And how long has protective coating repairs been going on at Colonial?
A: Since we started the pipeline, we have to -- it's required that we keep it coated.
Q: Okay. So, that would be in -- started in 19 -- -
A: I think we started building in 1960 and went into service in 1962.
Q: Okay. And so, prior to 2017, was the pipeline coating repairs included in your property tax base?
A: Yes.
Q: Okay. So, you -- you capitalized them. Now, what happens to an asset after you capitalize it? How does it work its way into the property tax base?
A: From that AFE record that it's been capitalized and listed on the fixed asset listing, then

A: The same way.
Q: Okay.
A: Similar process.
Q: All right. The pipeline coating -- is the pipeline already on the pipe or do you buy the pipeline coating on brand new pipes?
A: I think you can do it both ways. I think typically when we get ours, it's already been coated, but.
Q: Okay. And so -- so, it's already been coated. Was -- was the -- your exemption claim for repairs or was it the actual coating -- new coating?
A: It was for the repairs for the pipe itself ---
Q: Right.
A: --- that had coating that had gone bad.
Q: Okay. And so, we'll -- we're gonna get into, the next couple of witnesses, into the repairs, so we don't really need any details from you, but -- but coating has to be repaired from time to time?
A: Yes. So, it -- over time it breaks down and in some cases, actually de-bonds from the pipe and falls off and lets -- that's when we do these re-coating projects.

KOZLAREK LAW LLC

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December 21, 2020

Via Email and USPS
South Carolina 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 Sir/Madam:

On behalf of the Respondents Abbeville County, Anderson County, Greenville County, and York County, please find enclosed Respondents' Response to Petitioner's Motion for Reconsideration with related Certificate of Service for the referenced Contested Case.

Please return an executed, in the enclosed self-addressed, stamped envelope.

Thank you for your assistance. Do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Christie B. Satter

Enclosure: stated

cc: Burnett R. Maybank, III, Esq.
Jim Rourke, Esq.
Jason Luther, Esq.
Marcus D. Antley, III, Esq.
Walter H. Cartin, Esq.
J. Evan Phillips, Esq.
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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 **RESPONDENTS ABBEVILLE COUNTY, ANDERSON COUNTY, GREENVILLE COUNTY, AND YORK COUNTY'S RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION**

Respondents Abbeville County, Anderson County, Greenville County, and York County ("Counties") hereby respond to the Petitioner's Motion for Reconsideration under the Rules of the Administration Law Court, Rule 29(D), to Alter or Amend Under South Carolina Rules of Civil Procedure, Rule 59(e) ("Petitioner's Motion") and show as follows:

I. The Dual Use Doctrine Clearly Applies.

The Petitioner argues that the dual use doctrine does not apply. This argument must fail. Petitioner argues, first, that "[t]he pollution control exemption is found in the S.C. Constitution, S.C. Const. Art. X, § 3(b)." Petitioner's Motion, p. 3, Section I.A. Item 3(b), however, deals with the property of schools, colleges, charities, hospitals, and other matters unrelated to pollution control equipment. The constitutional pollution control exemption is found at Article X, Section 3(h) and states that the following property "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." Article X provides the General Assembly with the power to create exemptions: "In addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax, by general laws applicable uniformly to property throughout the State and in all political subdivisions." S.C. Const. Art. X, § 3. In enacting section 12-37-220(A)(8), the General Assembly

exercised its power and added a provision to limit the application of the exemption where the equipment or facilities in question serve a dual purpose.

In its Order, the Court noted that 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, stated the Court, "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." Order, p. 30. "If the equipment serves a function apart from pollution control, the utility of that function must be recognized before allowing the property tax exemption." Order, p. 30.

The Order goes on to state that "[t]he 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)." Order, p. 30. "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." Order, p. 32.

The record evidence supports the Court's reasoning on this issue. The Petitioner's own witnesses gave extensive testimony on the many purposes that are served by the pipe coatings.

Petitioner gave testimony that the coatings were installed prior to any laws requiring pollution control. Joint Exhibit 16, p.291, ll. . Petitioner also testified that the pipe coatings serve a purpose in the operation ot the pipeline itself. Joint Exhibit 16, pp. 65-66. ll. Further, Petitioner testified that the coatings were used then and are still used to "protect the asset" of the company, i.e., the pipeline itself, and to protect the product the Petitioner transports. Joint Exhibit 16, p. 35, ll. 7-15, p. 291, ll. p. 291.

Based on this record evidence, the Order concluded: ". . . 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." Order, p. 32.

The Court's reasoning on this issue is sound and properly interprets the Constitutional pollution control exemption and the General Assembly's further addition to the exemption that limits that exemption where dual purposes exist. The Court quite correctly concluded that the Petitioner's evidence on the dual purposes of the pipeline coatings was insufficient to meet its burden of establishing the exemption.

II. The Court Did Not "Overlook" the Petitioner's Evidence

Petitioner next argued that the Court improperly concluded that the exemption it sought was only for pipeline coatings. This argument borders on the absurd. Clearly, as shown in the language from the Order above, the Court, "applying the dual use provision of the exemption, . . . conclude[d] the exemption is not justified for the pipeline coatings because the coatings serve a dual business use without a calculable value differential." Order, p. 32. The Court made a ruling on the pipe coatings specifically, holding that the totality of the evidence presented at the final hearing established that the coatings served a dual purpose, and that Petitioner had not established that this equipment met the exemption.

III. The Cases Cited by Petitioner in Its Third Argument Support the Respondent's Position.

Petitioner makes its next argument based on several case citations, which do not support Petitioner's position. In the case of *Commonwealth Edison Company v. Department of Local Government*, 426 N.E.2d 817 (Ill. 1981), the Illinois statute at issue based the exemption for pollution control equipment on "economic productivity" and "productive earning value." The three-step process cited by the Petitioner ignores the most important language of the statute in question, which is that "economic productivity" is the requirement, not production itself.

In *International Paper Co. v. Board of Environmental Protection*, 737 A.2d 1047 (Me. 1999), the Maine statute at issue required that in order to even be considered for an exemption, the "primary purpose" of the facility or equipment must be pollution control. The Maine statute was not based on the "dual purpose" statutory language present in the South Carolina statue. Thus, the case is inapposite.

As acknowledged, however, by Petitioner, both of these cases involved "plants." *International Paper* involved a paper mill. *Commonwealth Edison* related to a utility plant that generates electricity. Respondents have always maintained that to be eligible for the pollution control exemption, the threshold question of whether a taxpayer's assets constitute an "industrial plant" involves an analysis of whether output occurs at that "industrial plant." Each of the cases Petitioner now cites are grounded in the tax scheme of the respective statute from which the case originates. It seems that the treatment of the definition of "industrial plant" in that context is much more persuasive than selecting seemingly random dictionary definitions without any of the backdrop of the tax scheme in which "industrial plant" is used in section 12-37-220(A)(8).

IV. Joinder

Respondents join in any responses of similar tenor that may be filed by the South Carolina Department of Revenue, Aiken County, or Laurens County, or any combination of the same.

V. Conclusion

Respondents respectfully request that the Court keep in place the portion of its Order that Petitioner requested to be reconsidered.

[ONE SIGNATURE PAGE AND CERTIFICATE OF SERVICE FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

Respectfully submitted,

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December 21, 2020
Greenville, 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 **AIKEN COUNTY'S AND LAURENS COUNTY'S RESPONSE TO COLONIAL'S MOTION FOR RECONSIDERATION**

Aiken County and Laurens County hereby respond to the Motion for Reconsideration ("Motion") filed by Petitioner Colonial Pipeline Company ("Colonial"), asking the Court to deny Colonial's Motion.

Aiken and Laurens County incorporate into this response by reference Aiken and Laurens County's Motion for Reconsideration currently pending before the Court, as well as the arguments and issues raised in their Proposed Final Order. In response to Colonial's Motion, Aiken and Laurens County would show unto the Court as follows:

There is No Conflict Between the Constitution and Section 12-37-220(A)(8)'s Dual use Provisions

Colonial's Motion states that because the Constitution does not contain the dual use doctrine, "arguably, the constitutional exemption supersedes the statutory exemption." [Colonial's Mot. Recons. 3]. This argument is wholly without merit, and Colonial failed to cite to any authority in support of this position.

Article X, Section 2(c) of the Constitution states that "[s]tatutes pertaining to the methods of assessment of property for ad valorem taxation not in conflict with this article shall continue in force until changed by an act of the General Assembly." Furthermore, the sentence immediately preceding the constitutional exemption states the following: "The exemptions allowed pursuant to this paragraph are subject to those terms and conditions that the General Assembly may provide by law." S.C. Const. Art. X, § 3.

The dual use provision within section 12-37-220(A)(8) directly relates to the method of assessment of pollution control property which serves a dual purpose use of production and

pollution control, and is nothing more than "those terms and conditions that the General Assembly may provide by law," as expressly authorized by the Constitution. Accordingly, there is no conflict between the Constitution and section 12-37-220(A)(8). Therefore, Colonial's argument must be rejected.

Colonial's Pipeline Coatings are Subject to Section 12-37-220(A)(8)'s Dual Use Provision

Colonial argues that even if there is no conflict between the Constitution and section 12-37-220(A)(8), the pipeline coatings "are not used for 'production,' and thus the dual use doctrine does not apply." [Colonial's Mot. Recons. 3]. Aiken and Laurens County agree with Colonial's argument to the extent this statement supports the argument that because Colonial does not actually "produce" any product, its operations do not qualify as an "industrial plant," and Colonial is therefore, ineligible for the exemption. However, Aiken and Laurens County do not agree that the statute as a whole is applicable to non-producers and producers alike, but that the statute's dual use provision would be applicable only to property that is used to produce a product. In other words, if section 12-37-220(A)(8) is not generally limited to companies that are engaged in the production of a product, then the dual use provision is not specifically limited to equipment that is engaged in the production of a product.

Moreover, Colonial argues that, even if the dual use doctrine applies to Colonial (as a transportation company), "[r]epairs of the pipeline coating hardly serve the 'dual purpose of production and pollution control.'" [Colonial's Mot. Recons. 10]. However, the record clearly shows that pipeline coatings are integral to Colonial's business operations and would be used by Colonial even if not required by federal law. *See, e.g.,* Colonial's 30(b)(6) Dep. 291:6–17 (Mr. Stanley stating that pipeline coatings, cathodic protection equipment, and automatic shutoff valves were used before required by federal law because "**it's in the best interest to protect the asset** and keep the product in the pipeline . . . [,]" and "**it's a good investment. It makes good financial sense . . . to protect your asset.**") (emphasis added); *id.* at 65:7–13 (Mr. Fuqua stating that pipe coatings, cathodic protection, and automatic shutoff valves "serve a function for operating the pipeline, as well"); *id.* at 132:2–9 (Mr. Brown stating that "[a]ll those things are very critical to the operation of the pipeline"). And, as the Court concluded, 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." [Order 31].

If the Court maintains its position that Colonial's operations qualify as an "industrial plant," then Aiken and Laurens County agree with the Court's reasoning that the dual use doctrine

must be used to differentiate the cost of the Colonial's equipment that is capable of controlling pollution and the cost of the same equipment that is not capable of controlling pollution. As the Court stated in its Order, "once the right to the exemption is establish, this Court must look to the dual use provision to determine if the exemption should be limited." [Order 30]. And, "[i]f the equipment serves a function apart from pollution control, the utility of that function must be recognized before allowing the property tax exemption." [*Id.*].

The record shows that pipeline coatings serve a function apart from pollution control. Thus, the value eligible for the exemption is the difference between the cost of pipes with the federally required coatings and the cost of pipes without these coatings. Because "Colonial cannot realistically purchase pipes for its business that are not already coated[,] . . . 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." [*Id.*].

Conclusion

Therefore, Aiken and Laurens County respectfully request that the Court deny Colonial's Motion for Reconsideration in accordance with the principles outlined above.

Respectfully submitted,

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December 21, 2020

STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE

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December 23, 2020

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 Department's Response to Petitioner's Motion for Reconsideration 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 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
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, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County, Respondents.	DOCKET NO. 18-ALJ-17-0443-CC **RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION**

Pursuant to Rule 29(D)(1) of the Rules of Procedure for the Administrative Law Court (SCALC), the Respondent, South Carolina Department of Revenue (Department) submits the following in Response to Petitioner's Motion for Reconsideration.

The Department joins Aiken County and Laurens County in their Motion for Reconsideration and Response to Petitioner's Motion for Reconsideration for the reasons stated therein. The Department joins Abbeville County, Anderson County, Greenville County, and York County in their Motion for Reconsideration for the reasons stated in Section I (A) and (C) and Section II and Response to Petitioner's Motion for Reconsideration for the reasons stated therein.

Additionally, to the extent the Petitioner argues that the dual purpose provision of S.C. Code Ann. 12-37-220(A)(8) is unconstitutional, the Court cannot rule on a facial challenge to the constitutionality of a statute. *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011).

In conclusion, the Department requests the Court deny Petitioner's Motion for Reconsideration.

Respectfully submitted,

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December 23, 2020

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 BRIEF ON CATHODIC PROTECTION EQUIPMENT**

The Court has asked the parties each to submit a brief answering three questions about cathodic protection equipment: (1) when was cathodic protection equipment first required by federal law; (2) when did Colonial first started using cathodic protection equipment on its pipeline; and (3) whether there is a distinction between cathodic protection equipment and pipeline coatings. Aiken and Laurens County respectfully submit this Brief to the Court, which shows that cathodic protection equipment was not required by federal law prior to 1970; Colonial installed and used cathodic protection equipment on its pipeline when Colonial began operating the pipeline in 1962; and cathodic protection equipment is separate and distinct from pipeline coatings.

CATHODIC PROTECTION EQUIPMENT WAS NOT REQUIRED BY FEDERAL LAW PRIOR TO 1970.

All gas pipelines installed after July 31, 1971, and all hazardous liquid interstate pipelines installed after March 31, 1970, must have cathodic protection. [Petitioner's Trial Ex. 3 at Colonial 0960; *see also* 42 CFR 195.563(a) (stating that "[e]ach buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c) must have cathodic protection"); 42 CFR 195.401(c)(1) (stating that "no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part: (1) An interstate pipeline, other than a low-stress pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid")].

COLONIAL INSTALLED CATHODIC PROTECTION EQUIPMENT ON THE PIPELINE WHEN COLONIAL BEGAN OPERATING IN 1962.

First, every Colonial witnessed testified that Colonial began operating its pipeline in 1962. [*E.g.*, Trial Tr. 90:25 (Buster Brown stating that "Colonial began operation [in] 1962"); Trial Tr. 91:9–10 (Mr. Brown stating that "we originally were constructed in 1962"); Trial Tr: 96:17–20 (Mr. Brown stating that the pipeline began operating in 1962); Trial Tr. 230:10–11 (Joshua Stanley stating that the pipeline was first installed in 1962); 30(b)(6) Dep. 184:21–23 (Mr. Brown, stating that "[o]riginal construction and completion was 1962 and I think they were moving their first barrels in 1963"); 30(b)(6) Dep. 187:12–15 (Mr. Brown stating that "original construction of the pipeline in 1962 would be when we -- when we began shipping products through and to South Carolina")].

Second, the evidence in this case shows that cathodic protection equipment has been installed on Colonial's pipeline since Colonial first constructed and began operating the pipeline in 1962—almost 10 years before it was required by federal law. Joshua Stanley, Colonial's Manager of Corrosion Prevention, stated on several occasions that cathodic protection equipment has been a part of Colonial's pipeline since the pipeline was originally constructed in 1962. Those specific statements are as follows:

- "Cathodic protection was installed – it's been installed for a long time. **Back in 1962 when the pipe was, was installed, it had cathodic protection** at a very limited capacity. Since then, we've installed more systems as the coating degraded over time." [Trial Tr. 230:7–14 (emphasis added)].
- "**[C]athodic protection has always been on our system**. . . ." [Colonial's 30(b)(6) Dep. 263:18–19 (emphasis added)].
- "[W]e have **always had cathodic protection on our system**. . . ." [*Id.* at 290:15–17 (emphasis added)].

And, when Buster Brown, Colonial's Direct of Commercial Affairs and Special Projects, was asked at Colonial's 30(b)(6) deposition about when exactly the assets at issue in this case—including cathodic protection equipment—were installed on Colonial's pipeline, the following exchange occurred:

> Q. "So the pipeline built in the fifties, I think it was, or the sixties, operated as a pipeline without any of those assets, correct?"
>
> A. "No. No, that's not correct. You're saying that our pipeline in the sixties did not have those types of things?"
>
> Q. "I'm asking. I believe the testimony from Mr. Fuqua was that those assets were installed between 2006 and 2016."

> A. "I believe -- I believe the specific assets that he's requested were installed from that, **but 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**."

[Colonial's 30(b)(6) Deposition 180:15–181:5 (emphasis added)].

CATHODIC PROTECTION EQUIPMENT IS SEPARATE AND DISTINCT FROM PIPELINE COATINGS

Although cathodic protection equipment and pipeline coatings work together to accomplish a similar goal of preventing pipeline corrosion, each performs a separate and distinct function to accomplish this goal. Cathodic protection equipment and pipeline coatings "are **two** primary methods for controlling corrosion on underground pipelines." [Petitioner's Trial Ex. 3 at Colonial 0944 (emphasis added)]. As explained by the Pipeline & Hazardous Materials Safety Administration, "[o]perators use coatings, cathodic protection systems, pipe cleaning techniques, product quality controls, and other approaches to protect pipelines from corrosion." [*Id.* at Colonial 0955]. In other words, pipeline coatings and cathodic protection equipment are each just a part "of the total package operators employ to ensure their pipelines are well protected." [*Id.* at Colonial 0958].

As part of the total package for protecting pipelines, "[c]athodic protection and integrity assessments are also used to prevent corrosion, and to detect any defects that may result from corrosion." [*Id.*]. As explained by Mr. Stanley, "cathodic protection is . . . an electrochemical process that prevents our pipeline and all of the other assets; tanks, pipelines, really anything metallic that we bury in our ground as part of our system." [Colonial's 30(b)(6) Dep. 258:7–11]. Specifically, "[c]athodic 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." [Petitioner's Trial Ex. 3 at 0944]. Cathodic protection equipment helps to prevent corrosion "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 or held in check." [*Id.* at Colonial 0960].

In most cases, cathodic protection equipment is used in conjunction with pipeline coatings because "[c]oatings 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." [*Id.* at Colonial 0960]. Because pipeline coatings are susceptible to disbonding,

operators, including Colonial, install cathodic protection equipment in order to more effectively protect pipeline assets. [Trial Tr. 232:9–23]. Colonial uses—and has used since the pipeline was first constructed in 1962—cathodic protection equipment in order to protect its assets more effectively than it otherwise could if only pipeline coatings were used.

CONCLUSION

The evidence presented to the Court in this case shows that cathodic protection equipment was not required on pipelines prior to 1970, Colonial installed and used cathodic protection equipment on its pipeline when Colonial began operating the pipeline in 1962, and cathodic protection equipment is separate and distinct from pipeline coatings. Therefore, Aiken and Laurens County respectfully request that the Court apply the same line of reasoning to Colonial's cathodic protection equipment (and automatic shut-off valve) that it did to Colonial's pipeline coatings in the Order. Thus, because Colonial used cathodic protection equipment prior to being required by federal law, and Colonial failed to present any evidence relating to associated cost differential to similar equipment without the ability to control pollution, the Court should deny Colonial's application for the pollution control exemption for cathodic protection equipment for the 2017 and 2018 tax years.

Respectfully submitted,

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