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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

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 4 OF 7

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STIPULATIONS

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14

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

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1 (On the record at 9:31 a.m.)

2 MR. ANTLEY: And, Nellie, the
3 Department would just like to get on the
4 record that late -- well, yesterday evening,
5 there was an e-mail sent with a last-minute
6 production of documents by Colonial
7 Pipeline.

8 The Department did not receive that
9 e-mail, expecting -- expect it was because
10 of the size of it. So we have not had a
11 chance to review it, but we just wanted to
12 get that on the record. That was a
13 Supplemental Response to the Department's
14 Request for Production, okay?

15 MR. KOZLAREK: Trey, if you don't mind,
16 I'll offer that exact -- I have the same
17 issue. I did not receive that e-mail.

18 MR. ANTLEY: And so the Department be
19 amenable to -- if -- maybe setting up a file
20 drop --

21 MR. MAYBANK: Sure.

22 MR. ANTLEY: -- in the meantime --

23 MR. MAYBANK: Uh-huh (affirmative
24 response).

25 MR. ANTLEY: -- maybe even during a

1 break --

2 MR. MAYBANK: Right.

3 MR. ANTLEY: -- during this deposition,
4 if that's okay.

5 All right. So we'll get started now.

6 THE WITNESS: Okay.

7 JAMES KEITH FUQUA, having been duly
8 sworn, examines and testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. ANTLEY:

11 Q. Good morning, Mr. Fuqua. Is that -- is that
12 how you pronounce your last name?

13 A. That's close enough, yes.

14 Q. Okay. My name -- my name is Marcus Antley,
15 III. I go by Trey, but I am the -- an attorney
16 representing the South Carolina Department of
17 Revenue.

18 I will be taking your deposition in the
19 matter of Colonial Pipeline versus the South
20 Carolina Department of Revenue and Abbeville,
21 Aiken, Anderson, Greenville, Laurens, and York
22 Counties.

23 Have you had your deposition taken before?

24 A. Yes.

25 Q. Okay. So you know that I will ask you

1 questions and the court reporter will write
2 everything down?

3 A. Yes.

4 Q. And please answer verbally.

5 A. Okay.

6 Q. And please ask me rather than your own
7 counsel or any other person for clarifications,
8 definitions, or explanations of any words,
9 questions, or documents presented during the
10 course of the deposition. And you're required to
11 abide by these instructions.

12 (Mr. Luther enters at 9:34 a.m.)

13 A. Okay.

14 Q. You are advised that during this deposition
15 or any breaks taken during the deposition, you
16 cannot discuss the subject matter of this
17 deposition with any party, including your
18 attorney, and you must not ask for assistance in
19 answering any of the questions asked to you.

20 Since you do have the right to ask me to
21 clarify any question or document given to you,
22 then I -- if you answer questions, it will be
23 assumed that you understood them.

24 A. Okay.

25 Q. Is there --

1 MR. MAYBANK: Wait. Let me -- if I can
2 interrupt you. We did agree to sign the
3 Consent Order to the extent that -- so
4 Summary Judgment. So to the extent of that,
5 you may want to ask more or less questions
6 based on that. So I did want to point that
7 out.

8 MR. LUTHER: Okay.

9 MR. MAYBANK: Should we actually
10 physically do that? Do you have a -- since
11 we got three of us here now, do you want to
12 grab the Consent Order and sign it right
13 now, you know, at the break of the
14 deposition?

15 MR. LUTHER: We can get it during a
16 break --

17 MR. ANTLEY: During a break.

18 MR. MAYBANK: Yeah.

19 MR. LUTHER: -- if that's what you want
20 to do. That's fine.

21 MR. MAYBANK: All right.

22 MR. ANTLEY: That's fine.

23 BY MR. ANTLEY:

24 Q. Okay. Mr. Fuqua, is there any reason, such
25 as being under any unusual stress, a physical or

1 mental condition, or being under the influence of
2 any substances that would prevent or limit you
3 today from giving truthful answers to my
4 questions?

5 A. No.

6 Q. How did you prepare for your deposition
7 today?

8 A. How did I prepare?

9 Q. Uh-huh (affirmatively responds).

10 A. I reviewed some of the information from the
11 original filings and kind of refreshed my memory
12 of what we did back in 2017.

13 Q. So what documents did you review?

14 A. I looked briefly at the actual pollution
15 control Schedule X we filed. I looked -- thumbed
16 through the return and I looked at some of the
17 schedules for how much tax we had under protest
18 and that kind of stuff.

19 Q. Did you speak with anyone to prepare today?

20 A. Oh, I met with my counsel yesterday and we
21 talked about the process and he had some
22 questions for us, as well.

23 Q. Did you talk with anyone other than your
24 attorney?

25 A. No.

1 Q. Okay. Could you -- what -- what is your
2 name? Could you state it for the --

3 A. Full name is James Keith Fuqua. I go by
4 Keith, mostly. I am the tax director for
5 Colonial now. At the time of the return, I was
6 the head of the indirect tax, manager of indirect
7 tax.

8 Q. Could you spell your name for the court
9 reporter?

10 A. Sure. James is J-A-M-E-S, K-E-I-T-H, last
11 name is F, as in Frank, U-Q-U-A.

12 Q. Okay. And you're here on behalf of Colonial
13 Pipeline Company?

14 A. That's correct.

15 Q. What is your date of birth?

16 A. July the 8th, 1958.

17 Q. And what is your educational background?

18 A. I have an accounting agree from a college in
19 Kentucky. It was called Brescia College when I
20 went there. It's now Brescia University.

21 And I had some MBA classes at the University
22 of Louisville; although, I didn't finish that
23 degree. And then lots of property tax and tax
24 seminars over the years.

25 Q. Where do you currently work?

1 A. Colonial Pipeline.

2 Q. And could you -- I think you said it
3 earlier, but could you repeat your current job
4 title?

5 A. Director of tax.

6 Q. Okay. And what are your job
7 responsibilities?

8 A. Well, I oversee all of the tax compliance
9 and filings for the company and work with staff
10 to make sure that we stay in compliance from a --
11 for federal, state, and all local taxes.

12 Q. Do you look for new tax breaks for your
13 company?

14 A. I do.

15 Q. And where is your job located?

16 A. It's in Alpharetta, Georgia, in the
17 headquarters office. You want an address?

18 Q. Sure.

19 A. It's 1085 Sanctuary Parkway in Alpharetta,
20 Georgia.

21 Q. Who are your direct reports? Who directly
22 reports to you?

23 A. Currently, I just have -- the way we're
24 organized, I just have one, an income tax manager
25 named Erica Nanke. And indirectly, there are

1 four others, so --

2 Q. Okay.

3 A. -- that report to her that report to me.

4 Q. And who are those?

5 A. I have an income tax senior named Chris
6 Peters, an income tax staff named Katherine
7 Sammons, a property tax analyst named Josh Cupit,
8 and a junior analyst named Christy Huiels.

9 Q. And where are those -- where is your income
10 tax manager located?

11 A. They're all located in the same office, in
12 Alpharetta, Georgia.

13 Q. So the person who directly reports to you
14 and their subordinates are located there?

15 A. Yes.

16 Q. How do you communicate with them?

17 A. I see them every day; by e-mail, by instant
18 messaging, if they're in a different part of the
19 building, by phone. Depends on where we are all
20 at any given day.

21 Q. Do you text? Send text messages from your
22 phone, too?

23 A. Very rarely. I'm not a big texter.

24 Q. So e-mail, instant message. Are there other
25 written communications you have with them?

1 A. Sometimes, yes. I mean, mostly, though,
2 that would be in the form of e-mail, like telling
3 them, "Make sure we get this -- could you do
4 this," or ask them if they could do a task or
5 fill out a form or do some kind of compliance
6 type work or remind them that something's coming
7 up on the calendar.

8 Q. So what are those other written
9 communications?

10 A. Those are usually in the form of an e-mail.

11 Q. Okay. Who do you report to?

12 A. I report to Clay Miller, the CFO. He's VP
13 and CFO, I think is his official title.

14 Q. And where is he located?

15 A. In the same office, in Alpharetta.

16 Q. Do you communicate with him in the same
17 manner? E-mail?

18 A. Normally face-to-face, sometimes through
19 e-mail, and occasionally by phone, and
20 occasionally by text. He likes to text.

21 Q. Okay. So he does like to text?

22 A. Yeah.

23 Q. Do you instant message with him, as well?

24 A. Very rarely; once or twice ever.

25 Q. Okay. Are there any other kind of written

1 communications you have with him?

2 A. I provide an update report every couple
3 weeks of what's going on in the world of tax, but
4 that's just a one-page status kind of thing.

5 Q. Does that update report, does that ever
6 cover property taxes?

7 A. Sure. Yeah, it's anything going on in the
8 tax world, things coming up that we're going to
9 need him to sign, big events, status of audits,
10 and that kind of thing.

11 Q. Has it ever covered the pollution control
12 exemption?

13 A. It's been on there, sure.

14 Q. For South Carolina?

15 A. Yes, just -- yes, just letting him know that
16 we're filing an appeal or whatever. He didn't
17 have that position when this started, so I've
18 just brought him up to speed on it since he's had
19 that position.

20 Q. Does that update report ever cover pollution
21 control exemption -- similar pollution control
22 exemptions in other states --

23 A. It will --

24 Q. -- other than South Carolina?

25 A. -- mention that we filed in a state or what

1 a status might be on the claim or something like
2 that.

3 Q. And how long have you been in your role as
4 tax director or director of tax?

5 A. About 14 months.

6 Q. And before that, were you also -- you were
7 at Colonial Pipeline Company?

8 A. I was the manager of indirect tax, so I had
9 everything but income tax since January of 2013.

10 Q. So that would include property tax?

11 A. Yes.

12 Q. So what were your job responsibilities as
13 manager of indirect tax?

14 A. I oversaw all the tax compliance for all
15 taxes, except income tax.

16 Q. Did you look for tax breaks there --

17 A. Yes.

18 Q. -- as well? Okay.

19 A. Yes.

20 Q. In that role, who did you report to?

21 A. It's been a couple different people over
22 time. When I started with Colonial, it was a
23 lady named Angela Long. Then after her, it was a
24 gentleman named Terry Bay. And then I took his
25 place.

1 Q. Okay. And did you have people who reported
2 to you in that role?

3 A. Most of the time, yeah. I had one position
4 that did, a gentleman named Brent Allen. And
5 then I hired Josh shortly before I got promoted
6 to this position. So Josh, Josh Cupit, as well,
7 took Brent's place when Brent moved on.

8 Q. When you were in that position, how did you
9 communicate with Angela Long and Terry Bay? Via
10 e-mail? Text message? Instant message?

11 A. Well, Terry did not like e-mail, so I
12 generally talked generally face-to-face with him.
13 Angela -- we didn't -- we didn't really use the
14 instant messaging much, but mostly e-mail and
15 face-to-face communication with Angela.

16 Q. And how did you communicate with Brent Allen
17 and Josh Cupit?

18 A. Well, they both sat right next to me, so
19 normally it was a verbal communication, so.

20 Q. Okay. Did you ever instant message or text
21 message or e-mail?

22 A. Probably I -- I'm sure I've e-mailed them.
23 I don't remember ever -- they don't have company
24 phones, so I would not have texted them at the
25 time. Josh has one now, but he just got it, so.

1 Mostly, there would have been e-mail
2 communications with them for different things;
3 remind them of due dates and ask them the status
4 of where they were on projects.

5 Q. So Brent Allen and Josh Cupit were located
6 in Alpharetta?

7 A. Right.

8 Q. Is that right?

9 A. Yeah.

10 Q. And were Angela Long and Terry Bay also
11 located --

12 A. Yes.

13 Q. -- in Alpharetta?

14 A. In the same space that we're in now.

15 Q. Okay. As part of your job -- well, I'm
16 sorry. When did you start as manager of indirect
17 tax?

18 A. In January of 2013.

19 Q. Okay. And that -- you were in that position
20 up until 14 months ago?

21 A. Yes.

22 Q. As -- when you were the manager of indirect
23 tax, did you communicate with the various state
24 and local taxing agencies?

25 A. Yes.

1 Q. How did you communicate with them?

2 A. Usually by phone and I did -- I try to go
3 see a lot of them every year, try to make a visit
4 to their -- wherever they're located; especially
5 for the property tax returns, and sometimes by
6 e-mail, as well.

7 I know, in particular, South Carolina had a
8 problem with cyber security when I first started,
9 so didn't -- we weren't allowed to send an
10 e-mail. So we did some things by mail at that --
11 so by mail, by e-mail, and by phone, and in
12 person.

13 Q. Okay. I'm going to hand you a document.

14 MR. ANTLEY: And if you need time to
15 review this with your client, I understand,
16 but this was part of Colonial's Response to
17 our Request to Produce.

18 MR. CARTIN: While he's reviewing that,
19 if we can do one housekeeping thing. Could
20 you get on the record that he's here as a
21 30(b)(6) deponent and not in his individual
22 capacity?

23 And just make sure that he understands
24 that when he answers questions about
25 specific things that he did, it's on behalf

1 of the company and not in his individual
2 capacity, necessarily.

3 THE WITNESS: Okay.

4 BY MR. ANTLEY:

5 Q. Okay. So did you -- do you understand that
6 you're here as a 30(b)(6) witness?

7 MR. MAYBANK: Yeah, we consent to all
8 that.

9 MR. ANTLEY: Okay.

10 THE WITNESS: Yes.

11 (RESPONDENT'S EXHIBIT 10 WAS MARKED FOR
12 IDENTIFICATION PURPOSES)

13 BY MR. ANTLEY:

14 Q. Okay. So I have handed you what's marked
15 as -- has been marked as Department's Exhibit 10.
16 Have you seen this before?

17 A. It looks familiar, yes.

18 Q. On footnote one, which is the only footnote
19 on there --

20 A. Oh, okay.

21 Q. -- that references an e-mail to Taylor
22 Ingram?

23 A. I see that.

24 Q. Did you -- does that -- did you ever see
25 that e-mail?

1 A. Not to my knowledge, no.

2 Q. Okay. So you wouldn't have a copy of that
3 e-mail?

4 A. No. I think in -- when you first sent out
5 our request, I looked for it. I don't have it.

6 Q. Okay.

7 A. I looked through several files and I believe
8 that that says that that's -- that Duff & Phelps
9 reached out to Taylor.

10 Q. Uh-huh (affirmatively responds).

11 A. So ...

12 Q. So they would have that -- a copy of that
13 e-mail, perhaps?

14 A. Yes. Are you sure it's an e-mail? Does it
15 say it's an e-mail?

16 (RESPONDENT'S EXHIBIT 11 WAS MARKED FOR
17 IDENTIFICATION PURPOSES)

18 Q. Excuse me. I'm going to hand you another
19 exhibit --

20 A. Okay.

21 Q. -- Department's Exhibit 11, which has that
22 same footnote.

23 A. Oh, it does say "per e-mail," okay.

24 Q. Okay.

25 A. Yes.

1 MR. CARTIN: Are we marking these as
2 exhibits?

3 MR. ANTLEY: It has been marked as
4 Department's Exhibit -- the first one was
5 Exhibit 10 and 11. I'm sorry. It's out of
6 order, but ...

7 MR. CARTIN: Okay.

8 (Off the Record)

9 MR. ANTLEY: And also, for the record,
10 I sent an e-mail to Mr. Kozlarek with the
11 exhibit list prior to this deposition so
12 that he's able to follow along.

13 All the exhibits that I plan to bring
14 up today have either been produced in
15 discovery or are publicly available on
16 Colonial's website or part of their filings
17 for the property tax exception.

18 THE WITNESS: Okay.

19 BY MR. ANTLEY:

20 Q. Okay.

21 A. I think both of these -- I don't know if
22 they're in one document or in two, but the --
23 kind of the process was that when we filed with
24 Taylor, he had some questions about things and
25 they prepared some of these to give him

1 additional information after the initial filing.
2 So I don't know if they were part of the original
3 or -- I don't remember off the top of my head.

4 Q. Okay. So do you know if Duff & Phelps had
5 direct communications with Taylor Ingram?

6 A. I'm fairly sure they did.

7 Q. Okay.

8 A. I know he knows those folks just like I do,
9 so.

10 Q. Okay. But to your knowledge, you did not --
11 Colonial Pipeline does not have a copy of that
12 particular e-mail?

13 A. Not to my knowledge. I looked and could not
14 find it, so.

15 Q. Okay. Did you lead Colonial's effort to
16 apply for the pollution control exemption?

17 A. I did.

18 Q. And who else at Colonial worked on the
19 application for the pollution control exemption?

20 A. It would have been myself and Brent Allen at
21 that time, but it was mostly me.

22 Q. Okay. Did anyone outside of Colonial assist
23 you with the pollution control exemption?

24 A. Duff & Phelps.

25 Q. Who at Duff & Phelps?

1 A. The primary person was Kathy Tronsberg, and
2 she had staff people that helped her. There's a
3 gentleman there named -- I'm going to mess his
4 name up. They call him Dom but his name is
5 Leonard. I think his last name is Salvato,
6 maybe.

7 Q. Do you have any idea how to spell that or
8 are you ...

9 A. I could probably look at my phone and tell
10 you, if that's ...

11 MR. MAYBANK: Why don't we do that at
12 one of the breaks, if you don't mind.

13 THE WITNESS: Okay.

14 BY MR. ANTLEY:

15 Q. That's fine.

16 A. I'm pretty sure it's S-A-L-V-A-T-O.

17 Q. Okay. Were there any other people at Duff &
18 Phelps that you can recall Colonial working with?

19 A. Toby Reese was involved in some of our
20 conference calls. I don't know what -- to what
21 extent he worked on the project. I mostly dealt
22 with Kathy and Dom.

23 Q. Okay. And what was the extent of their
24 assistance?

25 A. Well, we -- we actually hired them to look

1 at our fixed assets and look at the state
2 statutes in the states we're in and recommend
3 what they thought would qualify as pollution
4 control exemptions. So we had them do a review
5 for all fixed assets in all of our states.

6 Q. So did you identify the pollution control
7 exemption as a -- and then reach out to Duff &
8 Phelps to assist you in applying for it or did
9 they discover that as a potential exemption for
10 Colonial?

11 A. I was actually aware that there were
12 pollution control exemptions available to
13 Colonial that they weren't taking from my prior
14 pipeline life. I had applied for pollution
15 control exemptions in other states. I wasn't in
16 South Carolina at that time.

17 I had actually tried to work with another
18 third-party vendor that wasn't able to -- they
19 didn't have the staff for pollution control, so
20 they -- they took the job, but then gave it back.
21 So that's when I went to Duff & Phelps. I had
22 worked with them at a prior employer for -- on
23 pollution control exemptions.

24 Q. Okay. So you identified the pollution
25 control exemption as a potential exemption for

1 Colonial?

2 A. Yes.

3 Q. And then approached Duff & Phelps to assist
4 you?

5 A. To help me analyze the -- I tried to find
6 internal people that could help me analyze the
7 assets and I just didn't have anybody that had
8 the bandwidth to help, so I went and got
9 permission to go outside and hire them.

10 Q. Okay. How does Colonial reimburse Duff &
11 Phelps?

12 A. They get a percentage of whatever they save
13 in the first year, whatever the -- whatever the
14 exemption yields in tax savings the first year.

15 Q. If there are no savings, do they get --

16 A. They get zero.

17 Q. Okay. And that's -- so that's the only form
18 of reimbursement that they would receive is that
19 percentage of savings?

20 A. For this work, yes.

21 Q. Okay. Did Colonial Pipeline apply for
22 similar pollution control exemptions in other
23 states?

24 A. Yes.

25 Q. In what states?

1 A. At the time we did this one, we did Alabama,
2 and it was very similar to the South Carolina
3 one. And then we --

4 Q. Can we --

5 A. Okay.

6 Q. -- go through them one at a time?

7 A. Sure.

8 Q. So Alabama, you said it was very similar.
9 How was it similar?

10 (Mr. Luther exits at 9:56 a.m.)

11 A. The same kind of assets. They're -- I guess
12 we -- what we did is, we looked at like the most
13 recent ten years of expenditures. We didn't go
14 back to the beginning of time.

15 So those two states had a lot of projects in
16 that period of time that -- with pollution
17 control assets. So we started with those two and
18 the kind of assets were very similar in nature;
19 the things like cathodic protection, pipe
20 coatings, valves. Really, the asset types were
21 all very similar.

22 Q. Was the pollution control exemption, I
23 guess, law/statute, was that similar or was it
24 just the assets?

25 A. It's similar, but not -- none of them are

1 exactly the same. The Department of Revenue is
2 the reviewer there, as well, and they -- they did
3 that and they granted all of them, but ...

4 Q. How is it different?

5 A. The ...

6 Q. The Alabama statute from the South Carolina
7 statute for pollution control exemptions.

8 A. I'd have to lay them side by side to tell
9 you. I don't recall off the top of my head. I
10 just know they're slightly different. They're
11 very similar, though. They -- both of those have
12 the Department of Revenue as the reviewer. And I
13 think we thought we'd test the -- our claims with
14 that kind of state first.

15 Q. And you said those were -- that was granted
16 in Alabama --

17 A. Uh-huh (affirmatively responds).

18 Q. -- those applications? And this -- you said
19 the assets. Again, what were those? Cathodic
20 protection?

21 A. We've got -- we had cathodic protection,
22 pipe coatings, secondary containment kind of
23 valves and dikes, and the floating roofs that
24 contain air -- limit air pollution. Just ...

25 Q. Are automatic shut-off valves part of that?

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

3 Q. Okay. What other states besides Alabama?

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

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

15 Q. Okay.

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

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

1 They were -- I don't remember exactly what
2 those assets were. They were -- but they're on a
3 list. So if it's that kind of property, it's
4 automatically approved. It's not a -- there's no
5 other process with it.

6 Q. Would it include cathodic protection; do you
7 recall?

8 (Mr. McCabe enters at 9:59 a.m.)

9 A. No, there weren't -- we did not apply for
10 that. They were more like valves and things like
11 that.

12 Q. Okay. Like automatic shut-off valves?

13 A. I don't actually remember the exact thing,
14 but it was small. I don't know if it was
15 automatic shut-off valve or just a containment
16 valve.

17 Q. Okay. And I think you might have said
18 earlier pipe protections?

19 A. Yeah.

20 Q. Are those the same as pipe coatings?

21 A. Pipe coatings and cathodic protection.

22 Q. Okay.

23 A. Yeah.

24 Q. So Alabama, Virginia, Texas. Were there any
25 others?

1 A. Oh, yeah. We -- some of the other states,
2 depending on how their language was written, we
3 did test assets.

4 So I know in North Carolina, we applied for
5 an emergency shut-off valve in a tank that was
6 approved. That's the only asset we -- we had two
7 or three other small assets we decided didn't
8 meet the criteria that we withdrew from the
9 application.

10 Q. So you said "test assets."

11 A. So assets that we felt like read -- met
12 their definition of pollution control.

13 North Carolina is another state that has
14 divisions of water and air and it's -- they're
15 kind of like the -- your DHEC group divided into
16 two groups. And they'd make decisions on --
17 you'd have to figure out which one has governance
18 over a particular kind of asset for the type of
19 pollution that it prevents.

20 So it -- that's why we called them "test
21 assets," to see which -- who was going to -- you
22 actually file in regions instead of with the
23 state, too.

24 They have -- so it's pinpointing which --
25 figuring out which region it is and what each

1 region is going to want to look at, so. We've
2 not filed anything else with them since that one
3 asset was approved, but ...

4 Q. So just to make sure I understand, so a test
5 asset may be -- is something you think may
6 qualify but you're not sure --

7 A. Right.

8 Q. -- and you apply for it to see how the -- I
9 guess the state taxing agency reacts, if they
10 grant or --

11 A. See if -- yeah.

12 Q. -- or deny?

13 A. There's not a lot of history in North
14 Carolina of pipelines applying for that, so
15 that's really why we did -- went the test route
16 there because it was -- it was kind of hard to
17 navigate how you even applied. It took a while
18 to figure that out and which -- who had authority
19 to review assets. So in North Carolina, that's
20 why we did the test approach, so. And then we
21 did other states that way, as well.

22 Q. Was South Carolina one of those states?

23 A. No. We kind of felt like from the get-go
24 that we qualified in South Carolina. And you
25 did -- well, we -- and we did think that DHEC

1 would look at it first and they -- or would
2 confirm.

3 Duff & Phelps had -- had suggested that they
4 had done this before in South Carolina and that
5 DHEC had opined or weighed in at some point in
6 time to help Taylor, so.

7 And I think that's what that e-mail probably
8 is about, but -- so. But South Carolina, we felt
9 like we qualified from the very beginning, so.
10 And we felt -- I felt like we knew the process
11 for applying for it, as well.

12 Q. And the whole -- I guess the concept of a
13 test asset, that's -- that's informal. That's
14 not a set procedure you have?

15 A. Yeah. Oh, no, it's ...

16 Q. Okay.

17 A. Well, there you don't -- in North Carolina,
18 in particular, you don't file with the state
19 Department of Revenue. You file with a division
20 of Environmental Quality depending on what part
21 of the state it's in. And then each of them kind
22 of makes their own requests as to what they want
23 to see.

24 They actually went out and physically
25 inspected the asset and approved it, is how they

1 do it. But we also applied in another district
2 and they didn't even go out and look at it. They
3 just said "no." But we later withdrew that one,
4 anyway. We figured out that -- what it -- that
5 it was not really what we thought it was, so.

6 Q. But internally at Colonial, there's not --
7 there's not a test asset plan or a procedure --

8 A. Oh, no.

9 Q. -- that's followed?

10 A. No.

11 Q. It's just that's how you classify it if
12 you --

13 A. That's what we --

14 Q. -- or you --

15 A. That's what myself and Duff & Phelps called
16 it.

17 Q. Oh, okay.

18 A. We discussed our -- kind of our approach
19 was, they came to me one state at a time and we
20 discussed the rules in the states and how we
21 wanted to proceed in each state. And if there
22 wasn't a clear path, then we -- we used this test
23 approach.

24 Q. Okay. So we have Alabama, Virginia, Texas,
25 and North Carolina. Were there other states?

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

7 Q. Did you try cathodic protection?

8 A. No.

9 Q. Did you try pipe coatings?

10 A. No.

11 Q. Did you try automatic shut-off valves?

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

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

17 A. We have those in every state.

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

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

1 an asset before we put together a lot of time and
2 effort.

3 Q. Why didn't you think it would be granted for
4 those?

5 A. Their statute says that all -- that the
6 assets have to be only for pollution control.

7 Q. What other purposes are the assets used for,
8 the three, the cathodic protection, pipe
9 coatings, and automatic shut-off valves?

10 A. Well, they're all part of the pipeline
11 system, too. So they're -- they -- they're there
12 to protect the pipeline from leaking and to keep
13 it -- keep the product in the pipeline. But they
14 did not consider them to be purely pollution
15 control.

16 Like, in my days in natural gas, there are
17 things that you put on engines that control
18 pollution. Even in your car, you have things
19 that control pollution. Those are 100 -- those
20 are for the purpose of pollution control and
21 that's the only kind of assets they approve.

22 Q. Okay. Were there other states?

23 A. Let's see. We tried New Jersey and
24 Tennessee with test assets in both of those.
25 Well, Tennessee denied them, then asked for more

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

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

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

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

18 Q. Okay. Were there other states?

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

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

1 applied for cathodic protection, pipe coatings,
2 automatic shut-off valves --

3 A. Uh-huh (affirmatively responds).

4 Q. -- and that application was granted.

5 A. Yes.

6 Q. Okay. In Virginia, you applied for cathodic
7 protection and pipe coatings, but did you apply
8 for automatic shut-off valves?

9 A. I don't know if there was a shut-off valve
10 in that one or not. I don't believe so. I think
11 it was just those two --

12 Q. Okay.

13 A. -- and internal floating roofs.

14 Q. And that application is pending; is that --

15 A. Yeah, they've approved the internal floating
16 roofs and applied those exemptions. The -- they
17 asked their Department of Environmental Quality
18 to review the others and they've -- they've sent
19 a letter over to the -- to the Department of
20 Revenue saying that it is pollution control
21 equipment. But they don't have the jurisdiction
22 over it; you do. So they're trying to figure out
23 how they apply it, so.

24 Q. They don't have jurisdiction over ...

25 A. Over granting exemptions for -- for

1 pipelines --

2 Q. Okay.

3 A. -- because we're centrally assessed versus
4 locally assessed.

5 Q. Okay. So as far as cathodic protection and
6 pipe coatings, those applications are pending in
7 Virginia.

8 A. Yes.

9 Q. They have not been granted nor denied.

10 A. They have not --

11 Q. Okay.

12 A. -- been granted or denied, that's correct.

13 Q. In Texas, you've applied for valves only,
14 not cathodic protection or pipe coatings.

15 A. I honestly don't remember all of the assets.
16 I think there were three assets. I'm almost
17 positive one of them was some kind of a
18 containment valve for spill control. And I've --
19 I have not looked at that application for two or
20 three years now since it was applied -- applied
21 for and filed.

22 Q. Okay. Do you know the result of that
23 application?

24 A. They were on the list of assets, so they're
25 automatically approved. There's -- they have

1 like a 42-page list of assets that qualify.

2 Q. Okay. So in North Carolina, you applied for
3 the emergency shut-off valves but not cathodic
4 protection or pipe coatings; is that right?

5 A. That's what I -- in North Carolina, I think
6 that's -- was the only thing that was approved
7 was an emergency shut-off valve.

8 Q. Okay. Did you apply for --

9 A. It was some kind of valve. I don't remember
10 if -- if that's what it was, that or a dike
11 containment valve, but it's some kind of a valve
12 that prevents spillage.

13 Q. Did you apply for cathodic protection and
14 pipe coatings as --

15 A. No.

16 Q. Okay. Did not apply -- well, in Georgia,
17 you did not apply for cathodic protection, pipe
18 coatings, or automatic shut-off valves.

19 A. No.

20 Q. In New Jersey, you applied for automatic
21 shut-off valves but not cathodic protection and
22 pipe coatings.

23 A. Again, it was some kind of valves.

24 Q. Okay.

25 A. I'm not a hundred percent sure it was the

1 automatic shut-off valve.

2 Q. And those were not granted, those --

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

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

6 A. Pending forever is --

7 Q. Okay.

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

9 Q. Pending in perpetuity?

10 A. Yeah.

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

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

16 Q. In --

17 A. -- protection or pipe coatings.

18 Q. I'm sorry. In Tennessee.

19 A. Oh, Tennessee?

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

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

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

4 Q. And were those denied or granted?

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

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

12 A. Not yet.

13 MR. MAYBANK: Applications to other
14 states?

15 MR. ANTLEY: Yes.

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

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

21 BY MR. ANTLEY:

22 Q. Would you have copies of those
23 applications --

24 A. Yes.

25 Q. -- in other states?

1 A. Yes. Yeah, we intend to comply with that.
2 We just haven't had the opportunity to do that
3 yet.

4 Q. Okay. Would you also have copies of, I
5 guess, the result of those applications --

6 A. I do.

7 Q. -- whether they're granted or denied or
8 pending?

9 A. Yes.

10 Q. Okay. And you said you would -- you intend
11 to provide those to the Department --

12 A. I do.

13 Q. -- of Revenue? Okay. With those other
14 states' applications, did you have communications
15 with the local taxing agencies or other -- or
16 consultants like Duff & Phelps?

17 A. Duff & Phelps did most of the communication
18 with the local agencies, and the state agencies,
19 for that matter. I'm not -- I know in Alabama I
20 talked to the Department of Revenue quite a bit,
21 though, because we provided them additional
22 information, like we did with Taylor.

23 In the other states, in North Carolina, I
24 talked to the inspector and arranged for her to
25 get access to the property she went and examined.

1 I don't think I've ever spoken to anyone in
2 Tennessee or Texas. I've talked to the
3 Department of Revenue in Virginia.

4 Q. And when you say --

5 A. And I've never spoken to anyone in New
6 Jersey about pollution control at the state
7 level, at the state or local government level.
8 Duff & Phelps had all those contacts and ...

9 Q. And when you say "talked," does that include
10 e-mail communications?

11 A. That's right.

12 Q. Okay. But Duff & Phelps would also have had
13 e-mail communications probably with those states?

14 A. I would -- I would assume so. I don't
15 really know.

16 Q. Okay. So they didn't share those --

17 A. No.

18 Q. If they did, they did not share --

19 A. If they did, no.

20 Q. -- that with you?

21 A. No, they did not.

22 Q. Okay. At -- I'm sorry. With you, do you --
23 do you save your e-mails?

24 A. For the most part, yeah. If I -- you know,
25 if it's an e-mail about -- about something I

1 think it's important, I do. If it's to schedule
2 a call, I try not to keep those or that kind of
3 thing, so.

4 Q. How long do you keep the e-mails that you
5 consider important?

6 A. I think our system keeps them as long as I
7 keep them out there, and I don't purge them very
8 often. I don't know that I've ever purged them
9 but maybe once.

10 Q. Do you know if an e-mail is deleted if it
11 can be retrieved by -- do you have a IT
12 department that could maybe retrieve it?

13 A. We have an IT department. I don't know if
14 they can retrieve it. They do have backups. I
15 just don't know how far they go back.

16 Q. With other written communications, for
17 example, instant messages, are those --

18 MR. MAYBANK: And let me object. We're
19 going to be here till 2:00 in the morning.
20 I mean, you've asked him, what, 15 times now
21 about e-mails and instant messages. Is
22 there any relevance whatsoever to that?

23 MR. ANTLEY: I think the only
24 objection --

25 MR. MAYBANK: So let me just -- what --

1 MR. ANTLEY: -- would be to the form of
2 the question that would be proper.

3 MR. MAYBANK: Well, let -- let me just
4 object to the record. Go ahead and answer
5 the -- about the eighth time he's asked you
6 about e-mails and instant message and texts,
7 but go ahead and answer the eighth one.

8 THE WITNESS: So let me -- you asked if
9 there were -- I'm lost as to what -- was it
10 related to Duff & Phelps or to -- to my own
11 record --

12 BY MR. ANTLEY:

13 Q. To Colonial Pipe -- at Colonial Pipeline.

14 A. To my --

15 Q. Uh-huh (affirmatively responds).

16 A. To my knowledge with an instant message,
17 it's closed. It's gone. I've never tried to
18 recover one. But I don't do -- I don't like
19 instant messaging, so I don't really use that
20 form of communication very often. And it's only
21 internal, between people that work at Colonial.

22 E-mails, I keep most e-mails, or I've kept
23 most e-mails related to this, so. And I know
24 you've asked for those, as well, and we intend to
25 share those with you.

1 Q. Have you deleted any e-mails related to the
2 pollution control exemption?

3 A. Not since we have filed for it, no; not that
4 I'm aware of.

5 Q. Have you destroyed any written -- other
6 written communications related to the pollution
7 control exemption?

8 A. No. I have paper files for each tax year
9 for each state, so. It has the -- has the return
10 in it and any documents we submitted to the
11 state.

12 Q. Okay. All right. So I'm going to ask now
13 more about at a high level what Colonial does.
14 Could you give me just a high-level overview of
15 your company?

16 A. I think at the highest level, Colonial
17 Pipeline is a -- it transports refined petroleum
18 products for others; that's the short version.
19 We also provide other services related to that,
20 but that's our primary function.

21 Q. Okay. You said other services?

22 A. Storage services, blending services. I
23 thought we still did red dye services, but I'm
24 told yesterday we do not, though. But that's
25 done in the terminals now, so.

1 Q. What -- what is red dye services?

2 A. When farmers buy fuel tax free, they put red
3 dye in it so they don't have to pay the highway
4 tax. In that -- and then if you -- the red dye
5 is so if you put it in your personal automobile
6 and run it on the highway, it makes your
7 tailpipes pink and the -- the Departments will
8 come after you for using illegal fuel in a street
9 vehicle, but ...

10 Q. Do you know when -- when Colonial stopped
11 doing the red dye?

12 A. It's been in the last three or four years.
13 We -- we started phasing it out several years
14 ago, but I -- I thought -- when I started, we
15 were still doing it at one or two locations.
16 It's -- it's never been a -- it's only certain
17 locations that sell a lot of that non-highway
18 fuel, is what they call it, so.

19 Q. All right. So I'd like to get a little more
20 specific maybe with a particular example. Are
21 you able to walk me through oil in the ground to
22 gas in my car, like that process, and then what
23 part of that Colonial Pipeline does?

24 A. I can give you my understanding of it. I'm
25 not sure it's the hundred-percent view, but --

1 MS. BLACKWOOD: I think we have another
2 witness later today who can testify better
3 to that.

4 BY MR. ANTLEY:

5 Q. Do you know who would be able to better
6 testify to that?

7 A. Well, we brought Buster Brown with us who's
8 been with -- well, his name's not Buster.

9 MR. MAYBANK: We don't refine anything,
10 so --

11 THE WITNESS: Yeah.

12 MR. MAYBANK: -- we're not oil in the
13 ground.

14 THE WITNESS: He's here to testify.
15 He's been with Colonial longer. I can give
16 you the quick overview, if you want, or I'll
17 let him do it.

18 MR. CARTIN: Probably make this more
19 efficient if we pin down specifically what
20 topics he's going to talk about and then we
21 can rattle --

22 MS. BLACKWOOD: Uh-huh (affirmatively
23 responds).

24 MR. CARTIN: -- those off and that way
25 we're not --

1 THE WITNESS: Sure.

2 MR. CARTIN: -- overlapping.

3 MR. ANTLEY: Okay. So here's a way we
4 can do this. I think I have -- I have a
5 copy of the 30(b)(6) notice and then we can
6 maybe do it that way.

7 MR. MAYBANK: None of our witnesses are
8 going to be talking about oil in the ground
9 because we don't do that.

10 MR. ANTLEY: And if I don't have it on
11 me, I can always get it during a break or we
12 can take a short break.

13 MR. MAYBANK: Well, why don't --

14 MR. ANTLEY: You --

15 MR. MAYBANK: You want to just continue
16 on with him and then during the break we'll
17 do it?

18 MR. ANTLEY: I just want to make sure
19 it's efficient. I don't want to --

20 MR. MAYBANK: Right.

21 MR. ANTLEY: -- start asking him
22 questions and not ...

23 MR. MAYBANK: Yeah, he -- we've got
24 environmental production witnesses. So his
25 role was just to know about taxes today.

1 MR. ANTLEY: One second. I might have
2 a copy with me.

3 MR. MAYBANK: We could -- we could
4 vastly speed it up if y'all want -- if y'all
5 want to let me go next now --

6 MR. ANTLEY: Okay. I have --

7 MR. MAYBANK: -- and then y'all can
8 cross-examine.

9 MR. ANTLEY: I found a copy of the
10 Notice of Deposition for the 30(b)(6)
11 deposition. I can offer this in as
12 Department's Exhibit -- I think it would be
13 13?

14 THE COURT REPORTER: 13, uh-huh
15 (affirmatively responds).

16 MR. ANTLEY: I think everyone has a
17 copy of it, if that's all right.

18 (RESPONDENT'S EXHIBIT 13 WAS MARKED FOR
19 IDENTIFICATION PURPOSES)

20 BY MR. ANTLEY:

21 Q. So if you -- we could just make for the
22 record -- make it clear for the record which of
23 those topics listed that you will be able to
24 speak to today.

25 MR. MAYBANK: He's doing 11 and 12.

1 MR. ANTLEY: Only 11 and 12; is that
2 right?

3 MR. MAYBANK: Right.

4 THE WITNESS: (Reading.) Okay.

5 BY MR. ANTLEY:

6 Q. Is that correct?

7 A. That's what I understood in looking at the
8 list when we were going through it. We brought
9 other experts that can do a better job on the
10 other items.

11 Q. Okay.

12 MR. CARTIN: Bernie, in your e-mail
13 kind of saying who's going to talk about
14 what, he was also listed as sort of the sole
15 guy to talk about topic nine, which was the
16 zoning for areas where Colonial Pipeline --

17 MR. MAYBANK: That's right.

18 MR. CARTIN: Okay.

19 MR. MAYBANK: He can talk about that
20 item, too.

21 MR. ANTLEY: All right. It's taking me
22 just a second because he was listed on a
23 number of items, so I'm trying to --

24 MR. MAYBANK: He's very knowledgeable,
25 but he's -- he's here to -- specifically for

1 11 and 12, and then zoning would be nine.

2 MR. ANTLEY: Okay.

3 MR. CARTIN: He's also listed as the
4 sole guy for number five, as well.

5 MR. MAYBANK: Which is which one?

6 MR. CARTIN: "Colonial Pipeline
7 Company's customers and the product Colonial
8 Pipeline Company sells."

9 MR. MAYBANK: No, that's a mistake,
10 that he would not do.

11 THE WITNESS: Okay.

12 MR. CARTIN: Who else do you --

13 MR. MAYBANK: I would suggest after he
14 finishes, Buster Brown --

15 MR. CARTIN: Okay.

16 MR. MAYBANK: He's -- Buster's the most
17 knowledgeable of the overall system. And
18 then we have two very specific environmental
19 witnesses.

20 THE WITNESS: Okay.

21 MR. CARTIN: Yeah, I think --

22 MR. MAYBANK: So that will answer at
23 the high level, you know, what the company
24 does.

25 MR. CARTIN: So I think nine, ten,

1 and -- nine, 11, and 12 are the only ones
2 where he was listed as the sole guy.

3 MR. MAYBANK: Right.

4 BY MR. ANTLEY:

5 Q. Okay. Okay. Well, let's talk about nine,
6 then.

7 A. Okay.

8 Q. So that has to do with the zoning. Are you
9 familiar with how Colonial Pipeline's Company's
10 operations are zoned for as far as local, like
11 city and county or -- zoning?

12 MR. MAYBANK: Let me -- if I could
13 also -- I think we were the ones who first
14 inserted the zoning issue and I don't know
15 why we did and -- well, anyway, I'll
16 withdraw that. Go ahead.

17 MR. ANTLEY: Okay.

18 THE WITNESS: Did we send you maps
19 yesterday?

20 MR. MAYBANK: I think that's what
21 couldn't go through.

22 THE WITNESS: Oh, okay.

23 MR. CARTIN: Well -- and this is a
24 copy -- just for the record, I've printed
25 out this morning a copy of -- one, two,

1 three, four, five, six -- seven maps that
2 were sent to us last night. It did go
3 through to my e-mail and so I think Trey was
4 going to use those.

5 THE WITNESS: Okay.

6 MR. CARTIN: So that's what that is.

7 THE WITNESS: I just -- I had -- just
8 to explain what those are, I went to my --
9 in preparation to answer question number
10 nine, I went to my GIS department and asked
11 them if they could plot the zoning along the
12 pipeline for me. So that's what those maps
13 were meant to do. Because I don't think
14 anybody at Colonial really knows what every
15 parcel is.

16 Generally, when we have a pump station
17 or a tank farm, which we have some of each
18 in South Carolina along the main lines;
19 those are industrially zoned. There are
20 industrial properties around them;
21 terminals, processing plants for asphalt,
22 that kind of thing.

23 I'm not familiar with the particular
24 ones in South Carolina, but in general,
25 that's what you see around our facilities.

1 And those maps will show you that
2 along -- along the pipeline, we go through
3 different kinds of farmland, residential
4 land, "other," which I assume is
5 government-owned land, and some industrial
6 land.

7 BY MR. ANTLEY:

8 Q. Okay. So just to be clear, the areas that
9 you say are zoned for industrial use are
10 generally tank farms?

11 A. Tank farms for -- and they're also -- there
12 are some on the -- that the pipeline passes
13 through. But tank farms and pump stations are
14 what we would call our facility locations.

15 And then delivery locations sometimes, as
16 well, where we just have it at the end of a line
17 where we deliver to another party; not always,
18 but most of the time that's the way they look.

19 MR. ANTLEY: Okay. And since we're
20 going to be talking about it, I'd like to
21 have this marked as Department's Exhibit 14.

22 (RESPONDENT'S EXHIBIT 14 WAS MARKED FOR
23 IDENTIFICATION PURPOSES)

24 BY MR. ANTLEY:

25 Q. Okay. So, Mr. Fuqua, if you could just look

1 through that and tell me what it is.

2 A. Well, the yellow parcels are residential
3 land use, the greens are agricultural, the grays
4 are other, "other" and it says "non-industrial
5 parcels," and the reds are industrial.

6 So as you'll see on this line, it looks like
7 we pass through one industrial area. This is --
8 what county is that? -- Abbeville County, which
9 is, I believe, just a stub line county, not the
10 main line, but ...

11 Q. Okay. That's page one of --

12 A. That's page one.

13 Q. -- Department's Exhibit 14? Okay.

14 A. Right. So on page two, this is more main
15 line. This is where we enter Georgia and
16 Anderson -- or from Georgia into Alabama -- wait,
17 Georgia into South Carolina. There you can see
18 it's red at our Anderson station. Then --

19 Q. What is your Anderson station?

20 A. It's a pump station.

21 Q. Okay.

22 A. And that's red there (indicating). I'm not
23 sure what that facility is, but it's zoned red.

24 Belton Junction is a tank farm and it's also
25 where our line runs down to North Augusta. And

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

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

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

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

15 A. That's actually a tank farm.

16 Q. Okay.

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

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

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

1 more industrial.

2 Q. So that's a delivery location that's red?

3 A. That's where the -- that's where that small
4 line ends, off the main line, and delivers
5 product to terminals down there.

6 There's also delivery up here (indicating)
7 at the North Augusta delivery station, which is
8 really a -- it's meters and -- I don't even know
9 if it has tanks or not. I don't know. I don't
10 know the property as well as some of the other
11 folks do.

12 The next line is Greenville County,
13 Anderson, more main line, and that's where Belton
14 Junction splits off and you can -- it just
15 continues to show you the zoning across there.

16 Q. Okay.

17 A. So what I know about the zoning is what I
18 see on this map.

19 Q. And is this a business record of Colonial's
20 is these maps?

21 A. They -- they got national GIS data for
22 zoning and overlaid it on our pipeline. So it's
23 our -- I had it created by our GIS department.

24 Q. Okay. So it's not something you regularly
25 keep?

1 A. No, I had it -- I had it done for today's
2 purpose.

3 Q. Okay.

4 A. No, it's something I -- I'd never seen it
5 until I got it in the e-mail late Friday night,
6 so.

7 Q. Do you know if any of the portions that are
8 not zoned for industrial use, if those include
9 any delivery locations, pump stations, tank
10 farms -- or tank farms?

11 A. I think there was -- I don't know for sure.
12 I'd have to study it real close. Spartanburg,
13 you know, is a delivery facility and tank farm
14 and it's, obviously, got all kinds of industrial
15 around it.

16 Q. Are the claimed assets of cathodic
17 protection, pipe coatings, and automatic shut-off
18 valves, are those all located in the areas that
19 are zoned for industrial use?

20 A. No.

21 Q. Okay.

22 A. No, they're -- cathodic protection and pipe
23 coatings are scattered along the pipeline and in
24 all the stations. They're -- they're means of
25 protecting steel.

1 We have a witness that can tell you how that
2 works that actually is responsible for applying
3 it all. I just know enough about it to know
4 that's what it does.

5 Q. Are the automatic shut-off valves outside --

6 A. The one that -- the one that was denied in
7 the application is for -- I'll say it wrong, but
8 I believe it was for Gaffney Station, and it's an
9 isolation automatic shut-off valve, so that if
10 the -- we had this discussion yesterday as to
11 what that valve was, is the only reason I know
12 this.

13 But it is in case something goes wrong in
14 the station, we can isolate it from the pipeline
15 so that it keeps more product from going through
16 and leaking. If there's a leak around that
17 station, you can isolate the station and keep it
18 from being -- from leaking more.

19 Q. So the automatic shut-off valve is only at
20 that one location?

21 A. Well, the one we claimed was only at that
22 one location.

23 Q. Okay. And what location was that again?

24 A. I believe it's the Gaffney Station. It says
25 it on the asset itself on that -- I believe it

1 says it on the Schedule X.

2 (Off the Record)

3 (RESPONDENT'S EXHIBIT 9 WAS MARKED FOR
4 IDENTIFICATION PURPOSES)

5 BY MR. ANTLEY:

6 Q. Talking about zoning, I'm going to show you
7 what's been marked as Department's Exhibit No. 9.
8 These are just the -- it's Colonial's Response to
9 the Department's Request for Production. I want
10 to go down to request number 12.

11 So as a 30(b)(6) witness for Colonial,
12 Colonial would respond to any discovery requests
13 honestly; is that correct?

14 A. We'll make every attempt to, yes.

15 Q. So in request number 12 when it says
16 that -- what -- well, what does it say? Could
17 you read the response to request -- well, could
18 you -- I'm sorry. Could you please read request
19 number 12 and --

20 A. Okay.

21 Q. -- the response?

22 A. Number 12, "Please produce all documents
23 related to the city and county zoning for areas
24 where the Petitioner's property is located in
25 South Carolina."

1 And the response is, "Petitioner objects
2 because it seeks information that is not
3 reasonably related to any claim or defense
4 herein, or reasonably related to the discovery of
5 admissible evidence herein, and also is overly
6 broad and unduly burdensome."

7 Q. So is it Colonial's position that the city
8 and county zoning is not relevant to the
9 pollution control exemption?

10 A. I think it's -- I think our position on this
11 was that if we're producing documents related to
12 all the right-of-way along the pipeline, it's
13 burdensome. There's thousands of those documents
14 and we would have to -- we don't maintain the --
15 the zoning records for all that.

16 Q. In the portion of the response it says,
17 "It's not reasonably related;" is that -- is that
18 also true?

19 A. (No response.)

20 Q. Does Colonial believe that city and county
21 zoning is not reasonably related to any claims or
22 defenses in this case; in other words, the
23 pollution control exemption?

24 A. I don't think so. I don't -- I don't -- I
25 don't -- I don't really understand how the zoning

1 has any -- any play in the way the -- in that the
2 law -- on whether an asset is exempt or not
3 exempt for pollution control purposes. I
4 understand that it says "industrial facility,"
5 but it doesn't say "zoned industrial."

6 Q. Okay. So it's Colonial's position that
7 zoning is not relevant to the pollution control
8 exemption?

9 A. I believe that is our position, yes.

10 (RESPONDENT'S EXHIBIT 12 WAS MARKED FOR
11 IDENTIFICATION PURPOSES)

12 Q. Okay. I'm going to hand you Department's
13 Exhibit 12.

14 A. Do you want this back?

15 Q. You can hold onto it for now. We'll clean
16 it up at the end. This has been marked as
17 Department's Exhibit 12 and I apologize for the
18 size. It's small.

19 A. I should be the one apologizing for that;
20 that's the way it started out.

21 Q. But this -- just want to confirm that this
22 is the property that's been claimed as exempt for
23 the -- under the pollution control exemption?

24 A. Yes, this is Schedule X.

25 Q. Okay.

1 A. These look like just the assets that were
2 denied.

3 Q. Okay. And what are those assets?

4 A. The automatic shut-off valve at Gaffney
5 Station and then several pipeline cathodic
6 protection projects and pipeline coating
7 projects.

8 Q. Okay. And let me know if this is going
9 beyond what you can talk about, but could you
10 describe exactly the purpose of pipe coatings,
11 cathodic protection, and automatic shut-off
12 valves?

13 A. I can describe them in general, but it
14 probably won't be the -- the textbook version of
15 what they do. Like I said, the automatic
16 shut-off valve is there to isolate a station in
17 case of emergency to prevent further leakage.

18 Q. Uh-huh (affirmatively responds).

19 A. The cathodic protection is there to protect
20 the integrity of the outer walls of the pipeline
21 to keep them from deteriorating to the point
22 where they leak, and that's the same thing with
23 pipe coatings.

24 Q. Okay. And earlier, we were talking about --
25 I think it was in Georgia, it has to be a hundred

1 percent pollution control.

2 A. Uh-huh (affirmatively responds).

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

6 A. No.

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

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

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

19 A. I have no idea.

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

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

1 considered hazardous materials. Refined
2 petroleum products, they're flammable. So if
3 they get released outside the pipeline through a
4 spill, they can contaminate the water and the
5 ground, but the fumes also contaminate the air.
6 So it's a bit of all -- a bit of both.

7 Q. Okay. Those three pieces of equipment, are
8 they all required by either state or federal law?

9 A. They're required by the Code of Federal
10 Regulations for how you operate a pipeline.

11 Q. Okay. What agency requires those pieces of
12 equipment?

13 A. Well, that's not my area of expertise --

14 Q. That's fine.

15 A. -- but I believe they call it PHMSA, which
16 is the Pipeline Hazardous Materials Safety
17 Administration.

18 Q. And who's -- do you know who at Colonial
19 would be the expert on that?

20 A. The expert on cathodic protection and pipe
21 coatings is Josh Stanley and he's here today, so.
22 And then you also have Robert Hughes, who's an
23 environmental engineer, as well. So you've got
24 two people from Colonial that can speak to those.

25 Q. Okay. So there's -- it sounds like there's

1 a production purpose in addition to the pollution
2 control purpose; is that correct?

3 A. I suppose so because it's part of the
4 pipeline itself.

5 Q. Is there a safety purpose?

6 A. Sure. I mean -- well, environmental safety,
7 especially, but, otherwise they're -- they're
8 underground, so they're really not out where
9 anybody's going to touch them or -- I don't see a
10 physical safety purpose there, other than
11 protecting the release of product.

12 Q. Okay. So for people, it's not necessarily a
13 risk. It's just environmental?

14 A. It's more environmental in nature.

15 Q. Okay. And just to be clear, I think -- I
16 think we're on the same page about this, but
17 Colonial doesn't dispute the valuation of the
18 property.

19 A. No.

20 Q. Is that correct?

21 A. We do not.

22 Q. And Colonial does not dispute the valuation
23 method?

24 A. No, we do not.

25 Q. What assessment ratio applies to Colonial

1 Pipeline Company?

2 A. I believe it's nine and a half percent.

3 Q. Do you know why that's the assessment ratio
4 that applies?

5 A. I'm not sure what the history of it is. I
6 just know that's the state assessment ratio for
7 pipelines.

8 Q. For pipelines, okay. How long has Colonial
9 had these assets -- pipe coatings, cathodic
10 protection, automatic shut-off valves -- that
11 it's claimed as exempt?

12 A. Oh. Well, there actually are dates on this
13 schedule as to when they were installed. I think
14 the oldest one on this list goes back to '06 and
15 the newest it looks like in '16, maybe, 2016.

16 Q. Okay.

17 A. So we didn't go back and try to claim all of
18 the original pipeline because it was old and how
19 do you determine the value of something that's 60
20 years old? So we -- we only went with things
21 that have -- projects that have been in the last
22 ten to 12 years at the time we filed this.

23 Q. Okay. So since it's been around since 2006,
24 as late -- as early as 2006, as late as 2016, why
25 did Colonial decide to claim the pollution

1 control exemption for these assets now?

2 A. It was something I identified when I came to
3 Colonial in 2013 that they weren't taking the
4 exemptions that they were entitled to.

5 So it was an initiative I started when I got
6 there to -- I think if you don't do that kind of
7 thing, you're at a disadvantage to your
8 competitors if they're claiming them, too, so.

9 Q. So -- so other than you starting, nothing
10 changed at Colonial as far as --

11 A. No.

12 Q. -- this exemption? Okay. And at any point,
13 did Colonial Pipeline Company request a Revenue
14 Ruling from the South Carolina Department of
15 Revenue as to whether pipelines qualify for the
16 pollution control exemption?

17 A. Not that I know of.

18 Q. Okay. Give me one moment. I'm just making
19 sure I haven't missed anything. I had to go a
20 little -- a little out of order. I do have one
21 question, I guess, for you. For tax purposes,
22 since you are the director of tax, is Colonial a
23 manufacturer?

24 A. We do not have a manufacturing code for the
25 pipeline. It's -- the NAICS code is for

1 transportation.

2 Q. Okay. Okay. And is that code -- is that a
3 fair representation of what Colonial does or --

4 A. It's -- it --

5 Q. -- is that -- do you agree with that
6 classification?

7 A. Well, I think the classification is supposed
8 to be your primary function and that's -- I'd say
9 that's fair. It's -- it hasn't changed in --
10 since they created the codes.

11 Q. Okay.

12 A. We do have other activities that we do,
13 blend product and -- and even Colonial blends
14 some of its products, but it's not the -- for an
15 NAICS code, it's the primary or the biggest thing
16 you do, which is transport.

17 Q. Okay. And is -- is Colonial a utility?

18 A. It -- that's a term that in some states it
19 is; in some states it's not.

20 Q. For South Carolina?

21 A. I think they call us a utility when we're
22 assessed for property tax purposes, but ...

23 Q. But Colonial is not a water company, is it?
24 They don't ...

25 A. No, we --

1 Q. Okay. Or a power company?

2 A. No.

3 Q. Okay. Or they don't -- they're not an
4 electric light company --

5 A. No.

6 Q. -- or electric cooperative?

7 A. No.

8 Q. And they're not a telephone or telegraph
9 company?

10 A. No.

11 Q. Okay. So Colonial is a transportation
12 company; is that ...

13 A. It's a -- it's a transporter of refined
14 petroleum products; that's what we do. And some
15 states call us utilities; others don't, so.

16 MR. ANTLEY: Okay. I think that's all
17 I have.

18 MR. CARTIN: I can be real quick.

19 THE WITNESS: Sure.

20 CROSS-EXAMINATION

21 BY MR. CARTIN:

22 Q. I have to remind myself what exhibit this
23 is. On Department Exhibit 14, I think you said
24 that this had to be created by your staff; is
25 that correct?

1 A. Yep. Our -- our -- the GIS group, I got
2 them to create this last week.

3 Q. It would be a true and accurate
4 representation of the land use, at least
5 according to the records of Colonial, regarding
6 where the pipeline and other equipment is
7 located; is that fair?

8 A. Yeah. The -- the Colonial part of that is
9 our -- where our pipeline's at and they overlaid
10 a national GIS database that the federal
11 government maintains, I think. So that's what
12 they think is -- we believe it's correct. It's
13 as correct as we could make it.

14 Q. Okay. Perfect. I know Mr. Antley spoke
15 with you about different states in the
16 application process and I'm just going to try to
17 make sure I understand -- I have documented
18 exactly what was filed where.

19 MR. CARTIN: Can we mark that as -- we
20 can do 15.

21 (RESPONDENT'S EXHIBIT 15 WAS MARKED FOR
22 IDENTIFICATION PURPOSES)

23 BY MR. CARTIN:

24 Q. All right. Take a look at this for me real
25 quick.

1 A. Okay.

2 Q. And this is, for the record, Colonial 0550
3 through -- too small for me to read -- 566, yeah.

4 A. Okay.

5 Q. And this appears to go through a number of
6 the different states we referenced and talked
7 about what the different statutory requirements
8 are in those states; is that fair?

9 A. I believe that's what this is. This is
10 something Duff & Phelps prepared for me.

11 Q. Okay. And to the extent that Colonial
12 sought and received or was denied exemptions in
13 these other states, this document, I would
14 imagine, would set forth specific statutory
15 sections that were applicable in those states?

16 A. Yes.

17 MR. CARTIN: Okay. We can mark that
18 16.

19 THE WITNESS: Are we done with this
20 one?

21 MR. CARTIN: Yes, sir.

22 (RESPONDENT'S EXHIBIT 16 WAS MARKED FOR
23 IDENTIFICATION PURPOSES)

24 BY MR. CARTIN:

25 Q. All right. Mr. Fuqua, please take a second

1 to go through this document, just kind of
2 familiarize yourself with it.

3 Aside from the first two pages, it should be
4 a document that is somewhat familiar to you. And
5 for the record, this is a document Bates labeled
6 DHEC_Subpoena_Response_00001 through 47.

7 A. (Perusing.)

8 Q. And while you're looking through that, I
9 will represent to you that this is a part of a
10 subpoena response that we received from the
11 Department of Health and Environmental Control.
12 And, specifically, what I want to chat with you
13 about begins on page DHEC_Subpoena_Response_00005
14 and continues through the end.

15 A. Okay.

16 Q. Okay. And I just want to make sure, this
17 letter was authored by you; is that fair?

18 A. This letter was -- yes, it was.

19 Q. Okay. And did you create and compile the
20 attachments, as well, or were they created at
21 your direction?

22 A. The -- they were done by Duff & Phelps. I
23 mean, the ones that are on their letterhead were
24 done by them.

25 Q. Okay. Do they also -- did Duff & Phelps

1 also prepare any exhibits that would've been
2 attached to their letter?

3 A. They -- they prepared the Schedule X's that
4 we provided and what's marked here as Appendix A
5 on 00017.

6 Q. Okay. So, really, anything that appears on
7 DHEC_Subpoena_Response_00006 through the end of
8 this document is a Duff & Phelps creation?

9 A. Yes.

10 Q. Okay. And Duff & Phelps, I -- are they an
11 accounting firm or are they some sort of a
12 consulting firm?

13 A. They're a consulting firm. They do property
14 tax consulting and other things. Kathy
15 Tronsberg, if I'm not mistaken, the lady I work
16 with, was at one time an engineer at a nuclear
17 power plant.

18 Q. Okay. And are they -- do they have any
19 location in South Carolina, physical location?

20 A. Not that I know of. I think their primary
21 offices are in Dallas.

22 Q. Okay.

23 A. The -- the -- the pollution control group is
24 based in Philadelphia.

25 Q. Okay. All right.

1 A. And I believe Duff & Phelps is like an
2 investment banking company overall or something
3 like that and this is just a branch of that
4 overall.

5 Q. Okay. All right. And so let me just, for
6 the record, confirm that Duff & Phelps in
7 creating its analysis would have relied on
8 information provided by Colonial; is that fair?

9 A. Colonial for -- for the assets, yes. A lot
10 of the -- the analysis on whether they -- a
11 state -- the state law and what the important
12 features were in each state law, they did that
13 research on their own. I did not give that to
14 them.

15 Q. And do you know whether you have -- let me
16 ask you this. If you were to ask Duff & Phelps
17 for copies of their underlying file relating to
18 the analysis that they conducted for Colonial
19 with regard to the South Carolina exemption,
20 would they provide that information to you?

21 A. I expect they would. I mean, they did
22 provide some documents when they -- when they
23 finished each state, they provided something very
24 similar to this. This -- I think these things
25 were created for Taylor and for DHEC as part of

1 a -- well, as part of the appeal to give
2 additional information, but ...

3 Q. And, specifically, just one document that
4 I'm interested in as to whether you could get it
5 from them, if they have it in their possession,
6 and that would be on -- I believe it's
7 Exhibit -- which one was that? -- 10? My
8 handwriting's terrible.

9 MR. ANTLEY: Hang on one second.

10 Q. This is the -- the footnote that says
11 pipelines are subject to the pollution control
12 equipment exemption per Taylor R. Ingram, Utility
13 Assessment Coordinator, SC DOR, in an e-mail
14 dated 2/9/2015.

15 A. I believe they would provide that if I ask
16 for it.

17 MR. CARTIN: All right. I'll just go
18 through these real quick.

19 I don't have any additional questions
20 for this particular witness.

21 MR. MAYBANK: Michael, are you on the
22 line there? You're probably on mute.

23 MR. KOZLAREK: I am. I do have, I
24 think, one question, if -- if everybody will
25 bear with me being remotely accessing this.

CROSS-EXAMINATION

BY MR. KOZLAREK:

Q. Could you walk through -- I think -- I think. I'm sorry. I think designation number 11 says, "Colonial Pipeline Company's application for ad valorem property tax exemption under 12-37-220(A)(8)." Could you walk me through what you think that process is?

A. Can I look at the question? I think the process in -- for Colonial in South Carolina is that we fill out that Schedule X and file it with our property tax return.

Q. And then what does the Department do?

A. Then the Department has to make some determination as to whether -- whether the assets qualify or don't qualify. And I think -- I don't know what their formal process is. It was my understanding that when we filed it that they might reach out to DHEC for some guidance.

Q. Can you describe how you reached the understanding that they would communicate with DHEC?

A. When I filed the application, I -- I called Taylor and told him it was coming and what it was and he said he might have to have some help with

1 the assets, that he wasn't familiar with all the
2 different kinds of assets. So I thought he was
3 going to reach out to them for help.

4 Q. Have you had any communications with the
5 Department of Health and Environmental Control?

6 A. I have not.

7 Q. Do you know if Duff & Phelps had?

8 A. I don't know. I suspect they have, but I do
9 not know that for sure.

10 MR. KOZLAREK: Okay. I think that's
11 it. Thank you.

12 MR. MAYBANK: All right. I've got a --
13 quickly (sic) questions. I'm going to
14 quickly go through these. A lot of these
15 are just "yes" or "no" answers.

16 THE WITNESS: Okay.

17 CROSS-EXAMINATION

18 BY MR. MAYBANK:

19 Q. All right. Did Colonial list certain assets
20 as exempt pollution control in their 2017
21 property tax return?

22 A. Yes, we did.

23 Q. And did they list certain assets as exempt
24 pollution control under 2018 property tax return?

25 A. Yes, we did.

1 Q. And were those the same assets on their 2017
2 and 2018 return?

3 A. Yes.

4 Q. Okay. And there were basically seven assets
5 listed?

6 A. Seven groups of assets, yes.

7 Q. Right. And can you -- can you tell me what
8 those seven groups of assets are and refresh your
9 recollect there listed there on the --

10 A. Can I look at this --

11 Q. Sure. Uh-huh (affirmatively responds).

12 A. -- a list of the denied ones?

13 Q. Whatever's easier for you. I don't need the
14 description. Just what are the seven assets that
15 you claimed --

16 A. Well, there's --

17 Q. -- on your 2017 and 2018 --

18 A. -- automatic shut-off valves, pollution
19 control equipment --

20 Q. And there (indicating).

21 A. Oh, you -- oh, there's a list right here.

22 Q. Right.

23 A. Pipe --

24 Q. Why don't you start at the top?

25 A. Okay. Pipeline cathodic protection,

1 pipeline coatings, automatic shut-off valves,
2 those were denied. Wastewater pollution control
3 equipment, approved; stormwater pollution control
4 equipment, approved.

5 Q. Is this list --

6 A. Secondary --

7 Q. I mean, I'll ask you whether it was approved
8 or denied.

9 A. Okay. Secondary containment and tank
10 internal and external floating roofs.

11 Q. Okay. And so did DOR grant the exemption
12 for all seven in 2017?

13 A. No, they denied three and they approved
14 four.

15 Q. Okay. How about in 2018?

16 A. Same.

17 Q. Okay. And, specifically, did the DOR grant
18 the pollution control exemption for wastewater
19 pollution control equipment --

20 A. Yes.

21 Q. -- in 2017 and 2018?

22 A. Yes.

23 Q. All right. And how about, did they grant
24 the pollution control exemption request for
25 stormwater pollution control?

1 A. Yes, both years.

2 Q. And they granted it in both 2017 and 2018?

3 A. Yes.

4 Q. All right. How about for secondary
5 containers, did they -- secondary containment,
6 did they grant the pollution control exemption
7 request?

8 A. Yes.

9 Q. In both 2017 and 2018?

10 A. Yes.

11 Q. How about tank internal floating roofs, did
12 they grant that exemption?

13 A. Yes.

14 Q. All right. In both 2017 and 2018?

15 A. Yes.

16 Q. All right. And so the Schedule X we have
17 referred to, could you identify that? Is that
18 your property tax return?

19 A. It is.

20 Q. Okay. For -- so you file one in 2017 and
21 one in 2018.

22 A. Yes.

23 Q. All right. So when you filed the property
24 tax return, what's the DOR's official response,
25 so to speak? What does -- what is that document

1 called?

2 A. (No response.)

3 Q. Proposed Assessment?

4 A. Notice of Proposed Assessment, yes.

5 Q. Okay. And how -- what's the sequence in
6 which those two documents are filed?

7 A. Well, we file the return by the end of April
8 and then sometime after that, the State issues a
9 Notice of Proposed Assessment.

10 Q. Okay. And so the -- in the Proposed
11 Assessment, what does the DOR -- they either
12 grant or deny the exemption request; would that
13 be fair?

14 A. Yes. In this case, they granted part of it
15 and denied part of it.

16 Q. Okay. And so what were the ones they
17 granted -- just to be a little repetitive, what
18 did they grant and what did they deny?

19 A. Wastewater pollution control equipment,
20 stormwater pollution control, secondary
21 containment, and internal and external floating
22 roofs were approved.

23 Q. Okay.

24 A. Pipeline cathodic protection, pipe coatings,
25 and automatic shut-off valves were denied.

1 Q. Okay. And so their response is the same in
2 2017 and 2018, correct?

3 A. Yes.

4 Q. All right. And so you appealed the ones
5 they denied?

6 A. Yes, we did.

7 Q. All right. Did you apply for the pollution
8 control exemption for all seven items under the
9 same pollution control statute?

10 A. Yes.

11 Q. All right. So you applied for all seven
12 under Section 12-37-220(A)(8)?

13 A. We did.

14 Q. Okay. To your knowledge, is it the only
15 pollution control statute -- exemption statute?

16 A. It is the only one I'm aware of.

17 Q. Is there -- there's no special exemption
18 statute for the items the DOR approved, correct?

19 A. Not that I'm aware of.

20 Q. Okay. So just to be a hundred percent
21 clear, there's not one property tax exemption
22 statute for wastewater, stormwater, and a
23 different exemption statute for pipeline cathodic
24 protection, pipeline coatings, and automatic
25 shut-off valves?

1 A. No, it's all one statute.

2 Q. Okay. So under the pollution control
3 exemption statute, did DOR have to find that
4 Colonial was an industrial plant in order to
5 grant the exemption for wastewater pollution
6 control?

7 MR. CARTIN: Object to the form.

8 BY MR. MAYBANK:

9 Q. You can go ahead and answer it.

10 A. Yes.

11 Q. All right. And did the DOR -- and did the
12 DOR find Colonial Pipeline was an industrial
13 plant for purposes of the wastewater pollution
14 control?

15 A. Yes.

16 MR. CARTIN: Object to the form.

17 Q. Okay. Under the pollution control exemption
18 statute, did the DOR have to find that Colonial
19 was an industrial plant in order to grant the
20 exemption for stormwater pollution control?

21 MR. CARTIN: Object to the form.

22 A. Yes.

23 Q. Okay. And just to belabor it, then, what
24 did the DOR have to find in order to grant the
25 exemption for stormwater pollution control?

1 MR. CARTIN: Object to the form.

2 A. They had to find that it was an industrial
3 plant as part of the process.

4 Q. Okay. All right. And did -- and did the
5 DOR find that Colonial Pipeline was an industrial
6 plant for purposes of the stormwater pollution
7 control?

8 A. Yes.

9 MR. CARTIN: Object to the form.

10 Q. Okay. And so just to belabor this, when you
11 applied for stormwater pollution control, what
12 did the DOR find?

13 MR. CARTIN: Object to the form.

14 A. They -- they approved it, so they must have
15 found that it was industrial facilities.

16 Q. Okay. And under the pollution control
17 exemption statute, did the DOR have to find that
18 Colonial was an industrial plant in order to
19 grant the exemption for the secondary containment
20 assets?

21 MR. CARTIN: Object to the form.

22 A. Yes.

23 Q. Okay. And so when you applied for the
24 exemption for secondary containment assets, what
25 did the DOR have to find in order to grant that

1 exemption?

2 A. That it was industrial property.

3 Q. Okay. And did the DOR find Colonial
4 Pipeline was an industrial plant --

5 A. Yes.

6 Q. -- for purposes of secondary containment
7 assets?

8 MR. CARTIN: Object to the form.

9 A. Yes.

10 Q. Okay. Under the -- under the pollution
11 control exemption statute, did the DOR have to
12 find that Colonial was an industrial plant in
13 order to grant the exemption for tank internal
14 floating roofs?

15 MR. CARTIN: Object to the form.

16 A. Yes.

17 Q. Okay. And so under the pollution control
18 exemption statute, what did the DOR have to find
19 in terms of internal floating roofs in order to
20 grant the exemption?

21 MR. CARTIN: Object to the form.

22 A. That it was an industrial plant.

23 Q. Okay. And did the DOR find Colonial
24 Pipeline was an industrial plant for purposes of
25 tank internal floating roofs?

1 MR. CARTIN: Object to the form.

2 A. Yes.

3 Q. Okay. And so what was the Department's
4 determination regarding internal floating roof?
5 Did the -- did Colonial --

6 A. It was approved.

7 Q. -- meet the statutory requirements?

8 A. It was approved, yes.

9 Q. All right. So how did the DOR rule on your
10 pollution control exemption for pipeline
11 coatings, cathodic protection, and automatic
12 shut-off valves?

13 A. They denied the exemption and cited --

14 Q. Okay.

15 A. -- that they were not an industrial plant.

16 Q. And on what basis did they deny it?

17 A. That they were not industrial plant.

18 Q. Okay. Did they ever -- DOR ever say that
19 pipeline cathodic protection wasn't designed to
20 mitigate or prevent water or air pollution which
21 was required by state or federal government in
22 the conduct of your business?

23 A. No.

24 Q. Okay. What -- then what was the basis of
25 their denial?

1 A. That it was not industrial plant.

2 Q. All right. Did the DOR ever tell you that
3 pipeline coatings weren't designed to mitigate or
4 prevent water or air pollution which was required
5 by state or federal government?

6 A. No.

7 Q. Okay. And did they ever tell you the
8 automatic shut-off valves weren't designed to
9 mitigate or prevent water or air pollution --

10 A. No.

11 Q. -- which was required by state or federal
12 government to conduct your business?

13 A. No.

14 Q. Okay. Did you do any personal due diligence
15 regarding whether pipeline coatings, cathodic
16 protection, shut-off valves were exempt under the
17 South Carolina law?

18 A. I just reviewed the statute.

19 Q. Okay. And in your mind, did it?

20 A. It -- I felt like it met the definition.

21 Q. Okay. And do you consider Colonial Pipeline
22 to be an industrial plant?

23 A. I consider it to be industrial property,
24 yes.

25 Q. Okay. And did DOR consider it to be

1 industrial property for purposes of the other
2 exemptions?

3 A. They did on some and not on the others.

4 Q. Okay. And what was the dollar value of the
5 exemption claimed for pipeline cathodic
6 protection?

7 A. Are we talking in terms of tax dollars?

8 Q. Yeah. Why don't we start with market value
9 and then we'll turn to the assessed value.

10 A. Cathodic protection, I believe, was
11 somewhere in the \$5 million worth of market value
12 and nine and a half percent of that is about
13 500,000, I think --

14 Q. Okay.

15 A. -- roughly.

16 Q. So does 500 and -- 5,000,273 sound about
17 right?

18 A. I probably -- I probably have that in front
19 of me here. I could quote it. Yes, that sounds
20 about right.

21 Q. Okay. And where are those assets located?

22 A. They're all over South Carolina.

23 Q. Okay. All along the pipeline?

24 A. All along the pipelines --

25 Q. All right.

1 A. -- and the stations.

2 Q. So what's the dollar value of the exemption
3 claimed for pipeline coating, starting first with
4 the dollar value and then the assessed value?

5 A. The market value was a little over -- is
6 10,000,254 and change and it was just under --
7 974,000 in assessed value.

8 Q. Okay. And that's -- and where is pipeline
9 coating? Where are those assets located?

10 A. Scattered throughout South Carolina.

11 Q. Is it scattered throughout the pipeline?

12 A. Along the pipeline and in the stations.

13 Q. Okay. What's the dollar value of the
14 exemption claimed for automatic shut-off valves?

15 A. The market value there is about \$442,000;
16 the assessed value, about 41,000, almost 42.

17 Q. Okay. Where are those assets located?

18 A. That's at the Gaffney Station.

19 MR. MAYBANK: Okay. I don't have
20 anything further.

21 (There being no further questions, the
22 deposition of Mr. Fuqua concluded at
23 11:08 a.m.)

24

25

1 (On the record at 11:15 a.m.)

2 JAMES EDWARD BROWN, having been duly
3 sworn, examines and testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. ANTLEY:

6 Q. Good morning, Mr. Brown. My name is Marcus
7 Antley, III. I am an attorney representing the
8 South Carolina Department of Revenue. I will be
9 taking your deposition in the matter of Colonial
10 Pipeline Company versus the South Carolina
11 Department of Revenue and Abbeville, Aiken,
12 Anderson, Greenville, Laurens, and York Counties.
13 Have you had your deposition taken before?

14 A. Yes, I have.

15 Q. So you know that I'm going to ask you
16 questions and the court reporter will write
17 everything down?

18 A. Yes.

19 Q. Please answer verbally. Please ask me
20 rather than your own counsel or any other person
21 for clarifications, definitions, or explanations
22 of any words, questions, or documents presented
23 during the course of the deposition. And you're
24 required to abide by these instructions.

25 You are also advised that during this

1 deposition or any breaks taken during the
2 deposition, you cannot discuss the subject matter
3 of this deposition with any party, including your
4 attorney, and you must not ask for assistance in
5 answering any of the questions asked to you.

6 Since you do not have the -- since you do
7 have the right to ask me to clarify any question
8 or document given to you, then if you answer the
9 questions, it will be assumed that you understood
10 them.

11 So is there any reason, such as being under
12 unusual stress, a physical or mental condition,
13 or being under the influence of any substances
14 that would prevent or limit you today from giving
15 truthful answers to my questions?

16 A. No, sir.

17 Q. Okay. What is your name, your full name?

18 A. Full name is James Edward Brown, Jr. I go
19 by Buster, though, so please call me Buster.

20 Q. Okay. And you're here as the 30(b)(6)
21 witness for Colonial Pipeline Company?

22 A. Yes, sir.

23 Q. Okay. I'm going to hand you -- we discussed
24 this earlier, but I just want to put it on the
25 record. This is the Exhibit No. 13.

1 If you could just point out which topics
2 you'll be discussing today, or I can also say
3 them and you can confirm that they are correct.
4 I believe --

5 MR. MAYBANK: Why don't we do it that
6 way.

7 Q. Okay. I believe you'll be discussing topic
8 one. Could you confirm that that's correct?

9 A. Yes, sir.

10 Q. Topic number two?

11 A. Yes, sir.

12 Q. Topic number three?

13 A. Yes, sir.

14 Q. Topic number four?

15 A. Yes, sir.

16 Q. Topic number five?

17 A. Yes, sir.

18 Q. Topic number eight?

19 A. Yes, sir.

20 Q. Okay. All right. Okay. How did you
21 prepare for your deposition today?

22 A. I spoke with our attorneys yesterday and
23 that was primarily my preparation.

24 Q. Okay. Did you talk to anybody other than
25 your attorneys?

1 A. Just the people that were present at that
2 meeting.

3 Q. Okay. What -- did you review any documents
4 to prepare for today?

5 A. Again, just those at our meeting with the
6 attorneys yesterday.

7 Q. And what documents did you review?

8 A. Mainly the documents that you had presented
9 to us in an e-mail. We reviewed that and just
10 reviewed those topics in some level of detail as
11 far as -- that's really the only documents.

12 We had a Colonial document that I think we
13 are preparing for you on our details, but that --
14 that's really about the only other document.

15 Q. Okay. The Colonial document, what is that
16 document?

17 A. On our operations, concerning the number of
18 locations we have, the number of employees,
19 details such as Colonial's operations --

20 Q. Okay.

21 A. -- here in South Carolina.

22 Q. Okay. So did -- was that a document you
23 intend to provide to the Department?

24 A. That was part of what we were going to
25 provide as far as our answers when we get down

1 into those detailed questions on the subject
2 matter that you had asked here.

3 Q. Okay. What is your date of birth?

4 A. 9/13/62.

5 Q. Okay. And what's your educational
6 background?

7 A. I am a chemical engineer from the University
8 of Arkansas.

9 Q. Okay. And where do you currently work?

10 A. I work for Colonial Pipeline based in our
11 Alpharetta office.

12 Q. And what's your job title?

13 A. Job title is director of scheduling and
14 shipper relations.

15 Q. Okay. What are your job responsibilities?

16 A. I support our functions of scheduling,
17 customer relations, and quality assurance,
18 product quality assurance, and measurement.

19 Q. Okay. Who are your direct reports? Who
20 directly reports to you?

21 A. Again, those functions associated with
22 schedulers, quality assurance personnel, customer
23 relations personnel, and then our measurement
24 specialists out in the field.

25 Q. About how many employees are those?

1 A. I have 26 direct reports.

2 Q. Okay.

3 A. Or not direct -- 26 in my organization.

4 Q. Okay. So of those, which ones are --
5 directly report to you?

6 A. I have four direct reports: Our manager of
7 scheduling, manager of quality assurance and
8 measurement, and a -- our customer service
9 representative, and then our -- I have an admin.

10 Q. Okay. What -- what are their names?

11 A. Their names are -- Michael Kay is our
12 director of scheduling -- or, excuse me, manager
13 of scheduling; Michael Bedwell is quality
14 assurance and measurement; Sherri Palmer is our
15 customer relations; and then Mary Beth is our --
16 my admin. Mary Beth Wright, excuse me.

17 Q. Are those four individuals, are they all in
18 Alpharetta, as well?

19 A. They are.

20 Q. Okay. Who do you report to?

21 A. I report to our vice president of
22 operations, Gerald Beck.

23 Q. Okay. And where is he located?

24 A. The same -- same office, Alpharetta.

25 Q. Okay. I guess other than preparing for this

1 deposition today, have you been involved at all
2 in the application for the pollution control
3 exemption?

4 A. No. Up until this, no.

5 Q. Okay. All right. So what I'd like to get
6 from you is a high-level overview of what your
7 company does. Could you -- could you give me a
8 good description of that?

9 A. Sure. Colonial Pipeline Company is a
10 transportation company. We're one of the largest
11 in the -- we are the largest refined petroleum
12 products pipeline system in the country.

13 We do -- transport petroleum products,
14 gasoline, diesel, jet fuel, primarily from the
15 Gulf Coast to the Northeast -- well, through the
16 Southeast and up to the Northeast. We start in
17 Pasadena, Texas, and we end in New Jersey.

18 We transport over, again, 2.6 million
19 barrels of petroleum products a day. We also are
20 involved in other services, things such as
21 blending operations. We provide services at some
22 of our locations to blend product to create
23 gasoline.

24 We also do injection services of biodiesel
25 and butane. We also are involved in other

1 offerings, such as barge operations and terming
2 (sic) storage. We provide storage services and
3 things of that nature.

4 Q. So the products that you move, could you say
5 that again? It's gasoline, diesel, jet fuel ...

6 A. Those are -- those are the primary --

7 Q. Primary?

8 A. -- generic terms for what we move.

9 Gasoline -- gasoline consists of premiums,
10 regular grades. We also -- we move both
11 blendstocks for ethanol blending and we move
12 finished gasolines that don't require ethanol
13 bending. We move both formulated gasolines and
14 conventional gasolines. Obviously, this area is
15 completely conventional gasolines for South
16 Carolina.

17 Ultra Low Sulfur Diesel. We move heating
18 oil. We move marine diesel. We also move quite
19 a bit of jet fuel, both commercial jet fuel and
20 military grade jet fuel. We move kerosene.

21 Q. Okay. So --

22 A. And we also move things such as blendstocks;
23 things that are unfinished products that are used
24 in the process of blending and making fuels.

25 Q. What -- could you describe that a little

1 more?

2 A. For instance, you hear the term "naphthas,"
3 "alkylate," "reformate," those are -- those are
4 just basically quantities of fuel that are not
5 finished gasoline. You take those types of
6 blendstocks, blend them together, and it creates
7 a finished gasoline.

8 Q. And does Colonial do that blending?

9 A. We offer our blending service for a
10 particular customer at one of our facilities
11 where we do that. We perform the blending for
12 them. They are the registered refinery, but we
13 provide the services to blend the product and do
14 that for them.

15 Q. And what -- what is that provider or that
16 customer that you provide those services to?

17 A. The company that we work for there is V-Tol
18 (phonetic).

19 Q. And you said they're the refiner but you
20 do -- you provide the service of blending for
21 them?

22 A. We're physically doing the things that they
23 want us to do to execute blending operations. So
24 we own the equipment, the tanks, and all of that.
25 We have the people. They're basically just

1 instructing us on the operations that they need
2 to do to do that blending.

3 Q. Okay.

4 A. And there's requirements under the EPA
5 requirements that define out the refiner and how
6 that works. So that's very clear in the
7 regulations.

8 Q. And that -- that blending, does that happen
9 in South Carolina?

10 A. That blending does not happen in South
11 Carolina; that particular blending happens in
12 Louisiana.

13 Q. Okay. Are there blending services that you
14 provide in South Carolina?

15 A. We provide -- we deal with transmix that is
16 generated on our system. We handle that transmix
17 through blending operations here in the State and
18 throughout our system. We also deal with
19 transmix in other fashions, but one of the
20 fashions is blending that product.

21 Q. Okay. So those blending operations that
22 occur in South Carolina, where do those occur?

23 A. Those occur primarily at our tank farms,
24 pump stations, and our delivery facilities.

25 Q. Tank farms, delivery facilities, and what

1 was the third thing?

2 A. The pump stations.

3 Q. Pump stations. Could you describe what
4 exactly each of those three things are for me?

5 A. Sure. So if you look at Colonial's system,
6 we have our two main lines that run through the
7 State of South Carolina. Those lines are
8 operating. They're moving volume of product at a
9 very high velocity. So we typically deliver off
10 into what we call our "breakout tankage," our
11 tank farms. We have one at Belton and one at
12 Spartanburg.

13 So we're taking product into that facility
14 and then we're pumping that product from the
15 tanks themself (sic) out on additional lines to
16 the individual truck terminals of our -- of our
17 customers.

18 Q. Okay. So the tank farms, there are two in
19 South Carolina?

20 A. We have two in South Carolina at Belton and
21 Spartanburg.

22 Q. And the pump stations, where are those?

23 A. Now, the pump stations would be -- we have
24 pump stations along the line. We have three
25 stations here in South Carolina, so we have three

1 here in the State.

2 Obviously, those run -- if you look at our
3 main lines, line one and two that go from
4 Pasadena to Greensboro, North Carolina, one of
5 those we typically call our "gasoline line," line
6 one.

7 The other one's our distillate line, which
8 handles jet and Ultra Low Sulfur Diesel in line
9 two. You'll see pump stations on those about
10 every 40 -- 40, 50 miles.

11 Q. So in South Carolina, you said we had -- you
12 had three --

13 A. We have three --

14 Q. -- pump stations?

15 A. -- of those in South Carolina.

16 Q. And where are those located exactly?

17 A. I do not remember the exact names of the
18 locations. I do -- we have that on the -- on the
19 list, but three of those stations. We have a
20 whole bunch of those, so.

21 But those -- so then we have the pump
22 stations. And then our delivery facilities,
23 right, where -- our major delivery facility here
24 is going to be our line 29. It goes from Belton
25 and then it goes down to North Augusta.

1 Q. Are there other delivery stations in South
2 Carolina?

3 A. The delivery stations in South Carolina are
4 at the tank farms themselves. So the -- the tank
5 farm is delivering on a very small line across
6 the fence, so to speak, to a truck terminal. The
7 truck terminals are located very close to our
8 tank farm facilities at Belton and Spartanburg.

9 Q. Okay.

10 A. Line 29 is the only major line that leaves
11 our Belton facility and that goes down to -- down
12 to North Augusta.

13 Q. So the tank farm, for example, the Belton
14 tank -- the tank farm in Belton, also in Belton
15 there is a delivery station or facility?

16 A. At Belton -- yes, at Belton -- Belton has --
17 so I've got my infrastructure that brings barrels
18 into the tanks and then I've got my
19 infrastructure that takes barrels and delivers
20 them out of the tank.

21 Q. Okay.

22 A. Right?

23 Q. And so are -- so the delivery stations,
24 those are always with tank farms?

25 A. They are -- do not have to be.

1 Q. Okay.

2 A. They can be individual deliveries off of,
3 say, line one or two.

4 Q. Okay.

5 A. In South Carolina, we don't have any of that
6 individual delivery. All the deliveries we do
7 go -- go into the two tank farms here and then
8 out to the terminal, truck terminals.

9 Q. Okay.

10 A. We do have -- like, for instance, in Oxford,
11 Mississippi, we have a direct delivery that comes
12 off of the lines one and two that goes to the
13 local truck terminals there. But, again, that
14 configuration is not here in the State, but we do
15 have quite a few of them throughout our system.

16 Q. So in South Carolina, you have tank farms
17 and delivery stations in Belton and Spartanburg
18 and that's --

19 A. Tank farms, yes, at Belton and Spartanburg;
20 within South Carolina, that's all.

21 Q. Okay. And the same with delivery stations,
22 also just at Belton and Spartanburg?

23 A. Belton and Spartanburg. And then on line 29
24 that goes from Belton to Augusta -- is that --
25 I'm thinking that delivery facility may

1 technically be in Georgia. Does it -- I'd have
2 to get my lines ...

3 It's close right there, right? We run from
4 Belton down to what we call North Augusta; that
5 may cross over the line, that delivery, even
6 though that -- Augusta is serving both South
7 Carolina and Georgia area.

8 Q. Do you have maps or lists of all the pump
9 stations or tank farms, delivery stations, in --
10 in South Carolina?

11 A. Yes.

12 Q. Okay. So is that -- that's something you'd
13 be able to provide a copy of?

14 A. Yes.

15 Q. Okay. And so at those three places, pump
16 stations, tank farms, delivery stations, those
17 are the only places where blending would occur?

18 A. Correct.

19 Q. Okay.

20 A. That's where we would be doing our
21 blending --

22 Q. Okay.

23 A. -- and dealing with transmix and things.

24 Q. Now, you also mentioned injecting services.
25 Where does that occur?

1 A. Injection/blending, similar term, right?

2 Q. Okay.

3 A. It's just a different term there.

4 We do biodiesel injection/blending at
5 Greensboro, North Carolina, our tank farm there,
6 and we also do it in -- on our line, Bainbridge
7 line, on line 17 going from Atlanta to
8 Bainbridge, Georgia, at our Griffin facility
9 there. That's biodiesel injection/blending at
10 both of those.

11 And then we also do a butane blending at our
12 Atlanta Junction facility with -- you'll hear a
13 term "Powder Springs," is another name for that
14 location that we're at there.

15 Q. So injecting services, those don't occur in
16 South Carolina? I don't believe you named a
17 South Carolina location.

18 A. No, those three -- with the biodiesel and
19 butane, those do not occur in South Carolina.

20 Q. Okay. And the other thing you -- I think
21 you also mentioned storage services?

22 A. Correct. At -- at all of our -- at all of
23 our tank farms, we have an ability to have what
24 we call "additional capacity." And that
25 additional capacity, we are able to lease storage

1 to our customers.

2 Q. Uh-huh (affirmatively responds).

3 A. And so we have storage capability and do
4 storage at all of our tank farm facilities. So
5 both Belton and Spartanburg, we would be doing
6 storage.

7 Q. Okay.

8 A. Storage leasing.

9 Q. So storage happens at the tank farms, as
10 well?

11 A. Correct.

12 Q. Okay. And only at the tank farms?

13 A. Only at the tank farms, correct.

14 Q. Okay. So I got that high-level overview.
15 I'd also -- if you could, just walk me through --
16 and I know that Colonial Pipeline would only
17 probably do part of this process, but just the
18 oil in the -- oil in the ground to gas in my car,
19 how that process goes, and then at what point
20 Colonial Pipeline -- what point they're involved.

21 A. Okay. Sure. So we've got crude coming out
22 of the ground.

23 Q. Uh-huh (affirmatively responds).

24 A. It goes to a refinery. The crude oil is
25 processed there to produce gasoline, diesel, jet

1 fuel, refined petroleum products. Then those
2 products are then transported.

3 Typically from a refinery, it may go into
4 multiple modes of transportation; barge, truck,
5 rail, pipes. You know, we got a lot of options
6 there. That product moves through Colonial as
7 part of that system.

8 Q. The transportation portion?

9 A. Part of that transportation system. Again,
10 we also -- that system also is involved in other
11 processes in the industry, right; the blending,
12 producing fuel, things of that nature, right, and
13 all of that.

14 So then we're -- that product moves through
15 these modes of transportation. These other
16 services that get produced where it produces
17 fuel, manufactures fuel, all of that, and then it
18 ends up finally at the truck rack, so to speak,
19 going out to the individual retail stations and
20 then being consumed.

21 Q. Okay. So Colonial's portion of that is,
22 they receive refined petroleum products from the
23 refinery.

24 A. Uh-huh (affirmatively responds).

25 Q. Is that -- and that's when -- at that point

1 is when Colonial Pipeline becomes involved in the
2 process?

3 A. Correct.

4 Q. They don't have any part of the refinery --
5 the refining process; is that --

6 A. Well, again, other than the -- other than
7 the activities that we're involved with that are
8 supporting refinery-type blending.

9 Q. Like blending.

10 A. Yes.

11 Q. Other than blending, okay.

12 A. Right.

13 Q. So when the product gets to Colonial, it's
14 already a refined petroleum product?

15 A. Well, remember, refined, yes.

16 Q. Okay.

17 A. That doesn't mean finished.

18 In other words, I can't just take all the
19 product that we ship and put it in a car and
20 drive off, right? It needs other things
21 happening to it prior to. Some of the things are
22 blendstocks. Some of them are finished fuels.
23 So it's a -- it's a mix. It's not just one or
24 the other, so to speak.

25 Q. How much is completely finished that you

1 wouldn't have to do any kind of blending?

2 A. The Ultra Low Sulfur Diesel and the jet fuel
3 are very finished, so to speak. There's not much
4 you can -- you know, you could run those
5 immediately in an engine in a car.

6 You will see -- you will see from Ultra Low
7 Sulfur Diesel, there are additives and things
8 that shippers like to put in their fuel at the
9 terminal level. So they may do additives.
10 That's an elective, not a requirement.

11 Gasoline is a whole different -- gasoline is
12 different than that. With gasoline, gasoline
13 is -- requires intake valve deposit additives.

14 Pipelines and most of the modes of
15 transportation are not -- we -- it's not very
16 compatible with transportation intake valve
17 deposit additives. So we, as a pipeline, do not
18 allow those additives to be in gasoline.

19 So for Colonial, our specifications
20 basically say our gasoline is -- it's a base
21 gasoline and it -- that's a term that's in the
22 EPA requirements on how that's defined.

23 "Base gasoline" means it does not have the
24 additives that it needs to meet the intake valve
25 deposit additive requirements.

1 So if you look at our gasoline on our
2 system, both our finished gasoline and our
3 BOBS -- which is Blendstock for Oxygenate
4 Blending, is the term you'll hear -- CBOBs,
5 RBOBs -- but the BOBs are a type of fuel that is
6 still missing the ethanol. You need the ethanol
7 to it. And then for all of the gasoline we
8 transport, you'll need the intake valve deposit
9 additives.

10 So both the ethanol and the intake valve
11 deposit additives are done downstream of us at a
12 truck rack level, is where you see those. Both
13 ethanol and intake valve deposit additives have
14 some unique characteristics that are not good for
15 pipeline transportation.

16 Q. So that happens outside of Colonial Pipeline
17 Company?

18 A. Those -- those two elements do, correct.

19 Q. Okay. So -- okay. So we -- so Ultra Low
20 Sulfur Diesel and jet fuel, those are finished.
21 So there's nothing that you do with that, other
22 than transport.

23 A. The party can, but there's nothing I don't
24 think required of them --

25 Q. Okay.

1 A. -- to do to be able to utilize those fuels.

2 Q. And base gasoline, you move that, but you
3 don't put the additives in; that's outside of
4 Colonial Pipeline.

5 A. Correct.

6 Q. Right? So what kind of refined petroleum
7 products -- or what kind of products is Colonial
8 moving that it's -- that it has to blend or
9 inject?

10 A. We move -- so if you look at the
11 transportation of products on our system, as we
12 move product through our system, products come in
13 contact with each other. For instance, regular
14 gasoline comes in contact with premium gasoline.
15 They're right behind each other in the pipe.

16 So that interface mixing, the mixing of
17 those products as it flows through the pipe, that
18 is -- that is fuel that we handle, deal with.

19 When the mixing of those two products is --
20 it creates an interface material that cannot go
21 either way. And the perfect example of that is
22 gasoline and diesel ULSD.

23 If you gasoline gets in ULSD, it's very bad.
24 If ULSD gets in gasoline, it's very bad. So the
25 mixture of those two products is -- we commonly

1 refer to as "transmix." That transmix has to be
2 dealt with.

3 So as an operator, we're dealing with that
4 transmix, and we're taking this transmix and
5 really putting it back, creating the gasoline.
6 So we're putting that -- that transmix back into
7 gasoline and we have to do that through a very
8 controlled process to be sure that we don't
9 impact the quality of the gasoline.

10 So we have to monitor concentrations and
11 keep up with that from a process standpoint to be
12 sure that process doesn't have a negative impact
13 on -- on the gasoline quality.

14 Q. So that gasoline then goes to a customer or
15 what happens to it?

16 A. Correct, that gasoline then is just like any
17 other gasoline in our system.

18 Q. Okay.

19 A. So we're taking this material and basically
20 creating -- taking it, managing it, and -- and
21 creating gasoline out of it.

22 Q. Okay. Okay.

23 MR. MAYBANK: It does get very
24 confusing.

25 BY MR. ANTLEY:

1 Q. Let me go back to the high level, again. So
2 based on what you said, I'm going to hand you a
3 diagram that I found. I just want to confirm
4 if -- this is what's been marked as Department's
5 Exhibit 1.

6 (RESPONDENT'S EXHIBIT 1 WAS MARKED FOR
7 IDENTIFICATION PURPOSES).

8 I just want to confirm if -- if this is an
9 accurate representation of -- of Colonial -- of
10 the process and Colonial Pipeline's portion of
11 the process of, I guess, moving crude, then being
12 refined, then being transported, and then
13 eventually making it to a local gas station.

14 Is that -- does that look accurate?

15 A. This is a high-level depiction. It doesn't
16 talk into the details that we were talking
17 about --

18 Q. Uh-huh (affirmatively responds).

19 A. -- about the things that are going on within
20 this bubble (indicating), so to speak, right --

21 Q. Yeah.

22 A. -- our blending and all of -- all the
23 operations that we're handling with transmix and
24 storage and all of that.

25 It's kind of -- this is a high level, like

1 you said, where we stand from ground -- product
2 coming out of the ground to product getting to
3 retail. So, yes, it's a high level.

4 Q. But it does look accurate to you?

5 A. Yes, a high-level picture of that, correct.

6 Q. Okay. That might help me navigate a little
7 bit. So now we're within -- in this box that
8 says, "Colonial's Role in the Supply Stream."

9 How is the product that goes into Colonial
10 Pipeline, how is it different than the product
11 that comes out? So the product from outside this
12 box that goes in, how -- how does it change
13 before it gets out of Colonial's hands?

14 A. So Colonial operates a fungible system, what
15 we call "fungible." And by -- what that means
16 is, is we take fuel that meets a certain
17 specification -- and we have close to 30
18 refineries in the Gulf Coast that we receive
19 product from.

20 And so from those 30 refineries, we have --
21 let's just use a high-level example of nine-pound
22 gasoline here in South Carolina, 87 octane, a
23 CBOB.

24 So it's sub octane now. When you add the
25 ethanol, it will be 87 octane. So we have that

1 specification. All of these refineries make fuel
2 to meet that specification.

3 What Colonial does is, we take all of the
4 refinery fuel and we move it together fungibly.
5 And then our processes have to ensure that the
6 quality of product that you get out the other end
7 is the same thing that came into the pipe.

8 So we have our processes there. We're
9 dealing with that interface material with
10 transmix. We're dealing with even interface
11 mixing of other things.

12 We've got our manifold and piping processes
13 that we have to deal with to ensure -- so all of
14 the processes and things that we have in place
15 are to ensure that what comes out the system
16 meets the specification.

17 So as long as we're doing that, we're
18 operating our systems and our processes in a
19 right way to reach that outcome. So there's a
20 lot of things that, so to speak, we manage and
21 control that ensures we -- we get to that end
22 result.

23 Q. Since you're talking about that, it sounds
24 like something that I might have seen on your
25 website. So I might -- let me see if I can

1 find ...

2 (RESPONDENT'S EXHIBIT 2 WAS MARKED FOR
3 IDENTIFICATION PURPOSES)

4 BY MR. ANTLEY:

5 Q. Okay. I'm going to hand you what's been
6 marked as the Department's Exhibit 2. Have you
7 been on Colonial's website?

8 A. Yes, I have.

9 Q. Okay. Does that -- is that an accurate
10 representation of what you see on their website?

11 A. Yes, I believe it is.

12 Q. Okay. So in there it mentions -- I just
13 want to make sure this is what you were talking
14 about. It says on -- this is the third
15 "Frequently Asked Question": What is the
16 difference between fungible and segregated
17 products?

18 And that last -- that last line there says,
19 "On segregated shipments, shippers receive the
20 same product they injected into the system;" is
21 that -- is that true?

22 A. On segregated products, we -- we endeavor --
23 and there's some details in that, but we try to
24 keep that product separate from other products.

25 There's always some level of mixing and some

1 things with interfaces, manifold, and things like
2 that, but at a high level, correct, we -- a
3 segregated batch, you get in what you -- you
4 hopefully get out what you put in with little
5 deviation.

6 Q. Okay. And with "fungible," the shipper --
7 it says -- let's see. That's the second line in
8 that same "Frequently Asked Question" and
9 response: "Shippers will receive equivalent
10 product but may not be the actual product
11 shipped."

12 A. (Nods head affirmatively.)

13 Q. So it's -- they're going to -- in your
14 example, they're -- I think it's -- it's gasoline
15 that comes in. It may not be the exact one that
16 was --

17 A. Correct. That's our --

18 Q. -- I guess that they purchased or --

19 A. Correct.

20 Q. -- but it's --

21 A. That's our -- that's that fungible nature of
22 our system and the fact -- what Colonial is
23 committing to and what we're providing is that on
24 specification fuel when it leaves our system, and
25 all of our systems and processes are put in place

1 to manage that and be sure that happens.

2 Q. Does Colonial -- okay. So Colonial doesn't
3 own the product that it transport, does it --
4 transports, does it?

5 A. Colonial does not own the product we
6 transport; our shippers do.

7 Q. Okay. Who are your shippers?

8 A. Our shippers are major oil companies. We
9 have over 250 companies that ship product on
10 Colonial, transport Colonial product on Colonial.

11 Q. Do the shippers own the refineries?

12 A. Majority of them do not own refineries.

13 Q. Okay.

14 A. Some do. There's a -- our shippers are a
15 wide range of companies from trading companies to
16 truck stops. You know, we have a very wide
17 range. They could be involved in any portion of
18 the distribution system.

19 Q. So who owns the -- okay. You said the fuel
20 that goes through Colonial, that's owned by the
21 shippers.

22 A. Correct.

23 Q. Is that right? Okay. Do you know at what
24 point they have ownership? Do they have -- do
25 they, I guess, purchase the fuel from the

1 refinery and then hire Colonial to transport it;
2 is that how it works?

3 A. Correct. When the -- when the barrels come
4 into our system, we accept custody of the
5 product. When the product is in our custody, the
6 shipper is the owner of that product.

7 What happens prior to us, what happens
8 downstream of us, is up to the shipper. But from
9 Colonial in our FERC regulations, the party --
10 the shipper is the owner of the product as it's
11 being transported through Colonial's system.

12 Q. Okay. And I think that's -- also reminds me
13 of another point on that same exhibit I just gave
14 you of "Frequently Asked Questions."

15 So if you could -- on there it says that --
16 that Colonial neither buys nor sells petroleum
17 products. It provides transportation services
18 only?

19 A. We're not in the marketing business of
20 product. We don't own. We do -- we do act on
21 behalf of our customers to settle gain/losses and
22 make product sales and things. But, again, that
23 is on behalf of our customers. Colonial is not a
24 marketer, so to speak, in the -- in the buying
25 and selling of fuel.

1 Q. Okay. So who are -- Colonial's customers
2 are the shippers; is that --

3 A. Yes.

4 Q. -- accurate? Okay. And it -- it sounds
5 like a lot goes on during the process, during the
6 time that Colonial has the product, but unless
7 there's -- well -- but, generally, input is more
8 or less equal to output? Like, what comes into
9 the pipeline is generally the same that comes
10 out?

11 A. Yes. So, again, there's the services that
12 we provide and things of that nature. And,
13 again, we're managing our system to be sure what
14 comes out is good, so. But, yeah, effectively,
15 we want good product coming in and we give good
16 product going out.

17 Q. And that product would be the same -- I
18 mean, it may not be the -- like an example of
19 fungible product. It may not be the specific
20 one, but it's the -- essentially the same product
21 that goes through -- that comes in will come out
22 on the other end for the customer.

23 A. Volumes differ as we manage our processes
24 and things. For instance, we're protecting
25 product, certain types of product. We're dealing

1 with those interface materials. So volumes of
2 the individual products will vary based on our
3 processes and how we're having to operate our
4 system --

5 Q. Uh-huh (affirmatively responds).

6 A. -- to ensure -- to ensure the safety, the
7 quality of the product.

8 So there are certainly volume differences
9 which impact the quality, which is why we talk
10 about the product meeting the specification, not
11 just being what's in is out, right?

12 Q. Okay.

13 A. So through our -- through the movement of
14 our -- of our product on our system, we have to
15 manage that quality, manage those operations to
16 ensure that we still meet the specifications as
17 it come out -- as it comes out.

18 Q. So whenever you provide blending services,
19 is that an instance where what comes in the
20 pipeline is different than what comes out, or is
21 that still -- is that blending service part of, I
22 guess, maintaining the quality or the integrity
23 of the product that originally came into the
24 pipeline?

25 A. Let's double -- let's break that --

1 Q. Okay.

2 A. -- into two, if you could. Because I think
3 my answer was going to be "yes" and "yes" and
4 that doesn't -- probably doesn't say what you
5 want me to. So can you break those down into two
6 pieces?

7 Q. Okay. So --

8 A. Let's talk about product coming into the
9 system.

10 Q. Sure.

11 A. Again, we move blendstocks and we move --
12 and finished gasoline. On some of our
13 blendstocks, those are going into facilities
14 where they're being blended and then that
15 produces a finished gasoline, right? So --

16 Q. So that is different than what -- what is
17 produced is different than what came into the
18 system because they're two separate --

19 A. Again, yeah, they're coming into the system
20 and then we're doing things to them. It's
21 come -- now it's a different thing and it's
22 moving out, right? And that's all happening
23 within our bubble.

24 Q. Okay.

25 A. Then there's things where we're just

1 bringing in the product and we're managing it
2 and -- and dealing with it and protecting it and
3 dealing with interfaces and things and it's going
4 to come out meeting the specification.

5 Q. Okay.

6 A. Right?

7 Q. So I'm trying to think of an analogy.
8 Essentially, the blending -- the -- when it comes
9 in in different -- where it's different from what
10 comes -- sorry. Let me start over.

11 So when there's a difference between what
12 goes into the pipeline, what comes out, that
13 would be -- let's say it's like Kool-Aid. So if
14 you had the powder and the water, it mixes, and
15 at the end you get a glass of Kool-Aid, correct?

16 A. Correct.

17 Q. Okay.

18 A. Correct.

19 Q. Whereas most of the time -- or I don't know.
20 Is it -- I'm not sure if it's most the time, but
21 other times, you have the Kool-Aid that starts in
22 the beginning and it may not be the exact one
23 that comes out at the end, but you still at the
24 end you get Kool-Aid; like in the glass -- like
25 mixed liquid --

1 A. Correct.

2 Q. -- Kool-Aid drink.

3 A. Correct.

4 Q. Okay.

5 A. Right.

6 Q. Okay. How much -- which one's more common?
7 Is it more common to have the -- the blendstocks
8 come in and you have a different product at the
9 end or is it more common to have basically the
10 same product going in that will come out at the
11 other end?

12 A. It's more common to have the same
13 specification coming in and the same
14 specification going out.

15 Q. Do you -- could you put a rough percentage
16 to which one is the same specification coming in
17 coming out versus the blendstocks coming in?

18 A. Very high.

19 Q. Okay. Ninety percent?

20 A. Yes, at least 90 percent.

21 Q. Okay. I'm just going to ask some questions
22 to try to make sure I'm clear. So Colonial has
23 no role in mining or refining product; is that
24 correct?

25 A. Correct. We're not a refiner.

1 Q. Okay. With the -- okay. In the prehearing
2 statement in this case, it was mentioned that
3 drag resistant agent was added to the product.

4 Could you describe what drag resistant --

5 A. Drag reducing should be the --

6 Q. Reducing?

7 A. Yeah.

8 Q. Okay.

9 A. "DRA" --

10 Q. Okay.

11 A. -- we refer to it a lot.

12 Q. What is that?

13 A. Drag reducer is a -- it's an additive that
14 reduces the amount of friction loss as product
15 moves through the pipe.

16 So as you -- as your product is moving
17 through the pipe, it's being slowed down by the
18 friction of it coming in contact with the pipe
19 (indicating).

20 And so drag reducing agent lowers that
21 friction and so it allows you to move the same
22 amount of product with lower pressures, or it may
23 even allow you to move a greater volume of
24 product with the same pressure.

25 Q. Okay.

1 A. So it reduces that drag, which then helps
2 you in either increasing your -- your flow rate
3 or being able to lower your pressures.

4 Q. Okay. So that's not something that your
5 customers ask you to put in. It's something to
6 make it just flow faster or more efficiently?

7 A. Correct. Well, they, I mean, ask us to put
8 in from the standpoint that they want the volume
9 shipped --

10 Q. Uh-huh (affirmatively responds).

11 A. -- and so we put that in to support those
12 desires.

13 Q. Is that drag reducing agent, is that still
14 present in the product that they receive, or is
15 that something that's filtered out by Colonial?

16 A. No, that's still present.

17 Q. Okay.

18 A. Still present.

19 Q. Okay. I want to make sure, too, I
20 understand just Colonial Pipeline's
21 infrastructure.

22 So we've talked about pump stations, tank
23 farms, delivery stations. There's -- and then
24 there's the pipeline itself. What other -- what
25 other infrastructure does Colonial Pipeline have?

1 A. Well, the -- all the things that help --
2 help make all of that run, support it, process
3 controls, all of our equipment around our safety,
4 relief devices, relief tanks, sump tanks, our
5 pressure relief valve, all of the supporting
6 manifolding, piping, and then all of the controls
7 equipment that -- that helps our people and --
8 and helps the system operate safely, right?

9 So we -- we have -- at all of our pump
10 stations, delivery facilities, and tank farms, we
11 have a tremendous amount of control equipment
12 that is helping us ensure the safety of the
13 operation and helping us operate the system.

14 For instance, all of our -- all of our main
15 line pump stations on lines one and two, our pump
16 stations are operated out of our Atlanta control
17 center, so they're remotely operated.

18 Now, you can go on site and physically
19 operate them, but in general normal operations,
20 those are all being remotely operated.

21 So from that standpoint, there's a
22 tremendous amount of support in additional
23 resources that we have that are helping us
24 operate and manage the Carolina area, the South
25 Carolina locations, that may not be based here,

1 so to speak.

2 But if you're -- if you're looking at
3 that -- especially at tank farms, you're -- you
4 are coming off of our main lines, you're going
5 through measurement equipment, quality assurance
6 equipment. We're measuring gravity, pressures,
7 temperatures. All of that's being, you know, put
8 into our control systems to help us manage and
9 operate safely.

10 Being sure that we're putting the right
11 product in the right places, all of those things
12 are being managed through our QA processes and
13 then, again, through -- through just safety and
14 general operations on how we're operating the
15 pipeline.

16 So you've got all of that. You've got our
17 pump stations and our pumps, motors, both at our
18 tank farms that are delivering fuel out, and then
19 on our lines, on our main lines that we
20 mentioned, the pump stations there, right?

21 So all of the things you see on a pump
22 station, those are also in our tank farms that
23 we're using to pump product out. So a lot of --
24 a lot of that infrastructure controls and safety
25 is -- is -- is a big part of what we do.

1 Q. How do cathodic protection, pipe coatings,
2 and automatic shut-off valves, how do they fit
3 into that infrastructure? What part -- what part
4 of that infrastructure are they connected with?

5 A. Well, I'm not sure what you mean by that. I
6 mean, they're -- they're part of -- they're part
7 of a total package of things that we must do as
8 an operator to -- to manage and perform our
9 services and -- and, you know, all of that is
10 part of an overall process to ensure integrity of
11 the pipe.

12 Safe operations, ensuring that we don't
13 pollute the environment, all of those things are
14 put together in a total package of what we are
15 and how we operate.

16 Q. Are those three assets, are those part of
17 the production role of Colonial Pipeline in
18 producing those -- those blend -- like the
19 blending operations?

20 A. Again, they -- they all have some
21 involvement with any of our operations. We have
22 to -- we have to protect our assets. A lot of
23 the things that you were -- the three elements
24 that you listed there, could you repeat those?

25 Q. Cathodic protection, pipeline coatings, and

1 automatic shut-off valves.

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

8 All of those things are very critical to the
9 operation of the pipeline. Without those things,
10 you know, so to speak, bad things happen.

11 Everything's working together to ensure the
12 integrity, the safe operation of the pipeline.

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

17 A. Oh, gosh.

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

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

20 Q. Okay.

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

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

1 transportation company.

2 A. Correct. That's our primary business and,
3 again, we are involved in -- in other areas
4 beyond transportation, too, but that is certainly
5 our primary business.

6 Q. I think I handed you Department's Exhibit 2.
7 I'm just going to hand you a couple more exhibits
8 from the website. I just wanted to make sure
9 that these are accurate representations.

10 (RESPONDENT'S EXHIBIT 3 WAS MARKED FOR
11 IDENTIFICATION PURPOSES)

12 BY MR. ANTLEY:

13 Q. This is Department's Exhibit 3. Once again,
14 you said you're familiar with the -- with
15 Colonial Pipeline's website. Is that -- does
16 that look like an accurate representation of
17 their website?

18 A. Yes, it is.

19 Q. Okay. And on there --

20 A. I will mention, this is a dated version now.

21 Q. Okay.

22 A. We did a major site overall, so.

23 Q. When did that site overall ...

24 A. A week or two.

25 Q. A week or two?

1 A. Last couple of weeks.

2 Q. Okay.

3 A. Yeah. Yeah. So --

4 Q. Okay.

5 A. -- there -- it does have a lot different
6 appearance, but a lot of the content is -- is
7 similar, so.

8 Q. Okay. Let me just make sure I've handed you
9 that. Okay. So what I handed you is -- I think
10 it's titled "About Colonial;" is that correct?

11 A. Yes.

12 Q. Okay. And it says that -- that first
13 sentence there says, "Every day, Colonial
14 Pipeline safely and efficiently delivers more
15 than 100 million gallons of gasoline, home
16 heating oil, aviation fuel, and other refined
17 petroleum products;" is that right? Is that
18 accurate?

19 A. Yes, sir.

20 Q. Okay. And then it says that, "Colonial's
21 mission is to move energy" -- this is the last
22 paragraph -- "to move energy to where it's
23 needed, store it until it's needed, and blend it
24 as it's needed;" is that also accurate?

25 A. Yes, sir.

1 (RESPONDENT'S EXHIBIT 4 WAS MARKED FOR
2 IDENTIFICATION PURPOSES)

3 Q. Okay. This is also from Colonial's website.
4 This is Department's Exhibit 4. Is this their --
5 the website? Is it --

6 A. Yes, sir.

7 Q. And is it -- is it also that dated version?

8 A. Yes.

9 Q. Okay. All right. And the title of this is
10 "Colonial Pipeline Community" or "CP Community."
11 Is that the title of that?

12 A. "CP Community," yes, sir.

13 Q. Okay. Okay. And I just want -- this is the
14 first paragraph and I just want to make sure I'm
15 reading this right: "While our first job is to
16 move fuel safely and responsibly from refinery to
17 market, we take pride in our role in the
18 community."

19 So is that -- is that true, that your first
20 job is to move fuel safely and responsibly from
21 the refinery to market?

22 A. Yes.

23 Q. Okay. Earlier, when you were talking about
24 the whole supply chain part of moving crude and
25 refining it, transporting it, and then getting it

1 to the gas station, you mentioned barges, trucks,
2 and rails as a possible form of transportation.

3 Does Colonial have any -- do they have a
4 role in that? Do they have barges, trucks, or
5 rails that are used to transport the fuel --

6 A. We do not --

7 Q. -- or refined --

8 A. -- physically have barges, trucks, or -- or
9 rail.

10 Q. Okay.

11 A. No, we do not physically. We do offer
12 barge/dock services through one of our companies.

13 Q. Could your customers get the same services
14 from a barge, truck, or -- or railroad or train
15 that -- that Colonial Pipeline Company provides?

16 A. I'm not exactly sure what you mean by that.
17 I mean, our --

18 Q. As far as transporting.

19 A. I mean, our service is unique. I'm not sure
20 how you're defining exactly what they're doing or
21 what they're getting, right?

22 I mean, we -- we offer services we think are
23 unique. We -- we offer blending. We think our
24 pipeline is special and -- and unique compared to
25 some of the other services. We offer more

1 flexibility, more capability.

2 We also deal, like I said, with the
3 interface handling, ensuring product quality and
4 things of that nature that we think are above and
5 beyond what you would typically get from these
6 types of companies.

7 Now, whether or not they can do those
8 things, I ...

9 Q. And when you said these types of companies,
10 you're referring to barges, trucks, rail, like
11 those kinds of companies?

12 A. Yes.

13 Q. Okay. But other pipelines might provide the
14 same services that you can provide?

15 A. They well could.

16 Q. Okay. But as far as you understand, barges,
17 trucks, and rails can't provide certain services
18 that Colonial can provide?

19 A. Well, I think with our storage capabilities
20 and -- and our blending and dealing with those
21 operations, managing transmix, I don't -- I think
22 these other types of companies would be very
23 limited, if not -- you know, if not incapable, so
24 to speak, of managing and doing some of the
25 things we do because of our infrastructure, the

1 way we're constructed, the way we operate, the
2 processes and the -- the equipment and things
3 that we have in place, so.

4 Could they? Yes. Would they or, you know,
5 could it be easily done? I think that answer is
6 "no." But, again, that's my opinion.

7 Q. Would the main difference be the blending
8 operations that you do from --

9 A. Well, again --

10 Q. -- like a tanker truck could do?

11 A. Just the -- the whole operation around the
12 way our pipeline operates, the tank farms --

13 Q. Uh-huh (affirmatively responds).

14 A. -- managing those volumes, those flow rates.
15 Those other modes of transportation are -- tend
16 to be very closed quantity, so to speak,
17 operations.

18 Q. Uh-huh (affirmatively responds).

19 A. For instance, a truck, I've got, you know, a
20 hundred and -- or a thousand gallons of product
21 sitting in a vessel. The vessel moves and then,
22 you know, I drop that off.

23 That vessel doesn't have much flexibility.
24 That vessel doesn't -- you know, a truck doesn't
25 have all of the capability, flexibility, ability

1 to deal with interface and things of that nature
2 that -- that a pipeline company does like
3 Colonial.

4 So, again, could they do what we do? Yes.
5 Would it be a high hurdle? Yes.

6 Q. And with a truck, they wouldn't have to
7 worry about transmix; is that right? That's a
8 unique --

9 A. Well, one of --

10 Q. -- issue with pipelines?

11 A. -- their issues -- one of their issues could
12 be, I've got gasoline in my truck right now and
13 now I want to put diesel fuel in it. To do that,
14 I need to go wash out the truck, right?

15 Q. Okay.

16 A. In Colonial, we just -- we just move along
17 and we're able to deal with that -- that
18 interface and things and keep moving without
19 having to do those additional things, so.
20 Some -- some of it's apples to oranges --

21 Q. Okay.

22 A. -- I guess would be the good way to say
23 that.

24 Q. So does Colonial Pipeline Company directly
25 connect to a refinery? How does that

1 connection -- how does -- how does it get from
2 the refinery to Colonial Pipeline?

3 A. Everything that's going to be pumped onto
4 Colonial is coming from a tank. So when you say
5 directly connected to a refinery, that would be
6 directly connected to a refinery tank and from
7 the tank would be a pipe that goes to a pump that
8 supplies product to our pumps that goes into our
9 pipes.

10 Q. Is that a permanent connection or is that
11 something that's disconnected and then
12 reconnected?

13 A. Well, it's piping.

14 Q. Uh-huh (affirmatively responds).

15 A. So, typically, it's permanent.

16 Q. Uh-huh (affirmatively responds).

17 A. Now, can you go in and change it and do
18 things like that? Yes. But it's piping. I
19 would call it more of a permanent issue, right?

20 It's not hoses. You're not hooking your
21 water hose up. This is a -- you know, again,
22 our -- our two main lines are a 36-inch diameter
23 and a 40-diameter pipe, and we're doing well in
24 excess of 40 to 50,000 barrels an hour on those,
25 on each of those.

1 Q. Is -- is there any part of Colonial
2 Pipeline's Company -- is there anything that --
3 that you would refer to as a "plant"?

4 A. Plant? I mean, we -- if you look at our
5 tank farm facilities, they are a self-contained
6 unit of operation. They have their control
7 systems. They have their -- it is a -- it is a
8 unique operation that's, you know,
9 self-sustaining, so to speak.

10 We've got our maintenance and -- all of our
11 maintenance. We're bringing in contractors and
12 doing work on the facility. All of the processes
13 and everything are -- all of our -- our processes
14 at the facility are around its safety and
15 operation.

16 So when you -- when you say a "plant," I
17 think that refers to a single location. So for
18 Colonial, we would focus on our bigger locations,
19 which would be our tank farm facilities.

20 Q. But at Colonial, do you -- in -- in your
21 nomenclature, do you refer to any property as a
22 certain plant? Like the Belton plant? The
23 Spartanburg plant?

24 A. That's -- that's not a typical term for us,
25 no, the term "plant," no.

1 Q. Okay. Do you have anyone that -- do you
2 know of anyone employed at Colonial whose title
3 is a "plant manager," for example?

4 A. No, we -- we have the term "operations
5 managers."

6 Q. Okay. So for you, the property that you
7 would say is a plant, even though you don't use
8 that term, would be -- what would you say counts?
9 The Belton facility? Spartanburg facility?

10 A. Right, our operations managers at each of
11 those facilities. Some -- some of those
12 facilities we have one operation manager that
13 manages multiple facilities, but ...

14 Q. In South Carolina, are there -- other than
15 the Belton and Spartanburg facilities, are there
16 other locations you would consider a plant?

17 A. Again, our delivery facility is a major
18 facility. Our pump stations are -- are major
19 facilities.

20 Q. Just to clarify, again, that the percentage
21 you'd say of what you do -- Colonial does is over
22 90 percent transportation related versus what's
23 blending or these other services you provide?

24 A. What -- I guess what term are you using to
25 find a percentage? Are ...

1 Q. So -- I'm sorry. Let's go -- whenever we
2 talked about the product that goes in, product
3 comes out that's different, whenever you have
4 those blends that come in, you said that was less
5 than -- I guess less than ten percent because
6 90 percent of the time it's the same
7 specifications in, same specifications out; is
8 that -- was that right?

9 A. All fungible. The fungible movements that
10 we talked about?

11 Q. Uh-huh (affirmatively responds).

12 A. Right.

13 Q. Okay.

14 A. Our delivered barrels would be greater than
15 90 percent fungible movements, correct.

16 Q. Do you know how your customers are billed?

17 A. Our -- our customers are billed based on our
18 tariff, which is a FERC filing.

19 Q. Okay.

20 A. Our rates from point A to point B are filed
21 through FERC. And then, of course, we have all
22 of our products and services -- the services and
23 things that we're offering, those would be billed
24 individually based on those services.

25 Q. Okay. And you're talking -- you mention

1 services. Do you know if as part of what you
2 charge your customers or -- is sales tax part of
3 any of -- any of those invoices?

4 A. I'm not aware of the tax issues.

5 Q. Okay. So of the -- do you know -- with
6 billing, is there any kind of differentiation on
7 an invoice between transportation versus services
8 like blending?

9 A. Yes, we have some differentiation of those
10 services.

11 Q. Okay. So --

12 A. Yes.

13 Q. -- do your customers receive an invoice?

14 A. Yes, customers are invoiced, yes.

15 Q. Okay. And what kind of items would be on
16 an -- a typical invoice for -- let's -- let's do
17 an example first with where you have the -- the
18 blend product -- the blended product that -- or
19 the components that come in and then a blended
20 product is produced.

21 A. Uh-huh (affirmatively responds).

22 Q. How -- could you just tell me what would be
23 on that invoice, a typical invoice?

24 A. There's -- there's parts and services that
25 we bill for. For instance, if we're transferring

1 product from one tank to another in the -- in the
2 operation of the blending, that transfer is
3 billed separately.

4 We also do -- in the blending will do things
5 around just the injection of -- of particular
6 products. We do tank leasing as part of that
7 type of operation, where you're leasing a certain
8 amount of tankage.

9 We also base it off of potentially the
10 delivered barrels into the facilities and things
11 of that nature as far as the blending operation.
12 The time that the tank may be recirculating is
13 another thing that we may bill. So, again, it
14 depends on the service.

15 Q. And so when it's same specifications in,
16 same specifications out, what's on a typical
17 invoice for that kind of product?

18 A. A typical invoice would be their rate.
19 There would also be things associated with
20 product loss allocation and transmix allocation.
21 Those are the primary three things on a customer
22 invoices based on just transportation.

23 Q. So with transmix, you charge your customers
24 to turn that transmix back into a product they
25 can use or --

1 A. We do not charge that. That is part of our
2 services and what we -- what we manage there.

3 MR. ANTLEY: I think that will be it
4 for me.

5 MR. CARTIN: I've got a few.

6 CROSS-EXAMINATION

7 BY MR. CARTIN:

8 Q. I'm Walt Cartin. I represent Aiken and
9 Laurens Counties. We met a little bit before.
10 I'll try to go through these real quickly. And
11 some of these are completely caused by my own
12 ignorance of your business, so if I ask some
13 questions that seem simple, please forgive me.

14 First simple question to you, not so simple
15 to me is, what is a truck rack?

16 A. A truck rack is -- if you look at a truck
17 facility where -- where trucks are going in to
18 bring -- get gasoline to take to retail
19 stations --

20 Q. Uh-huh (affirmatively responds).

21 A. -- that facility is a bunch of tanks and
22 then from those tanks, it goes to truck loading
23 racks. And a lot of the regulations and things
24 for states are associated with truck -- the truck
25 racking itself.

1 Even EPA regulations and things around
2 intake valve deposit additives and stuff like
3 that, they reference that -- that truck rack
4 because that's typically -- once it leaves that
5 facility, it's -- it's a fuel out into the
6 marketplace.

7 Q. Is it a truck -- same thing as a truck
8 terminal?

9 A. Truck terminal is another term, yes.

10 Q. Okay.

11 A. Yep.

12 Q. And is -- just to confirm, Colonial Pipeline
13 does not own any truck tracks or truck terminals;
14 is that correct?

15 (Mr. Luther enters and Mr. McCabe exits at
16 12:24 p.m.)

17 A. We do not operate any normal -- we do have a
18 couple of truck racks that deal with transmix and
19 things, but we're not your traditional truck rack
20 that you would think of, truck terminal/truck
21 rack, no.

22 Q. Okay. None of those truck racks are located
23 in South Carolina; is that fair?

24 A. No.

25 Q. Okay. And so as I understand it -- I think

1 we kind of went over this, but I don't think we
2 said it expressly. The contents of the pipeline
3 are pressurized; is that fair?

4 A. Yes.

5 Q. Okay. Are they different densities such
6 that the products don't mingle together?

7 A. Right. The density helps them to keep
8 separated somewhat, but really the flow of the
9 pipe is turbulent.

10 There's two terms, turbulent and laminar.
11 If you're back in the college days, "turbulent"
12 means that the internal forces keep the product
13 moving through the pipe at basically a similar
14 rate.

15 If you get down to a very low flow rate, you
16 can actually have separation, laminar flow, where
17 you get layers of flow and they -- so -- so if we
18 were operating our system at a very, very low
19 flow rate, we would have issue because our pipe
20 is so big and we would not have turbulent flow.

21 So this -- this -- the turbulence and speed
22 of the product moving through the system --

23 Q. Keeps it from mixing?

24 A. -- helps keep them -- helps keep them from
25 mixing.

1 Q. Okay.

2 A. But they -- they are different gravities.
3 There's a term "API gravity" that you use with
4 petroleum products. So gasoline is typically
5 about a 60, kerosenes are 40, and diesels are
6 high 30's. Water is ten, just to give you a
7 comparison.

8 Q. Okay.

9 A. So water is heavier. Water -- water will
10 settle out to the bottom.

11 Q. Okay. So the pipeline is predominantly
12 underground; is that correct?

13 A. Yes.

14 Q. Is any portion of it aboveground?

15 A. Typically, when we come up to pump
16 stations -- you know, when we come up to
17 facilities -- pump stations, tank farms, those
18 types of things -- and when product is
19 originating, all of those facilities are
20 aboveground.

21 Q. Okay.

22 A. So just the normal -- when it's -- when
23 we're in between all of those, it's underground
24 for safety.

25 Q. Right. So we've talked about these

1 different pollution control things, but I'm not
2 sure anybody's actually said what they are. What
3 is cathodic protection and what does it do?

4 A. I'd like to refer you to our -- to our
5 specialist on defining "cathodic protection."

6 Q. No, and --

7 A. I'm a chemical engineer, but --

8 Q. Is it an electricity thing? Is it a ...

9 A. It uses electricity to provide protection.

10 Q. Okay. Well, how about pipe coatings, is
11 that also for the ...

12 A. Yes --

13 Q. Okay.

14 A. -- can give you the technical ...

15 Q. All right. We talked a lot about blending
16 and injection. Is this literally you're --
17 you've got the pipeline's pressurized, you've got
18 product moving through it, and there's some sort
19 of little flap you open up and shoot something
20 down into it? I'm sure it's a lot more complex
21 than that, but is that --

22 A. Yeah, we've got a pump --

23 Q. Okay.

24 A. -- that's pumping product into the product
25 as it's flowing by.

1 Q. Okay. And I did not understand fully where
2 all that takes place. Does any of that happen in
3 South Carolina?

4 A. Yes, at our tank farms, pump stations, and
5 the delivery facilities.

6 Q. Okay. There's a map over here that's, I
7 believe, Exhibit 14. And this is something that
8 was produced to us and it shows the pipeline
9 running through various portions of South
10 Carolina. The counties are labeled there. The
11 black line there is the pipeline and then it's
12 got different zoning overlays.

13 I don't know if there's something on
14 these -- and feel free to take a look at them --
15 that shows you -- I'm just trying to figure out
16 where along the path the -- the tank stations
17 might be, if you know that, if you could tell
18 from looking at this.

19 A. I cannot tell from a quick look at that.
20 Are our facilities not on the line itself? Do we
21 not list out those facilities?

22 Q. I don't -- I don't know. We've got these
23 last night.

24 A. (Perusing.)

25 MR. MAYBANK: That's a zoning map, so

1 it's -- may or may not have everything you
2 need.

3 THE WITNESS: Well, for instance, on
4 the -- on the second page, it has our Belton
5 Junction.

6 BY MR. CARTIN:

7 Q. Okay.

8 A. These are our two -- it appears to be that
9 these are our two main lines, line one and two.

10 Q. Okay.

11 A. Here's our Belton Junction. Here -- this is
12 our line 29 --

13 Q. Okay.

14 A. -- that is headed South. I believe some of
15 these little small jiggly lines are actually the
16 delivery lines that are going to the terminals
17 that are right there, the truck terminals --

18 Q. Okay.

19 A. -- that are right there at Belton.

20 Q. And would Colonial own those lines going out
21 to the truck terminals? Okay.

22 A. Yes.

23 Q. And let me ask you. So there are some
24 little -- it looks like we've got Belton Junction
25 there. Is that the name that you have for your

1 tank storage facility there?

2 A. Yeah. We'll call our -- a lot of our
3 facilities, we call them "junctions" --

4 Q. Okay.

5 A. -- just from a standpoint that barrels are
6 coming into and out of.

7 Q. Okay.

8 A. So it's where a bunch of pipes are joining.

9 Q. All right.

10 A. It's a "junction" term, right?

11 Q. And so just -- just so I understand, all the
12 blending activities or injection activities, to
13 the extent they occur in South Carolina, would
14 happen at a similar location like the Belton
15 Junction here.

16 A. Belton Junction and the pump -- and the pump
17 stations themselves.

18 Q. Okay.

19 A. And I didn't -- I haven't noticed any of
20 those on the map.

21 Q. But there are only three --

22 A. And then --

23 Q. -- of those in South Carolina?

24 A. And then the delivery facility, also.

25 Q. Do you own that delivery facility?

1 A. We do own the delivery facility.

2 So what happens is, is the pipeline comes
3 into the facility. There's piping, manifold,
4 control systems, everything there that then
5 divert product to each of the individual truck
6 terminals.

7 Q. Okay. So --

8 A. Metering and all of those -- those --

9 Q. So there could be multiple truck terminals
10 listed around your --

11 A. Delivery facilities, correct. I believe,
12 for instance, in Augusta, I think there are five
13 terminals that we deliver to in that area.

14 Q. Okay. And you mentioned pump stations. I
15 think you said there were three in South
16 Carolina?

17 A. Three -- three stations, yes, on lines one
18 and two.

19 Q. Okay.

20 A. And then all of the other pump -- all the
21 other pumps and motors would be actually in the
22 tank farms themselves --

23 Q. Okay.

24 A. -- Belton and Spartanburg.

25 So -- so at the delivery facility, we have

1 an injection pump that's doing that blending for
2 us --

3 Q. Gotcha.

4 A. -- that's injecting that product at the
5 delivery facility, so.

6 MR. CARTIN: You can mark that as -- I
7 don't know what's -- 16?

8 THE COURT REPORTER: 17.

9 MR. CARTIN: 17? Okay.

10 (RESPONDENT'S EXHIBIT 17 WAS MARKED FOR
11 IDENTIFICATION PURPOSES)

12 BY MR. CARTIN:

13 Q. And, for the record, this is Colonial 0452,
14 which was produced to us. I wish I had a better
15 quality picture, but I think this is probably
16 close to what it looked like when we got it.

17 And I just want to see if you can tell me on
18 this map, kind of show me -- or this overhead
19 projection, I presume this is a tank storage
20 facility?

21 A. Yes, it appears so. Yes, sir.

22 Q. Okay. What are the other -- what's around
23 it? If I can tell what the big round things are,
24 I presume those are your storage tanks?

25 A. The pump -- yeah, the -- yeah, the storage

1 tanks. And so -- do you -- do you know what
2 facility this is or ...

3 Q. Do not.

4 A. I do -- I do not, so I'm speculating.

5 Q. Okay.

6 A. But, typically, what you would see is
7 there's a little square, black square there, that
8 might be the control building.

9 Q. Okay.

10 A. And then that's where all of the controls
11 equipment is, our -- typically our operators are
12 positioned, and then it looks like the other
13 things around that would be the manifolding,
14 pumping, piping, and things to support an
15 operation --

16 Q. Okay.

17 A. -- for that tank farm.

18 Q. What would -- would this over here -- so
19 we've got this sort of a "V" as we're holding it
20 with the Bates stamp at the bottom of the page.
21 There's a "V" made by the road that sort of
22 points to the left as you're facing the page.

23 On the other side of the road there, there's
24 this separate little set of tanks, a cluster of
25 tanks or something. Is that something owned by

1 Colonial or is that -- would that be, for
2 instance, a truck rack?

3 A. Well, again, I --

4 Q. Can't tell?

5 A. I can't tell that this is even Colonial's
6 picture.

7 Q. Okay.

8 A. But it does appear to be a different
9 facility --

10 Q. Okay.

11 A. -- across the road.

12 (RESPONDENT'S EXHIBIT 18 WAS MARKED FOR
13 IDENTIFICATION PURPOSES)

14 Q. You've been handed what is marked Exhibit 18
15 and this is Colonial 0537. It essentially has --
16 this appears to be a much more simplified,
17 not-to-scale representation of your pipeline; is
18 that fair?

19 A. Correct.

20 Q. Okay. And you've got the Belton Junction
21 referenced here, the Spartanburg DF, Charlotte
22 Douglas Airport DF. So I presume "DF" on this
23 stands for "distribution facility;" is that --

24 A. Delivery facility.

25 Q. Okay.

1 A. So Athens is an old delivery facility where
2 we actually used to have a tank farm there and
3 that tank farm has been mothballed and we go
4 directly to the shippers there now. We redid the
5 piping and everything there. So it's a little
6 bit different animal now than it used to be.

7 And then Spartanburg, there's our tank farm
8 there (indicating). Based on you giving me this
9 map now, I know the three names of the -- of the
10 pump stations --

11 Q. Okay.

12 A. -- in South Carolina which are Anderson,
13 Simpsonville, and Gaffney.

14 Q. Okay. And so I presume -- am I safe to
15 assume those are in Anderson, Simpsonville, and
16 Gaffney?

17 A. Typically, they are close to the towns --

18 Q. Okay.

19 A. -- even though sometimes names got on a
20 location and we don't know why they're there
21 or ...

22 Q. That's why I asked the question.

23 A. We're closer here than we are there. How
24 did we get that name?

25 Q. Right. Right.

1 A. But, again, when you're built in 1962, so --

2 Q. Okay.

3 A. -- some of the names don't quite match, but
4 generally they do.

5 Q. And so do the little -- circled around a
6 cylinder, does that indicate where a storage
7 facility is on this map?

8 A. Based on the map, it appears that -- that
9 the -- that that is a tank farm. Those are tank
10 farms. Athens was -- kind of was a tank farm.

11 Q. Okay.

12 A. So I think the diagram hasn't been updated,
13 so to speak, to say Athens is kind of no longer
14 one. But both Belton, Spartanburg, and Charlotte
15 are -- are tank farm facilities.

16 The reason we don't call Spartan -- the
17 reason on this map we don't call Spartanburg and
18 Charlotte a tank farm, a junction, is because
19 there is no specific pipe that leaves that.

20 Q. Uh-huh (affirmatively responds).

21 A. So, from a scheduling standpoint, when we
22 come in off of one pipe and go out off of
23 multiple other pipes that aren't local delivery
24 lines, we call that a "junction." It's a
25 scheduling nomenclature that our systems use and

1 how we talk with our customers.

2 Q. Okay.

3 A. The delivery facilities, basically, those
4 are the tank farm facilities that go -- and from
5 there, they go directly across the fence lines to
6 those terminal -- truck terminals --

7 Q. Okay.

8 A. -- that are at those locations.

9 Q. And we've got -- it says lines and you've
10 got L1, L2, L21A, and L29, and then I presume
11 there's a pressure to the right of like L1 and a
12 type of gas or kerosene or -- can you explain how
13 to read that little legend there?

14 A. This one up here?

15 Q. Small one at the top left.

16 A. Sure. So line one, L1, 40-inch diameter,
17 typically ships gasoline.

18 Q. Uh-huh (affirmatively responds).

19 A. And its flow rate is roughly 52,000 barrels
20 per hour.

21 Q. Okay.

22 A. And then -- so line two, we call it our
23 "distillate line," which is diesels, heating
24 oils, kerosenes; again, 42,000 barrels per hour.
25 Line 21A, that is an old line that's been

1 decommissioned. It's no longer operating. It's
2 idled.

3 Q. Okay.

4 A. And then line -- that line ran from Belton
5 to -- to North Augusta.

6 Q. Okay.

7 A. Then we have line 29, which is our 16-inch
8 mix product line. It moves both gas, kero, and
9 diesel.

10 Q. Now, of all these different lines, are
11 some -- some containing -- I'm going to say the
12 word "fluid;" that's probably not what you call
13 it -- fluid that will be injected or otherwise
14 mixed by you, Colonial Pipeline, and some are
15 not?

16 Meaning, some of these things, these lines
17 are just passing on product as you receive it and
18 it's going to this -- you get kerosene in,
19 kerosene comes out?

20 A. Yeah, our --

21 Q. Or all of this fluid traveling through these
22 pipelines, at some point at one of your
23 facilities receive an injection or a mix of
24 something?

25 A. So everything flowing through the pipes is

1 probably -- is likely to receive some -- some
2 handling, some injection.

3 And so anything going through our tank
4 farms -- the thing to remember is, is -- in
5 particular, you use the term "jet," "jet fuel."
6 Jet fuel is very pristine fuel. Thou shalt not
7 put anything in jet fuel, from a quality
8 standpoint. So it's a fuel that we have to
9 protect.

10 So a lot of the interface of material that
11 we're getting associated with jet fuel that we're
12 then processing, re-injecting back into the
13 gasoline diesel.

14 Q. Gotcha.

15 MR. MAYBANK: Understand that?

16 MR. CARTIN: I'm going to have to read
17 the transcript a couple of times, Bernie,
18 but I will by the time it counts.

19 BY MR. CARTIN:

20 Q. So if we look at South Carolina counties
21 here, you've got Anderson, Greenville, Laurens,
22 Spartanburg, Cherokee, and York listed.

23 Just take Anderson, for example, how -- how
24 do I understand -- you've got L1-2, L21A, and
25 L29. Then you've got a list of either towns or

1 geographic locations, like Saluda River, Savannah
2 River, Belton, Anderson. How -- what does that
3 mean when you look at this and you read that
4 across there for Anderson? What does that mean?

5 A. I don't -- I don't know why they listed
6 those other particular items out there.

7 Q. Uh-huh (affirmatively responds).

8 A. I'm not sure. It -- it appears -- I'm
9 really not sure where they're going. Obviously,
10 the -- the Anderson, the Simpsonville, the
11 Gaffney's, those are our pump station facilities,
12 I believe. But why they listed river
13 information, I don't know.

14 Q. Does that mean it passes -- I presume
15 your --

16 A. It probably crosses those rivers --

17 Q. Crosses the river?

18 A. -- potentially, but I -- I'm not sure.

19 Q. Would it cross over those rivers above them
20 or would it go underneath the river?

21 A. Always below.

22 Q. Always below the river. Okay. There should
23 be a document there to your left that says "DHEC"
24 at the top, and I cannot recall what the exhibit
25 number was on that.

1 THE COURT REPORTER: 16.

2 BY MR. CARTIN:

3 Q. Take the one that has the exhibit number on
4 it, Exhibit 16.

5 A. (Witness complies.)

6 Q. And, Mr. Brown, at the bottom of the page,
7 you'll see what's called a Bates label. All the
8 way at the bottom, it says DHEC_Subpoena_Response
9 and then it has a series of numbers after it. Go
10 to the page that has a seven at the end of that.

11 A. (Witness complies.)

12 Q. Okay.

13 A. Okay. I'm there.

14 Q. All right. And if you look at this list
15 here, it says "Colonial Schedule X Filings."

16 There are two broad categories with subcategories
17 underneath them. First broad category says
18 "Transmission Pipeline." Do you see that -- that
19 section?

20 A. Yes, I see the section.

21 Q. And then -- and then you see one, and item
22 number two, Roman numeral two, it says "Storage &
23 Terminals." Do you see that section?

24 A. I do.

25 Q. Okay. As I read this chart, am I to presume

1 that the sub item one, A, to include pipeline
2 cathodic protection, pipeline coatings, automatic
3 shut-off valves, all of that equipment will be
4 part of the transmission pipeline; is that fair?

5 A. Again, I'm not -- I didn't prepare this and
6 I'm not sure. I wasn't associated with what
7 that's referencing or not.

8 Q. And just in general terms, though, your
9 understanding of Colonial's pipeline and its --
10 how it's set up, is it your understanding that
11 the pipeline cathodic protection, pipeline
12 coatings, automatic shut-off valves would all be
13 part of what could be referred to as the
14 "transmission pipeline"?

15 A. Those are core elements in all of our
16 facilities. Tank farms, outbound lines, all of
17 those things, they're core elements to our entire
18 system, so.

19 Q. And just so we're being -- I'm talking about
20 where these things are physically present.

21 A. Right.

22 Q. I certainly understand that the whole system
23 working together --

24 (Simultaneously Speaking)

25 A. They're -- they're present in our tank farms

1 and --

2 Q. Okay.

3 A. -- our -- our pump stations and our delivery
4 facilities.

5 Q. Okay.

6 A. Those things are all integral to supporting
7 our entire infrastructure, not just a piece of
8 pipe running -- running across the country.

9 But anywhere where our pipe is, anywhere
10 where our facilities are, cathodic protection,
11 coatings, and valving, relief valves, all of
12 those protective valves, all of -- all of those
13 things are -- are present at all of our
14 facilities.

15 Q. So that will be -- everywhere that there is
16 pipeline, you're going to find those three items
17 I just read out; the pipeline cathodic
18 protection, pipeline coatings, automatic shut-off
19 valves?

20 A. Yeah, those are present -- those are present
21 at all of our facilities. Tank farms, pump
22 stations, delivery facilities --

23 Q. Okay.

24 A. -- all of those things are -- are present.

25 Q. Let's look at the second category and we've

1 got wastewater pollution control equipment,
2 stormwater pollution control, secondary
3 containment, and then tank internal/external
4 floating roofs. Do you see those, how those are
5 broken out?

6 A. Yes, I do.

7 Q. Okay. And that's set forth under the broad
8 category of "Storage & Terminals"? Is that
9 correct based on your reading of the chart?

10 A. That's the way it's broken down in the
11 chart.

12 Q. Okay. And are all of those things
13 located -- well, first off, do you know what all
14 those things are referencing?

15 A. At a high level, yes.

16 Q. Okay. And all those would be located at the
17 storage or terminal facility?

18 A. To my knowledge, yes. Not exclusively, but
19 yes, at those locations that you listed, yes.

20 Q. Other than those locations of, you know,
21 storage terminals and tank farms, where else
22 would they be?

23 A. Again, not -- not knowing a detailed portion
24 and exactly how they were terming these and
25 defining them, I don't feel able -- I'm able to

1 answer that question.

2 Q. Okay. From an operation standpoint, is
3 Colonial Pipeline ever undergone an analysis to
4 determine from a monetary impact perspective how
5 cathodic protection, pipeline coatings, and the
6 other pollution control -- I can't remember off
7 the top of my head -- automatic shut-off valves
8 impact the bottom line at Colonial Pipeline? Not
9 necessarily -- setting aside the environmental
10 concerns, but --

11 A. I'm not aware of a study like that.

12 Q. Okay. Does it help you prevent the loss of
13 product?

14 A. Oh, most certainly.

15 Q. Does it help you make sure that product is
16 transmitted efficiently?

17 A. Yes.

18 Q. If you have these things, I'm guessing
19 there's some protection from lawsuits that you
20 get as a result of -- you get sued less if you
21 cause less problems, right?

22 A. Not having problems is a good thing.

23 Q. Okay. So there are benefits to Colonial
24 Pipeline aside from the environmental impact,
25 correct?

1 A. Being -- being a good company, a good
2 steward, meeting regulations, all of those things
3 are a requirement. It's not an option, so to
4 speak.

5 Q. Have you ever heard of the SUPERB program?

6 A. I'm not familiar with that.

7 Q. Or CERCLA, Superfund, or anything like that?

8 A. No, I'm not familiar with that -- with those
9 terms.

10 MR. CARTIN: All right. I think that's
11 all I have for Mr. Brown.

12 MR. MAYBANK: Michael, you got
13 anything?

14 MR. KOZLAREK: I do. I'll be pretty
15 brief.

16 CROSS-EXAMINATION

17 BY MR. KOZLAREK:

18 Q. Mr. Brown, I apologize. I'm the voice from
19 the speaker phone. My name is Michael Kozlarek.
20 I represent four of the other counties that are
21 involved: Abbeville, Anderson, Greenville, and
22 York.

23 I apologize. A couple of my questions may
24 seem repetitive, probably just because I was on a
25 speaker phone and either didn't quite hear

1 answers or wasn't sure exactly what the answer
2 was. So I apologize, again, if a couple of these
3 seem duplicative of things you already answered,
4 but bear with me.

5 I thought I heard you say earlier that the
6 products that you transport could not be
7 transported by any other method, and I'll give an
8 example. Let's say tanker truck. Did I mishear
9 you or is that what you said?

10 A. No, you misheard me. I think the question
11 was centered around could -- could those other
12 transportation modes provide the same services
13 that Colonial does, as I -- as I believe what the
14 vein of that question was.

15 Obviously, those -- those modes of
16 transportations can transport the same products
17 that we do, but as far as offering the same
18 services and supporting the same processes, that
19 would -- that would be a "no."

20 Q. Okay. So -- so a tanker truck or a tank on
21 a -- on a railcar could transport the same types
22 of product.

23 A. Yes.

24 Q. Okay. Would you imagine that those would
25 also have some sort of corrosion protection and

1 automatic shut-off valves or some other type of
2 shut-off valve?

3 A. I'm not associated with those modes of
4 operation, but I'm sure that they would have some
5 safety-related things associated with them;
6 whether it's exactly those types of things or
7 not, I'm not sure.

8 Q. Okay. Could the tanker trucks or the -- or
9 the railcars in my sort of hypothetical, could
10 they also carry multiple products at the same
11 time, much like the pipeline?

12 A. Well, for instance, with rail, every --
13 every individual railcar in theory could
14 transport something differently.

15 I know in certain trucks, the trucks
16 themselves, even though it looks like it's one
17 big container, actually is broken -- are broken
18 up into multiple containers within the truck
19 itself.

20 Q. And I'm sorry. Let me -- let me try to
21 clarify this and I think this is -- this may be
22 beyond my intelligence. But what I thought I
23 heard you say earlier is that in the pipeline,
24 there may be multiple pipes of product at the
25 same time. There may be diesel fuel and

1 gasoline, for example. Is that -- again, did I
2 hear you correctly when you said that?

3 A. Yes. Yes, there are.

4 Q. Okay. So is it possible, then, a tanker
5 would with just one open container, as opposed to
6 multiple sections, could carry something
7 similarly?

8 A. No, the mixing would -- the mixing would
9 completely -- basically take those two products
10 and completely mix them together, which typically
11 is going to end up with a -- with a product of
12 lower denomination, so to speak, the product of
13 lower quality.

14 Q. I see. And so then I completely
15 misunderstood transmixing. Could you walk me
16 through that again?

17 A. Sure. When -- so when the two products --
18 when we have these multiple products in the pipe,
19 so they -- these two types of products will come
20 in contact with each other.

21 When -- when those products come in contact
22 with each other, it creates what we call an
23 "interface," and in an interface, there's mixing
24 of those two products. And during that mixing of
25 those two products, it creates an interface there

1 that can be either compatible or noncompatible.

2 For instance, if I -- if I have an 87-octane
3 coming in contact with a 93-octane gasoline, I
4 can take that interface and put it into 87 octane
5 gasoline and the 87-octane's on spec and I did
6 not lower the octane of the 93-octane gasoline.

7 So with gasoline and diesel, those two
8 coming in contact, now I've got to -- I've got an
9 interface that's incompatible with either way. I
10 cannot put oil in gas and I cannot put gas in
11 oil.

12 And when we have that incompatible
13 interface, we -- the term we tend to use with
14 that is "transmix." And with transmix, we have
15 to isolate that product and then re-inject and
16 manage that and basically support the removal and
17 disposal of that product, or inject it and blend
18 it into gasoline.

19 Q. So -- and, again, I apologize. I thought
20 what I heard you say is, in a tanker situation,
21 if they put one type of product in the tank and
22 then they want to put another type in, they would
23 have to completely clean out the tank before they
24 could put the new product in; is that what you
25 said?

1 A. Yes, depending on the types of products
2 they're moving.

3 For instance, if -- if I were -- if I had
4 premium gasoline in my truck and I emptied out
5 the truck and now I want to put 87-octane
6 gasoline in the truck, then I'm fine. I don't
7 have to clean it out, so to speak. There might
8 be some residual 93-octane product in there.

9 But on the flip side, if I have a truck that
10 I'm using to transport Ultra Low Sulfur Diesel,
11 and then all of a sudden I want to switch to
12 gasoline, I have to ensure that all of that
13 diesel is out of that truck.

14 If I don't, if I don't go through a process
15 to clean it or verify that it's completely empty,
16 then when I put the gasoline in there, any
17 residual diesel that's left will -- will cause me
18 specification issues, and I might hurt my octane
19 or might hurt my distillation point of the
20 gasoline.

21 Q. Could the pipeline do the same thing?
22 Basically, you could transmit one type of
23 product, just that product alone, clean out the
24 pipe, and then transmit a separate product behind
25 it?

1 A. So -- so the first question would be is:
2 What do I clean out the pipe with? The -- the --
3 you know, the theory behind our pipe is, is I
4 need volume to be able to -- I need volume coming
5 in to be able to deliver volume going out.

6 The pipe -- the pipe is just kind of -- kind
7 of be the constant. There will always have
8 product in the pipe. So to get product out of
9 the pipe, I've got to push product into the pipe.

10 To say could I do that? Could -- I could
11 inject nitrogen, potentially, into the pipe and
12 purge out the entire pipe and then fill it back,
13 but from an operational standpoint, that would
14 be -- is very impractical.

15 Q. Understood. I'm just trying to figure out
16 what the -- what the possible reality is, not
17 whether it makes operational and efficient sense.

18 So -- so, really, transmixing products is a
19 measure of trying to keep the pipelines full, not
20 necessarily a measure of really anything else.
21 It's just trying to keep product in the pipe.

22 A. Say the term again? I'm not sure. You used
23 a term "transmixing" or ...

24 Q. So pushing product through the pipe and
25 having a separate type of product behind it or in

1 it at the same time where those -- and I forget
2 the word you used, but where there's an
3 interaction between two products, that's really
4 just a mechanism of trying to keep the pipes
5 full.

6 A. That is -- that is how to operate a
7 pipeline, correct.

8 Q. Okay. So the three types of assets that
9 we've been talking about that are claimed exempt,
10 the auto shut-off valves, the cathodic
11 protection, and the pipe coatings, what do those
12 have to do with transmixing?

13 A. They -- those particular items do not. I
14 mean, trans -- dealing with transmix and managing
15 transmix is a process -- is a process that we do
16 that produces fuel that basically manages -- it's
17 a managing our operation of the -- of the system.

18 Q. And the other thing that I think I heard you
19 mention, although I've heard two different --
20 what I thought were two different answers.

21 Originally, when you're speaking at the very
22 beginning, I thought I heard you say that you do
23 blending for one customer but it's not in South
24 Carolina. And then later, I thought I heard you
25 say that you do some blending or maybe you used

1 the word "injection" at -- at pump stations and
2 at tank farms and at the delivery facilities; is
3 that correct? Or maybe I should say, which one
4 of those is correct?

5 A. Yeah. Well, let's -- let's double back and
6 talk -- talk through those. We do -- we have
7 specific locations where we're doing specific
8 types of blending across our system.

9 We're doing biodiesel blending, butane
10 blending, and then we're also doing a blending
11 operation in Louisiana where we're taking
12 different types of blendstocks and blending them
13 up for -- for customers. So those are -- those
14 are our primary blending services.

15 Then the other blending service that we're
16 doing as part of our operations of our -- of our
17 system and our facilities is, we're doing the
18 transmix blending that we talked about.

19 So that's -- that's separate. That's how to
20 separate those -- those items as far as blending
21 and how we're creating product and where we're
22 doing that.

23 Q. Okay. So the transmix blending is the
24 blending that I -- I'm assuming we were talking
25 about when we were talking about it in South

1 Carolina at the various facilities in South
2 Carolina; that is --

3 A. Yes.

4 Q. -- pump stations, delivery facilities, and
5 tank farms. That would be transmix blending
6 only.

7 A. Yes.

8 Q. Okay. So that kind of blending is basically
9 just because of the way you operate a pipeline.

10 A. Yeah, that's how to operate the facilities
11 and ensure quality of the product in doing those
12 things, correct.

13 Q. Okay. And in doing that, the three types of
14 claimed exempt property, what specifically do
15 they -- how do they impact transmix blending?

16 A. I'm not -- I'm not exactly sure the question
17 as far as impact transmix blending.

18 Q. Well --

19 A. There --

20 Q. -- what is the pipe coating have to do with
21 transmix blending? How does that -- how does
22 that help you or hurt you? How does that change
23 taking two products that may have touched and
24 turning them into two separate products again and
25 whatever that -- whatever that third mixed

1 product is that you sort of got to either dispose
2 of or re-separate in some way?

3 A. The three items that you mentioned, the
4 cathodic coating and the -- the pressure valves,
5 those are an integral part that allows our
6 facilities and our equipment and everything to
7 operate.

8 So as far as how they're tied together, we
9 need those core foundation things to be able to
10 operate our equipment and perform the services
11 that we do. I --

12 Q. All right. Let me try to ask it --

13 A. I'm not sure that --

14 Q. Let me try to ask it a different way. If
15 the pipe coating was not on the pipe, would the
16 pipe still transmit fluid?

17 A. The pipe coating -- well, yes, the pipe
18 coating could -- I mean, the pipe could. But,
19 again, without the coating, the pipe would cease
20 to operate correctly. So I'm not -- I'm not sure
21 what you mean. Hypothetically --

22 Q. I think you do know what I mean, but --

23 (Simultaneously Speaking)

24 A. Hypothetic -- yeah.

25 Q. Without the pipe coating, the pipe would

1 still be a pipe --

2 A. Yes --

3 Q. -- and fluid would still flow through the
4 pipe.

5 A. Correct. Pipe -- yes, a piece of pipe,
6 correct.

7 Q. With the cathodic protection, correct?

8 A. Correct. Correct.

9 Q. And the same with -- and the same with the
10 shut-off valves. As I understand the testimony
11 earlier, those -- that those assets have not been
12 in place since as late or as early as 2006 and as
13 most -- the most recent, I think, installation
14 was in 2016.

15 So the pipeline built in the fifties, I
16 think it was, or the sixties, operated as a
17 pipeline without any of those assets, correct?

18 A. No. No, that's not correct. You're saying
19 that our pipeline in the sixties did not have
20 those types of things?

21 Q. I'm asking. I believe the testimony from
22 Mr. Fuqua was that those assets were installed
23 between 2006 and 2016.

24 A. I believe -- I believe the specific assets
25 that he's requested were installed from that, but

1 those types of asset -- those types of assets,
2 cathodic protection, coating, shut-off valves,
3 things of that nature, have been present on
4 our -- present on our system since original
5 construction.

6 Q. Okay. I think we're almost done. Again, I
7 apologize for some of this being what may seem to
8 be a repeat, but when you talked about the -- I
9 think you said "central control." And, again, I
10 apologize if I'm -- I don't want to misstate it.
11 I think you said that the control of our
12 facilities or at least most of them was centrally
13 located, I think you said, in Alpharetta; is that
14 correct?

15 A. Again, for our main line -- our main line
16 controls, line one and two and line 29, those
17 lines are being operated from our Atlanta control
18 center.

19 The tank farm, the individual tank farms and
20 their deliveries there at the tank -- each of the
21 tank farms, that's all being controlled from the
22 local operations at the tank farms themselves.

23 Q. Okay. Okay. Thank you. That is very
24 helpful. I didn't -- I didn't understand that
25 originally.

1 How does -- how did the automatic shut-off
2 valves tie into the centralized control? What's
3 that look like? What -- how do they operate?

4 A. The -- the control center in Atlanta has the
5 ability to basically shut that valve in the event
6 of any kind of integrity issue or in the event of
7 even a potential integrity issue. So they have
8 control over that valve so that in certain
9 conditions, that valve can be closed very
10 quickly.

11 We also have -- we also have monitoring --
12 our control systems and things are monitoring the
13 operation of the pipe. They're monitoring
14 pressures, temperatures, and things. So we're
15 monitoring the pipe to help support our operator
16 controller.

17 And so, in certain cases, our control
18 systems may begin a shutdown of the pipe based on
19 information that it's receiving and things and so
20 that's where that auto shut -- the shut-off valve
21 and things assist and help with.

22 So it allows us to respond immediately to
23 things that we -- that may be an integrity event
24 or that are an integrity event to minimize the
25 impact of those events.

1 Q. Okay. So it -- so if -- we keep calling
2 them auto shut-off, but in reality, it's both an
3 auto shut-off and a controlled shut-off by the
4 operators in Atlanta.

5 A. Correct. Now, of course, the -- of course,
6 you can walk up to the valve and open it and
7 close it and things of that nature. But,
8 generally, the normal operation of that is going
9 to be controlled from the Atlanta control center
10 on the -- on the lines that Atlanta control
11 center is controlling, right, which is line one
12 and --

13 Q. Sure.

14 A. -- two and 29.

15 Q. Okay. And then I think this may be my last
16 question, which means as a lawyer, I probably
17 have three more, so.

18 The cathodic protection, on a very high
19 level, can you explain what that is? I think
20 Mr. Cartin may have asked you about that a little
21 bit. But, again, I'm the slowest of the three
22 lawyers -- well, four including Bernie. And so
23 if you could just walk me through, again, at a
24 very high level what that is and what it does.

25 A. Well, I know we've got someone else to help

1 you with those details, but basically it just
2 protects the -- it protects the pipeline from --
3 from corrosion.

4 MR. KOZLAREK: Okay. Okay. I think
5 that is it. I appreciate your time. I know
6 this is no fun for anybody.

7 MR. MAYBANK: All right. I'll jump
8 right in.

9 CROSS-EXAMINATION

10 BY MR. MAYBANK:

11 Q. Mr. Antley asked you if you would define
12 some of your facilities as a, quote, plant, end
13 quote. Did he define what a "plant" was? Do you
14 know what he was referring to when he asked you
15 if it was a plant -- quote, plant, end quote?

16 A. No, sir. I think we -- basically, we're
17 terming as a major facility.

18 Q. Okay. All right. So let's turn to Colonial
19 Pipeline nationally. When was Colonial Pipeline
20 started, the original company?

21 A. Original construction and completion was
22 1962 and I think they were moving their first
23 barrels in 1963.

24 Q. Okay. What do they -- what does Colonial
25 Pipeline do on a national basis today? Just give

1 us a quick national basis.

2 A. A national basis as far as, is we deliver
3 2.6 million barrels of product from the
4 refineries primarily in the Gulf Coast to the
5 Northeast.

6 Q. And what are your pipelines nationally, not
7 South Carolina?

8 A. Pipelines nationally, we have our main
9 lines, line one and two --

10 Q. Uh-huh (affirmatively responds).

11 A. -- that move from Pasadena to Greensboro,
12 North Carolina. From Greensboro, we have a line
13 four that runs into the Virginia/Maryland market,
14 and a line three that runs from Greensboro up
15 into the Linden, New Jersey, and serves both the
16 Philadelphia area and the New Jersey/New York
17 area.

18 Q. Okay. What is your CapEx in the United
19 States today?

20 A. I do not -- I do not know that exact number.

21 Q. Would it be as high as 3 billion?

22 A. Would not surprise me.

23 Q. Okay. How many states do you do business?

24 A. We do business, I believe it's 13 states.

25 Q. Are you a public company?

1 A. We are not. We are a privately-held
2 company.

3 Q. Okay. What federal agencies regulate
4 pipeline companies like Colonial?

5 A. Primarily for -- for my side of the
6 business, the shipper side of the business, it's
7 Federal Energy Regulatory Commission, FERC.
8 There's also PHMSA and I will let --

9 Q. And what -- what --

10 A. -- our specialist say that name because I
11 always get it wrong and -- Pipeline Hazardous
12 something.

13 Q. All right. And are you regulated by the
14 EPA?

15 A. EPA and OSHA.

16 Q. Okay. And are you subject to state and
17 federal environmental laws -- pipeline companies
18 subject to them?

19 A. Yes, sir.

20 Q. All right. And who are your major
21 competitors nationally? You briefly mentioned
22 that, but ...

23 A. Plantation is a pipeline that runs in our --
24 our own -- in our corridor. So they are what
25 I'll call a very direct competitor to us. Also

1 truck, rail, barge, ship is -- is another mode --
2 modes of transportation, are competitive with
3 Colonial.

4 Q. Okay. And would that be true -- I asked you
5 at a national level. That would be true all in
6 South Carolina, as well?

7 A. Correct.

8 Q. Okay. When did Colonial start business in
9 South Carolina? If you could give us a very
10 brief history of getting started in South
11 Carolina.

12 A. Well, again, the original construction of
13 the pipeline in 1962 would be when we -- when we
14 began shipping products through and to South
15 Carolina.

16 Q. Okay. And was it basically the same
17 pipeline today as it was in '62? Obviously,
18 you've made improvements, but was it --

19 A. Right. Well, in the original construction
20 in 1962, it was a single line that ran from
21 Pasadena all way to the New York Harbor.

22 And then in the 1980's -- late seventies,
23 early eighties, we expanded our system. We added
24 another pipe from Pasadena to Greensboro, and
25 then from Greensboro, we added another piece of

1 pipe from Greensboro to the Baltimore area, which
2 is currently what we call our line four.

3 So in the past, we were one line going all
4 the way; then we added another line going from
5 Pasadena all way to Baltimore.

6 Q. Okay.

7 A. So now we have our two main lines, line one,
8 line two, lines three and four.

9 Q. All right. And then I think we all got a
10 little confused about what you do nationally
11 versus what you do in South Carolina. So I'm
12 going to try and narrow that down a little bit.

13 So in terms of making a buck in South
14 Carolina today, you do no refinery in South
15 Carolina anywhere, correct?

16 A. Correct.

17 Q. But you do transport in South Carolina.

18 A. Yes.

19 Q. You do store in South Carolina.

20 A. Yes.

21 Q. Do you regrade fuel in South Carolina?

22 A. We have.

23 Q. Okay. And what is regrading?

24 A. Regrade is where we -- we're able to change
25 a label of the product, the product's grade.

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

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

9 Q. Okay.

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

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

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

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

16 A. We do.

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

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

1 flowing by.

2 At our delivery facility, we would be
3 putting that back into product as it's being
4 delivered. And then at the tank farm facilities,
5 we would be primarily doing that as product is
6 coming into the tank farm and going into the
7 tanks and doing -- doing that there.

8 Q. Okay. So would it be fair to say there's
9 blending at the tank farm, the pump station, and
10 at the delivery point, correct?

11 A. Yes, sir.

12 Q. Okay. Do you drain water or otherwise
13 separate the fuel?

14 A. Water -- we -- we typically drain water off
15 of our tanks; that's a normal kind of operation
16 to ensure the quality of the product.

17 So we normally go out and we use the term
18 called "sting," which -- which basically means go
19 out -- go out and remove the water off of the
20 bottom of the tanks. That -- and so that's
21 something that we typically and regularly do as
22 we move product through our system.

23 Q. Okay. We've -- all -- all four of us
24 lawyers have used -- have occasionally used the
25 word today, but what's under appeal is 2017 and

1 '18. Your business is very similar today as it
2 was in 2017 and '18; is that correct? No major
3 expansions or anything of that nature?

4 A. No, sir.

5 Q. So references to today --

6 A. It's similar, yes.

7 Q. -- would be basically the same as 2017 and
8 '18?

9 A. Yes, sir.

10 Q. Okay. All right. So let's go with CapEx.
11 You've given us a little bit of your CapEx in --
12 in nationally. Let's describe your physical
13 facilities in South Carolina and why don't we --
14 to speed it up, why don't we turn to tank farms.
15 How many tank -- and what is a tank farm and how
16 many do you have?

17 A. We have two tank farms, Belton and
18 Spartanburg, in South Carolina.

19 Q. Okay. And what do tank farms do?

20 A. Tank farms receive petroleum products.
21 These two facilities receive petroleum products
22 from our -- our main lines, lines one and two,
23 into tankage and then that product is delivered
24 out from that tankage to multiple delivery lines
25 to customers.

1 Q. Okay. So you have two -- two major tank
2 farms, Belton and Spartanburg, correct?

3 A. Yes, sir.

4 Q. And how many tanks -- do you have gas tanks
5 or distillate tanks do you have in Spartanburg?

6 A. Again, I'd have to refer to the --

7 Q. Right.

8 A. -- the document that we're putting together
9 with the details.

10 Q. Okay. Would it -- would 13 in Spartanburg
11 sound about right to you?

12 A. Yes, sir.

13 Q. And that number's not on any of the
14 paperwork we've handed around, is it? I don't
15 believe it is.

16 A. No, sir, not that I've seen.

17 Q. Okay. So let's next turn to pump stations.
18 How many pump stations do you have?

19 A. In South Carolina --

20 Q. Right.

21 A. -- we have three pumps -- three pump
22 stations on our lines one and two. There's
23 obviously pumps and equipment in -- in our tank
24 farm facilities.

25 Q. Okay. So Anderson -- how many pump stations

1 would Anderson have; do you know?

2 A. Pump stations that Anderson have -- the
3 Anderson facility has pumps on both lines one and
4 two.

5 Q. Okay. And how big are those pumps?

6 A. They range anywhere from 1500 horsepower to
7 5,000 horsepower.

8 Q. Okay. Do you have any in the 20 to 22,000
9 horsepower range?

10 A. Well, again, the combination of all of the
11 pumps on that station add up --

12 Q. Okay.

13 A. -- to that -- to that number.

14 Q. Okay. All right. On that -- on the main
15 line, how many individual pumps do you have? You
16 have -- I assume you have large pumps and small
17 pumps; would that be fair to say?

18 A. Correct. On our main line, how many pumps
19 do we have?

20 Q. Right.

21 A. Goodness. We have a pump station every
22 40 -- 40 to 50 miles with typically four or five
23 pumps at every station, so.

24 Q. Okay. All right. And I'll come to the --

25 A. A whole bunch.

1 Q. Okay. That works. And then you have pumps
2 at every delivery line; would that be accurate?

3 A. Yes, you have to have a pump at the
4 beginning of the line to pressure up the line to
5 get the product flowing, yes.

6 Q. Okay. And do you have booster -- booster
7 station? And what's one of the -- what is a
8 booster station?

9 A. A booster is a specific type of pump that
10 basically helps -- it's a specific pump that's
11 designed to put up low pressure at a very high
12 flow rate. So it -- it is a good pump that helps
13 feed what we call our normal pumps, so
14 centrifugal pumps.

15 Those -- the centrifugal pumps are designed
16 to put up a very high pressure flow and -- and
17 the booster pumps help feed that to -- to make
18 those pumps work correctly. So it's just a
19 hydraulic difference between the two types of
20 pumps. Boosters are helping feed what we call
21 our --

22 Q. Okay.

23 A. -- our normal pumps, main line pumps.

24 Q. And so both Belton and Spartanburg have
25 booster pumps?

1 A. Correct.

2 Q. And Anderson has booster pumps?

3 A. Anderson is a pump station. They would not
4 have boosters. They would just have what we call
5 our normal --

6 Q. Pumps?

7 A. -- centrifugal pumps, correct.

8 Q. Okay. And what is at -- we've referenced
9 Simpsonville. What facility do you have in
10 Simpsonville?

11 A. Again, Simpsonville is the -- a single
12 station on -- I believe that's line -- let me
13 make sure I get the right line here. I believe
14 Simpsonville is on line two only.

15 Q. Okay. And does it have any pumps?

16 A. Yes, it would have, again, that 1500 to
17 5,000 --

18 Q. Right.

19 A. -- horsepower, typically totaling close to
20 20,000 horsepower in total.

21 Q. Okay. What's in Gaffney?

22 A. Again, another pump station. Both lines one
23 and two are -- are in Gaffney.

24 Q. Okay. Does it have a booster station there?

25 A. Yes, that is the -- Gaffney is the location

1 of our -- that is our booster station.

2 Q. Okay. And do you know off the top of your
3 head how many pumps? Does it have eight pumps at
4 Gaffney?

5 A. Correct. We have four on each line.

6 Q. All right. And do you have relief tanks in
7 South Carolina?

8 A. We do.

9 Q. How many of those?

10 A. Not exactly sure the number of them --

11 Q. Right.

12 A. -- but just typical operation of our lines,
13 our main lines.

14 Q. And what's a relief tank?

15 A. A relief tank is a -- in the event that we
16 get some type of pressure fluctuation on the
17 line, potentially due to a valve closing, a pump
18 turning off, it would create a pressure increase
19 on the line. Based on certain pressures, it
20 would open, trigger an automatic valve that -- a
21 pressure relief valve to open and go into those
22 pressure relief tanks.

23 Q. Okay. And do you know where those are
24 located?

25 A. I am not positive. I believe we do have one

1 at -- one at our tank farm, Belton, I thought,
2 and then potentially one at one of our pump
3 stations.

4 Q. And do you have utility tanks in South
5 Carolina?

6 A. Yes, most all of our facilities has what we
7 call "utility tanks" that are there to drain
8 product, be able to evacuate pipes so that we can
9 do work in that facility.

10 Q. Okay.

11 A. So we --

12 Q. Do you -- do you know how many you have?
13 Would you have as many as ten to 12?

14 A. Yes, I imagine that many. Again, they're --
15 they're present at -- at really all of our
16 facilities that --

17 Q. Okay.

18 A. -- (inaudible) work and alignments ...

19 Q. All right. You don't -- Colonial own any
20 trucks?

21 A. Just trucks, just normal Ford pickup trucks,
22 not -- not --

23 Q. Right.

24 A. -- products trucks.

25 Q. Okay. All right. And then do you have a

1 control system in Atlanta that regulates South
2 Carolina, that controls South Carolina?

3 A. We have our control center, our Atlanta
4 control center, that controls many -- almost most
5 of our pipelines on our system.

6 Q. Okay. And can you briefly describe it? For
7 example, how big is it? How many employees do
8 you have?

9 A. I believe we're close to -- above 50, close
10 to 60 people that support that operation there.
11 We have, I believe, nine desks that operate
12 lines. So, typically, have, I believe, nine --
13 nine people on shift at all times that are
14 supporting the operation of our -- of our
15 pipelines.

16 Q. Is that for the entire pipeline including
17 South Carolina?

18 A. Correct.

19 Q. Okay. And is that a 9:00 to 5:00 job? How
20 often is the control room open?

21 A. 24/7.

22 Q. Okay. And do you have control rooms in
23 South Carolina, as well?

24 A. Again, the tank farms themselves are
25 individual operations there that are -- that are

1 manned and ...

2 Q. So that would be in Belton --

3 A. Belton and --

4 Q. -- and Spartanburg?

5 A. -- Spartanburg, correct. Belton is 24/7.

6 Spartanburg is only manned when we have

7 operations ongoing; that tends to be a very high

8 percentage of the time, but there are certain

9 small windows there that we don't have to be, so

10 to speak, "manned."

11 Q. Okay. And so what is -- what exactly is a

12 Belton control room doing? Is it just managing

13 that facility or something bigger?

14 A. The Belton is managing the -- the inbound

15 deliveries off of line one and two and managing

16 the tank farm itself, and then all of the local

17 deliveries going out to the customers in that

18 market there.

19 Q. Okay. And I may have asked you this. How

20 many -- how many people work in the Atlanta

21 control system?

22 A. I believe over 50.

23 Q. Okay. All right. Do you have warehouses

24 for spare equipment in South Carolina?

25 A. I do believe we have some warehouses at the

1 tank farm facilities.

2 Q. Okay. And how about emergency response?

3 A. Again, we work with all of our local
4 responders, fire departments, police departments,
5 and things. We do have some -- some emergency
6 response equipment, but we do rely heavily on the
7 fire departments and the -- the services.

8 Q. All right. Do you have monitoring equipment
9 on the lines in South Carolina?

10 A. Yes, monitoring equipment, pressure,
11 temperature. We're monitoring the pump stations
12 and everything going on there, delivery
13 facilities.

14 We have our measurement equipment on there
15 to help ensure that -- that what's going into the
16 pipe is coming out of the pipe from a measurement
17 standpoint, to help us detect any leaks or
18 anything that may be occurring there.

19 Q. Okay. So do you have markers and test
20 stations?

21 A. Correct.

22 Q. And how often -- where are they or how many
23 of those do you have?

24 A. Don't know the count of that. I think our
25 technical person --

1 Q. Right.

2 A. -- can provide some details around those.

3 Q. Are they on every -- every mile of the -- of
4 the pipeline?

5 A. They're frequent. I'm not exactly sure --

6 Q. Okay.

7 A. -- that level of detail, but they are
8 frequent.

9 Q. Okay. And you have cathodic protection
10 systems? I'm not asking you for any details,
11 but --

12 A. Yes, sir.

13 Q. -- you do have that?

14 A. Yes, sir.

15 Q. Okay. And is that along the entire line?

16 A. Yes, it is.

17 Q. All right. And you have rectifiers on your
18 system?

19 A. Correct.

20 Q. And how -- how often do you have rectifiers?

21 A. I don't know the mileage on that, but quite
22 often. And you mentioned lines, lines and
23 facilities, both protections and leads and all of
24 those --

25 Q. Okay.

1 A. -- are both in our facilities and on our
2 line.

3 Q. And what is a rectifier?

4 A. A rectifier is part of our cathodic
5 protection system.

6 Q. Okay. And then I kind of skipped over it.
7 Well, I asked you if you had monitoring
8 equipment. What exactly -- you said you do, but
9 what exactly do you monitor?

10 A. We monitor the flow in the pipe, the
11 pressure in the pipe, temperature. Those are our
12 primary things that we're monitoring from just
13 the pipeline operation perspective. And then, of
14 course, valve positions, pump -- pumps on/off,
15 things of that nature.

16 Q. Okay. And do you have any sting water
17 tanks -- S-T-I-N-G -- in South Carolina?

18 A. Correct. Our tank farms -- all of our tank
19 farms generally have sting systems that we remove
20 the water off the tank and that water is put into
21 what we call a "sting tank" or a tank --

22 Q. Okay. And --

23 A. -- to hold that water.

24 Q. All right. So -- and what exactly is "sting
25 water" then?

1 A. Sting water is water that's been removed
2 from the tank, a product tank; so that water has
3 come in contact with product.

4 Q. Okay.

5 A. Gasoline, diesel, jet fuel.

6 Q. And so often do you -- do you drain it?

7 A. We monitor that and drain it at least daily;
8 a little more often if we see any issues or any
9 problems like that --

10 Q. Okay.

11 A. -- with water. But their general practice
12 would be daily on that.

13 Q. All right. And what happens to the sting
14 water?

15 A. It's isolated and typically trucked off to
16 the dispose of.

17 Q. Okay. All right. Do you have oil/water
18 separators?

19 A. We do.

20 Q. And where are those?

21 A. Oil/water separators are at most of our
22 facilities. It's a mechanism to deal with
23 stormwater and things of that nature and -- and
24 protect -- being sure that if we do have an
25 integrity event that we're able to protect the

1 environment.

2 Q. Okay. Do you have any facilities in
3 Gaffney? What's there?

4 A. Gaffney's our pump station there.

5 Q. Okay. And how about in Simpsonville?
6 What's there?

7 A. A pump station there.

8 Q. All right. So why don't we real -- real
9 quickly go over your two main facilities. Can
10 you tell us what's at Belton in terms of gas
11 tanks, distillate tanks, and transmix tanks?

12 A. Again, the exact number I think is in the
13 detail there --

14 Q. Uh-huh (affirmatively responds).

15 A. -- but we -- we ship both gasoline, diesel
16 fuel, and jet fuel through our Belton facility.

17 Q. Okay. Does 12 -- do you think you have as
18 many as 12 gas tanks at Belton?

19 A. Yes.

20 Q. And seven distillate and one transmix?

21 A. Yes.

22 Q. All right. And do you recall your -- the
23 other big one is your Spartanburg facility?

24 A. Yes, sir.

25 Q. Do you know the number of gasoline tanks you

1 have in Spartanburg?

2 A. Do not recall the exact number.

3 Q. Would it be between ten and 13?

4 A. I believe that would be correct.

5 Q. Okay.

6 A. Uh-huh (affirmatively responds).

7 Q. And then do you have distillate tanks at
8 Spartanburg?

9 A. Yes.

10 Q. All right. Do you do tank maintenance in
11 South Carolina?

12 A. Yes, we do tank maintenance on -- we're
13 required to do tank maintenance on all of our
14 tanks, both inspections and floor replacements
15 and things of that nature, and whatever we need
16 to do there.

17 Q. Okay. Do you do pipeline integrity checks?

18 A. Correct. Yes, sir.

19 Q. Okay. And do you do coating and repairs of
20 coating?

21 A. Yes.

22 Q. And do you do re-piping?

23 A. Yes.

24 Q. Do you do switching?

25 A. Switching ...

1 Q. Switching out equipment, I'm sorry.

2 A. Yes.

3 Q. Right, replacing and switching.

4 A. Replacing, upgrading, yes.

5 Q. Okay. All right. And then -- oh. Do you
6 use independent contractors in South Carolina?

7 A. Yes.

8 Q. Well, actually, I -- I'm sorry. I skipped
9 over. Hang on one second here. So we've been
10 over the physical facilities. Let's go down --
11 let's go down to your employees. Do you know how
12 many full-time employees you have in South
13 Carolina? Does about 42 sound right to you?

14 A. I'm just going to say it's on the listing
15 that I think we're --

16 Q. Okay.

17 A. -- providing on that. That sounds right,
18 over 40, yes.

19 Q. All right. And what are their -- what are
20 their jobs? Do you have operations managers?

21 A. Yes, sir. We -- we have operations
22 managers. We have what we call our senior
23 operators, who are kind of Jack-of-all-trades.
24 We have our operator/controllers who are
25 operating the tank farm facilities.

1 Then we have our technicians who are doing
2 work. We have senior technicians. Sometimes
3 we'll have specialized technicians around
4 electrical or mechanical.

5 Then we have a lot of support personnel
6 around environmental and corrosion. We'll have
7 projects support here in Carolina and South
8 Carolina. So, again, a lot of support personnel.

9 In addition to those in South Carolina, we
10 have a lot of technical support personnel that
11 are in Atlanta that come to and assist in South
12 Carolina to do work.

13 Q. Okay. So we mentioned a bunch of them in
14 South Carolina. You had -- you have techs who
15 work in South Carolina, correct?

16 A. Yes, sir, our technicians, yes, sir.

17 Q. Okay. And you have a planner who works in
18 South Carolina?

19 A. Correct.

20 Q. And do you have administrative support in --

21 A. Yes, sir.

22 Q. And do you have support staff of project
23 managers in South Carolina?

24 A. Yes, we do.

25 Q. Okay. And do you --

1 A. Project managers, project inspectors, and
2 things of that nature, yes, sir.

3 Q. And do you have a safety specialist in South
4 Carolina?

5 A. Yes, sir.

6 Q. And do you utilize independent contractors
7 in South Carolina to assist your ...

8 A. We do. Our company utilizes contractors for
9 a very large amount of our work. Our
10 contractor -- contractors will tend to actually
11 outnumber the number of Colonial employees that
12 we have working in a particular state and on a
13 project.

14 Q. Do you know how many independent contractors
15 work in South Carolina?

16 A. I do not -- do not know the exact count.

17 Q. Would it be as many as 30, you think?

18 A. Yes, sir, easily.

19 Q. Okay. Then your products, you mention you
20 ship gas -- gasoline, diesel fuel, jet fuel, and
21 refined petroleum products --

22 A. Yes, sir.

23 Q. -- in South Carolina?

24 A. Yes, sir.

25 Q. And, obviously, all of those are liquid.

1 A. Yes.

2 Q. And they're all flammable. Are they all
3 flammable?

4 A. Yes, they are. They're all flammable.

5 Q. Would they be considered pollution if they
6 were dumped on the ground, exposed on the ground?

7 A. Oh, yes, sir.

8 Q. Okay. And ...

9 A. And hazardous. They're hazardous materials.

10 Q. All right. All right. So let's turn to the
11 actual pipelines themselves and I'm going to --
12 about finished here. Real quickly, so just to
13 speed this up, I'm going to give you this -- so
14 you have a line one and it's about 102 miles,
15 correct?

16 A. In the State of South Carolina.

17 Q. Right.

18 A. Right.

19 Q. So you have a line two and it's also about
20 102 miles?

21 A. They would be pretty close to each other, so
22 they should be about the same, yes, sir.

23 Q. Okay. And then you have a line 29, which is
24 71 miles?

25 A. Yes, sir.

1 Q. All right. Then you have delivery lines.
2 You have a delivery line in Belton; is that
3 correct?

4 A. A delivery -- multiple delivery lines at
5 Belton; multiple delivery lines at Spartanburg.

6 Q. Okay. And how about in North Augusta?

7 A. Again, North Augusta, we have line 29 going
8 down to that facility and then from the delivery
9 facility itself would be multiple delivery lines
10 to each of the truck terminals.

11 MR. MAYBANK: Okay. All right. I
12 think that's it for me.

13 MR. CARTIN: I've got one follow-up.

14 RECROSS-EXAMINATION

15 BY MR. CARTIN:

16 Q. I'm just trying to understand the blending
17 still and where it happens.

18 A. Yes, sir.

19 Q. What I just heard was, as we were all trying
20 to figure this out, that the only blending that
21 takes place in South Carolina is a result of the
22 transmix process, the need to reprocess that
23 transmix.

24 A. Transmix and -- and transmix can be
25 generated through normal operations, like

1 drain-downs and work and things of that nature,
2 too, so. General operations will generate
3 transmix, right, just our normal operations and
4 work, maintenance, and all of those things --

5 Q. Okay.

6 A. -- that occur at these locations, so.

7 Q. So transmix is going to happen within the
8 pipeline in South Carolina.

9 A. (Nods head affirmatively.)

10 Q. And the only need to do additional blending
11 is a result of that transmix? Or are you still
12 at your delivery stations that exist in South
13 Carolina injecting different fluid into the
14 pipeline liquid to create a new product?

15 A. No, we're managing -- we're managing all of
16 that transmix that's generated from normal pipe
17 operation and maintenance and all of -- all of
18 that.

19 Q. Okay. So that's it?

20 A. Correct.

21 Q. All right. So if you only -- theoretically,
22 if you only had one -- let's just say you had
23 87-octane gasoline traveling through your
24 pipeline --

25 A. (Nods head affirmatively.)

1 Q. -- and that's all you ever let travel
2 through South Carolina, you would not need to
3 have any blending operations in South Carolina
4 because there'd be no transmix.

5 A. Yeah, there would be nothing -- nothing
6 operationally different. I'd have one fuel,
7 right?

8 Q. Okay. Yeah. So -- so the need to have any
9 blending at all is driven by the diversity of
10 product that you transport?

11 A. That is a driver of that, correct. Yes.

12 MR. CARTIN: I don't think I have any
13 additional questions.

14 MR. MAYBANK: Just one --

15 MR. KOZLAREK: I've got one or two --
16 I've got one or two follow-ups, real quick.

17 RECROSS-EXAMINATION

18 BY MR. KOZLAREK:

19 Q. Could you go through the regrading process?
20 I -- again, I think I heard you say that you have
21 regraded fuel for at least one customer and I was
22 just curious about how that happened.

23 A. Sure. The -- so if you look at our product
24 specifications and the products that are being
25 pumped on Colonial, typically what you have is

1 you have higher quality products and lower
2 quality products. And by that I mean, the higher
3 quality product will meet all of the
4 specifications of the lower quality product.

5 So in certain circumstances, shippers will
6 want to regrade the higher quality product, so to
7 speak, to another product for purposes of just
8 sales or -- or whatever is driving their business
9 to do so.

10 Another good example that we've had in the
11 past that's transitioned in the last few years
12 is, we used to have off-road diesel -- I don't --
13 and on-road. Ultra Low Sulfur Diesel was on-road
14 diesel and we had off-road diesel. And a lot of
15 times, shippers would -- would transfer back and
16 forth between those two products and we would do
17 regrading there.

18 There may also be regrading associated with
19 just blending and any -- any products that they
20 would like to -- to do that with and -- and we
21 can help facilitate that for them by doing the
22 regrades and things.

23 Q. And that is happening in South Carolina, as
24 well, correct?

25 A. Yeah, we have historically done those. I

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

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

11 You are simply -- instead of calling it
12 93-octane, the -- the owner of the product has
13 said, "We want to call it 89-octane," and so
14 that's what you're selling now or transporting.
15 That's what you're transporting.

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

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

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

1 Q. Okay. The other thing that Mr. Maybank went
2 through -- and I'm not going to attempt to
3 recreate his long list of forcing you to go
4 through every -- what seemed like every asset
5 that you have in South Carolina, including water
6 separators and things that I don't even know what
7 they are. I don't think I heard anything that
8 sounded like it was physically located inside the
9 pipe; is that correct?

10 A. Physically located inside the pipe? The
11 only thing that jumps off at me is the valves.
12 Anytime you mention a valve, they're in the pipe.

13 Q. Absolutely. So other than the valves, which
14 we know that's part of the discussion in terms of
15 exemptions, other than those assets, all of the
16 other assets that Mr. Maybank talked about are
17 located somewhere outside of the pipe.

18 A. Out or on. I'm not --

19 Q. Okay. Out or on.

20 A. I mean ...

21 Q. Fair enough.

22 A. I believe --

23 Q. Fair enough.

24 A. Yeah.

25 MR. KOZLAREK: Okay. I have no other

1 questions.

2 MR. MAYBANK: I have none.

3 (There being no further questions, the
4 deposition of Mr. Brown concluded at
5 1:37 p.m.)

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1 (On the record at 2:26 p.m.)

2 ROBERT HUGHES, having been duly sworn,
3 examines and testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. ANTLEY:

6 Q. Good morning, Mr. Hughes. My name is Marcus
7 Antley, III. I'm an attorney representing the
8 South Carolina Department of Revenue. I will be
9 taking your deposition in the matter of Colonial
10 Pipeline Company versus the South Carolina
11 Department of Revenue and Abbeville, Aiken,
12 Anderson, Greenville, Laurens, and York Counties.
13 Have you had your deposition taken before?

14 A. In other matters, yes.

15 Q. So you understand that I'll -- I'll ask you
16 questions and the court reporter will write
17 everything down?

18 A. Yes.

19 Q. So please answer verbally. Please ask me
20 rather than your own counsel or any other person
21 for clarifications, definitions, or explanations
22 of any words, questions, or documents presented
23 during the course of the deposition. And you're
24 required to abide by those instructions.

25 You are also advised that during this

1 deposition or any breaks taken during the
2 deposition, you cannot discuss the subject matter
3 of this deposition with any party, including your
4 attorney, and you must not ask for assistance in
5 answering any of the questions asked to you.

6 Since you do -- since you do have the right
7 to ask me to clarify any question or document
8 given to you, then if you answer the questions,
9 it will be assumed that you understood them.

10 Is there any reason, such as being under
11 unusual stress, a physical or mental condition,
12 or being under the influence of any substances
13 that would prevent or limit you today from giving
14 truthful answers to my questions?

15 A. No.

16 Q. All right. What is your name?

17 A. It's Robert Hughes.

18 Q. Okay. And could you spell that for the
19 court reporter?

20 A. It's R-O-B-E-R-T H-U-G-H-E-S.

21 Q. Okay. And you're here as the designee of
22 Colonial Pipeline Company; is that correct?

23 A. Yes.

24 Q. I'm going to hand you what's been marked as
25 Exhibit 13. On that second page, I just want to

1 clarify which one of those areas that you will be
2 testifying to today. I believe it will be ten,
3 number ten; is that correct?

4 A. Yes, ten.

5 Q. Okay. And were there --

6 THE COURT REPORTER: Keep your voice
7 up. Thank you.

8 THE WITNESS: Okay.

9 BY MR. ANTLEY:

10 Q. Were there other areas that you would be
11 testifying to? I think seven? Is that also an
12 area that you'll be testifying about?

13 A. I can testify to the number seven as in
14 regards to the assets that were approved under
15 the -- by the DOR. The pipe coatings and the
16 automatic shut-off valves, that is something that
17 the next subject matter expert will be
18 discussing.

19 Q. So you cannot speak to pipeline coating --
20 the pipe coatings, cathodic protection, or
21 automatic shut-off valves; is that correct?

22 A. That's correct.

23 Q. Okay.

24 A. That's not my area.

25 Q. Okay. All right. So you can only speak to,

1 as far as what's at issue here, number ten; is
2 that correct?

3 A. Yes. Yes.

4 Q. Okay. And that's only -- I guess that would
5 be -- okay. What is your date of birth?

6 A. September 15th, 1968.

7 Q. Okay. What's your educational background?

8 A. I have a bachelor's of science in geology
9 and a bachelor of science in civil engineering
10 with an environmental emphasis.

11 Q. And where do you work?

12 A. Colonial Pipeline Company.

13 Q. And what's your job title at Colonial?

14 A. Manager, environmental.

15 Q. And what are your job responsibilities?

16 A. I manage a department of approximately 18
17 people that manage environmental compliance and
18 permitting aspects from Pasadena and Houston area
19 to New York Harbor.

20 Q. Where is your job located?

21 A. Alpharetta, Georgia.

22 Q. Okay. And who reports to you?

23 A. There are approximately 18 people, I
24 believe.

25 Q. Directly?

1 A. Yes. Well, there are six direct reports.

2 Q. Okay.

3 A. There are three district environmental
4 program managers and two environmental program
5 specialists and one administrative assistant.

6 Q. Okay. And who do you report to?

7 A. I report to the director of HSE.

8 Q. And what does that stand for?

9 A. Health, Safety, and Environment.

10 Q. Okay. How long have you been in your
11 current role as manager, environmental?

12 A. Approximately 13 months.

13 Q. Okay. Where were you before that?

14 A. I was the environmental compliance manager.

15 Q. And what were your job responsibilities as
16 the environmental compliance manager?

17 A. It was to manage our environmental
18 management information system and to oversee the
19 environmental assessment/audit process.

20 Q. Okay. What kinds of permits does Colonial
21 Pipeline Company hold in South Carolina?

22 A. Environmental permits? We have Title V, air
23 permits. We have a couple minor air permits. We
24 have a hydrostatic test water discharge permit
25 under NPDES. We have two NPDES permits for bulk

1 storage, bulk petroleum storage facilities. And
2 I believe that's probably the extent of it. We
3 don't have a significant number of current
4 permits in South Carolina.

5 Q. What property in South Carolina of Colonial
6 Pipeline Company requires a permit?

7 A. So the bulk petroleum storage NPDES permits,
8 those are at our two tank farms, at Spartanburg
9 and Belton. The hydrostatic test permit is
10 statewide. The air permits are at Belton,
11 Spartanburg, and North Augusta, and Anderson.

12 And I -- I'm sorry. I need to add another
13 permit that we have is at Simpsonville Station.
14 That is an NPDES permit for the discharge of
15 petroleum contaminated groundwater.

16 And I'm not sure if this falls into the
17 category of a permit, but we have a Consent Order
18 at -- I believe it's Gaffney for the discharge of
19 the same contaminated groundwater.

20 That's currently a corrective action plan
21 that we are not currently discharging under,
22 though, but it permits the corrective action
23 activities.

24 Q. So the air permits that you have --

25 A. Uh-huh (affirmative response).

1 Q. -- who issues those?

2 A. South Carolina DHEC.

3 Q. And the hydrostatic test, I think is what
4 you said.

5 A. Yes.

6 Q. Who issues that?

7 A. DHEC, same.

8 Q. Are there any permits that you've listed
9 that are not issued by DHEC?

10 A. I believe all of those are issued by DHEC.

11 Q. Okay. So which of those permits relate to
12 petroleum bulk stations and terminals?

13 A. So that is our two tank farms, Belton and
14 Spartanburg. Those authorizations were from 2009
15 to 2014. That permit has not been reissued, so
16 Colonial, as well as all other permitted
17 entities, are operating under the permit shield
18 until that's reissued.

19 Q. Are any of those permits specific to
20 industrial plants?

21 A. There are references to industrial
22 facilities and industrial activities within
23 both -- well, within that permit at both of those
24 facilities.

25 Specifically, there's language within the

1 stormwater pollution prevention plan requirements
2 to manage stormwater runoff from areas where
3 those activities occur.

4 Q. So you said there's stormwater -- what was
5 the other permit that was specific to industrial
6 plants?

7 A. It's -- it's actually a plan that you
8 develop as part of your permit compliance. It's
9 called a "stormwater pollution prevention plan,"
10 and that has provisions for managing water --
11 stormwater that has the potential to come into
12 contact with industrial activities.

13 Q. So that one's industrial activities?

14 A. (Nods head affirmatively.)

15 Q. Did you say there was another that --

16 MR. MAYBANK: You got to answer "yes"
17 or "no" rather than waving your head.

18 THE WITNESS: Right. Thank you.

19 BY MR. ANTLEY:

20 Q. You said that was industrial activities.
21 What was -- was there another one that also --
22 another type of industrial permit that you
23 mentioned?

24 A. There's the hydrostatic test discharge
25 permit, which are waters that are generated

1 from -- from activities related to testing of
2 pipe and tanks, which are, by their nature,
3 industrial.

4 Q. So they're related to industrial activities
5 or industrial facilities; is that -- is that
6 correct?

7 A. Yes.

8 Q. Okay. Is there any one that specifically
9 uses the language of "industrial plant"?

10 A. I don't know the answer to that. I don't --
11 I don't know if those permits specifically
12 identify that term.

13 (RESPONDENT'S EXHIBIT 5 WAS MARKED FOR
14 IDENTIFICATION PURPOSES)

15 Q. Okay. I'm going to hand you what's been
16 marked as Department's Exhibit 5. This is a
17 portion of Colonial's Response to Department's
18 Request for Production and it's Bates stamped at
19 the bottom as Colonial 0283. Do you recognize
20 this?

21 A. Yes.

22 Q. Okay. What is it?

23 A. This is a -- a single page out of a Spill
24 Prevention Control and Countermeasure Plan. It
25 looks like it's Section 1 and 1.1.

1 Q. Do you author these?

2 A. I have reviewed these. I've not authored
3 those.

4 Q. Okay. So you review to make sure that the
5 information in them is correct?

6 A. I have. I don't recall if I've -- if I
7 looked at this one specifically.

8 Q. Do you see the second sentence there, it
9 says, "Operations at the facility are primarily
10 related to the transport of refined petroleum
11 products which fall under US DOT jurisdiction"?

12 A. Yes, I see that.

13 Q. Is that a true statement about the -- it
14 looks like this is referring to the Belton
15 Junction facility?

16 A. Yes, I think generally those activities
17 are -- are US DOT jurisdiction.

18 Q. Are they primarily related to the transport
19 of refined petroleum products?

20 A. Yes.

21 Q. Are they related to anything other than the
22 transport of refined petroleum products?

23 A. I'm not familiar enough with -- if there are
24 any ancillary activities at Belton, but the
25 primary role of that facility is for the -- the

1 transport of refined petroleum products. And
2 there are ancillary activities that are subject
3 to SPCC.

4 (RESPONDENT'S EXHIBIT 6 WAS MARKED FOR
5 IDENTIFICATION PURPOSES)

6 Q. All right. I'm going to hand you another
7 document. This is Department's Exhibit 6. This
8 is also Bates stamped -- this is another document
9 produced in Colonial's Response to the
10 Department's Request for Production. It's Bates
11 stamped Colonial 0287. Do you recognize this
12 document?

13 A. Yes.

14 Q. And what is it?

15 A. It appears to be Section 2 of the same or
16 similar document, the SPCC plan for Belton.

17 Q. Okay. And in that, I guess, first full
18 paragraph from the bottom, I'm going to read the
19 first sentence: "As described in the following
20 section, operations at the facility are primarily
21 related to the transport of refined petroleum
22 products which fall under US DOT jurisdiction."

23 That's essentially the same language that
24 you just looked at?

25 A. Yes.

1 Q. And is that also accurate?

2 A. Yes.

3 (RESPONDENT'S EXHIBIT 7 WAS MARKED FOR
4 IDENTIFICATION PURPOSES)

5 Q. Okay. I'm going to hand you one more
6 exhibit. This is Department's Exhibit 7 and this
7 one is two pages, just to make sure that it
8 was -- that you got to see the full -- the
9 complete paragraph.

10 All right. So these are two pages. These
11 are also Responses to the Department's Request
12 for Production. They are Bates stamped
13 Colonial 0290 and 0291. Do you recognize this?

14 A. Yes.

15 Q. What is it?

16 A. It appears to be from the same document, the
17 SPCC plan for Belton, a continuation of
18 Section 2.

19 Q. Okay. So in here it refers to portable
20 tanks. What are those?

21 A. So -- I'm going to read this first.

22 Q. Okay. Sure.

23 A. (Reading.) So portable tanks, they can vary
24 in size. Often, one might think of a frac tank
25 as something that we might use if we have to do

1 maintenance on a piece of pipeline, system
2 equipment, or a relief tank, or something of that
3 nature, and we might utilize a frac tank to
4 conduct those operations.

5 And since that is not a permanent component
6 of the pipeline, it -- and because it's portable,
7 therefore it becomes subject to the SPCC rule
8 during its time that it is in its portable mode.

9 Once it's attached to the pipeline, it then
10 becomes subject to pipeline regulation, the PHMSA
11 Part 195 requirements.

12 Then there might be an occasion where if --
13 if there is cleanup of contaminated soil or
14 something of that nature, it might go into a skid
15 tank or a roll-off or something of that nature
16 prior to characterization and disposal.

17 Q. Okay. So I'm looking at the second page of
18 what I just handed you, Colonial 0291, and that
19 second -- or, sorry, the first full paragraph --
20 well, actually, the -- the paragraph -- it's a
21 partial paragraph there at the top of the page.

22 It says that these tanks meet the definition
23 of transportation related and are US DOT
24 regulated. What tanks is that referring to?

25 A. I believe -- like on this page (indicating)

1 right here, 0 --

2 Q. Yeah, it goes over from --

3 A. -- 291?

4 Q. -- 0290 to 291.

5 A. So that is -- as you can see on the bottom
6 of 0290, it lists tanks 50 -- 510 through 515,
7 530 through 537, 551 through 554, 560, 561, 570,
8 572; that's what that is referring to. And those
9 are the large substantive tanks at the
10 facility --

11 Q. Okay.

12 A. -- that are DO -- US DOT transportation
13 regulated.

14 Q. And is that statement true, that those tanks
15 meet the definition of transportation related and
16 regulated by the US DOT?

17 A. Yes.

18 Q. Okay. And that same -- and I should have
19 asked this earlier, but that's also true for the
20 portable tanks where it says, "These tanks meet
21 the definition of transported related and are
22 US -- US DOT regulated"? Is that a true
23 statement?

24 A. At the time that they are connected and --
25 and no longer mobile, they are connected to the

1 pipeline system, then they become subject to
2 US DOT regulation and they fall out of SPCC
3 applicability because of that.

4 Q. Okay. And these -- these -- these last
5 three exhibits I let you look at, can you remind
6 me again, what are those part of? Is that a part
7 of a permit application?

8 A. No.

9 Q. What are they?

10 A. This is a document that is put together to
11 comply with the requirements of US EPA
12 regulation.

13 Q. So who -- who receives this document?

14 A. It is maintained on site and should there be
15 an inspection, it needs to be produced at the
16 time of the request.

17 Q. So this is to be followed by Colonial
18 Pipeline Company; is that the purpose of this --

19 A. At facilities where this rule is applicable,
20 yes.

21 Q. Okay. Are there parts of the -- of Colonial
22 Pipeline's property that are not considered
23 transportation related?

24 A. Can you define what parts of the property?

25 Q. I --

1 A. Are you talking about assets and equipment
2 or just physical property?

3 Q. Assets and equipment.

4 A. Can you reask the question?

5 Q. Sure. So there are facilities, for example,
6 in Belton and Spartanburg. Are there parts of
7 those facilities that are not transportation
8 related? Is there property -- are there assets
9 at those facilities that are not transportation
10 related?

11 A. It's very limited and the way the
12 applicability determinations -- and I'll use this
13 rule as an example. While something is under
14 active shipping papers being transported as a
15 commodity, it is subject to PHMSA jurisdiction.

16 The moment it changes modes of
17 transportation or is put into a container for
18 waste characterization, it's no longer being
19 shipped or transported.

20 And so that container may be holding a
21 material that's no longer a commodity and it is
22 subject to waste determination and that item -- I
23 don't know how you would define whether it's --
24 the asset itself is non-transportation related,
25 but it's holding a material that is no longer in

1 transport.

2 Q. So I just want to make sure I'm clear.

3 Could you explain more how you make the
4 determination or your staff make the
5 determination of whether or not property is
6 transportation related for the purposes of these
7 plans?

8 A. Usually through legal review. We'll come up
9 with a determination or have a consultant put a
10 determination together and then review that with
11 legal counsel to see if -- if it's a reasonable
12 assessment.

13 Q. Okay. Would cathodic protection, pipeline
14 coatings, and automatic shut-off valves, would
15 those be transportation related?

16 A. That's not my area of expertise, so I -- I
17 can't answer that.

18 Q. So those aren't cover by any of these
19 permits that ...

20 A. The SPCC rules, if you're dealing with a
21 large facility where those materials are there
22 and you're subject to the SPCC rules, there are
23 provisions for providing protection for your
24 assets. However, the -- the ones that are in
25 pipeline transportated -- transportation related,

1 those are PHMSA jurisdiction.

2 Q. And who is it? Who -- who would be the
3 expert on those?

4 A. Your -- your next witness, Josh.

5 Q. Stanley?

6 A. Yes, Josh Stanley, sorry.

7 Q. Okay. So outside of the facilities, like
8 the Belton and Spartanburg facilities, do you
9 have plans? Are these plans limited to the
10 specific facilities of Colonial Pipeline?

11 A. It's -- they can be activity based, so it
12 depends on the activity at the time. So it's --
13 it's something that is in flux depending on when
14 you trigger applicability thresholds, right?

15 So, essentially, you have a site or a work
16 site. If you have containers that exceed the --
17 the volume threshold for SPCC applicability in a
18 non-transportation container, then you trigger
19 SPCC.

20 Q. Are the permits different for areas that are
21 doing blending of transmix and are you -- than
22 they are for portions of the facilities that are
23 not doing blending activities?

24 A. Now, when you say permits ...

25 Q. Well, let's see. The -- I think you've

1 named -- there's the NPDES, the bulk storage
2 facility permits, the hydrostatic test, the air
3 permits.

4 Are any of those different based on -- based
5 on whether or not the activities involve blending
6 as opposed to other functions?

7 A. So blending would be contemplated during the
8 air permit review process. Depending on how
9 blending is done, it could impact other permit
10 applicability, but it's much less likely than to
11 need an air permit evaluation.

12 And I guess I -- I should ask, when you're
13 referring to blending, are you talking in-line
14 blending or in-tank blending or -- like those
15 are -- there are different types of blending and
16 so the answer depends upon ...

17 Q. Whatever blending happens in South Carolina,
18 is it -- would it include all of those that you
19 named?

20 A. It would generally be in-line blending or
21 the use of a sump to meter product back into the
22 main line, and that -- those activities are
23 something that are evaluated as part of the air
24 permit application process.

25 Q. And when we started, I think you said that

1 you could talk about number seven, about the
2 source, quantity, and types of pollution that the
3 equipment claimed as exempt eliminates,
4 mitigates, prevents, treats, abates, or controls.

5 Other than pipe coatings, cathodic
6 protection, and automatic shut-off valves, what
7 are those other pieces of equipment?

8 A. So there are like -- for instance, the --
9 the list of approved items included like a
10 facility drain -- drain valve, and those are
11 prudent for us to be able to isolate a facility
12 should we have an incident on site.

13 Then there are oil/water separators, which
14 are used to ensure if -- if something does occur
15 on site, that we can try to mitigate or minimize
16 the impact of that release.

17 We also have at a variety -- at several
18 facilities, we have facility ponds, and those
19 have submerged fill or -- I'm sorry -- submerged
20 outfalls, and by the very nature of petroleum
21 product floating on water, we can contain it on
22 site. So there are -- there are other pollution
23 control measures that can be utilized.

24 Also, with our -- the sumps that we utilize,
25 we can use that as -- if we have a tank that is

1 potentially in a -- in a position to be
2 overfilled, we can divert to that sump, a
3 secondary containment, and then subsequently put
4 that back into the line and avoid overfill.

5 Q. And you said you can talk about those
6 issues, but not cathodic protection, pipe
7 coatings, or automatic shut-off valves.

8 What -- what makes those different? How is
9 it -- how are -- how are those within your area
10 of expertise versus the other three items that
11 are not?

12 A. Well, we have -- at Colonial, we have people
13 that specifically work with those items and so
14 that's their -- their purview and I honestly
15 don't have any -- any direct working experience
16 with those materials.

17 MR. ANTLEY: That's all the questions I
18 have.

19 CROSS-EXAMINATION

20 BY MR. CARTIN:

21 Q. Mr. Hughes --

22 A. Yes.

23 Q. -- my name's Walt Cartin. I represent Aiken
24 and Laurens County.

25 A. Uh-huh (affirmatively responds).

1 Q. I just got a few quick questions for you.
2 We were talking about how the characterization of
3 the product changes once it's out of the pipeline
4 into a storage container of some sort. Do you
5 recall that discussion?

6 A. If you're -- are you referring to when I was
7 identifying when it's in transportation as a
8 commodity versus when it might end up in a tank
9 that's subject to characterization as a waste or
10 a recyclable material?

11 Q. Yes.

12 A. Okay. Yes.

13 Q. You mentioned the term "waste
14 determination." What does that mean in that
15 instance?

16 A. So we have a -- we have a material. It's a
17 hazardous material and we have to identify what
18 are our options for either reclamation, reuse,
19 recycling, disposal, or it may, in fact, have
20 enough -- have sufficient energy value that it
21 might be able to be sold as a commodity.

22 And so that's what that waste -- it's
23 determining whether it's a waste, whether it's a
24 commodity, or whether it's something other than
25 those.

1 Q. Are you familiar with the term "transmix"?

2 A. Yes.

3 Q. Is transmix what is subject to that waste
4 determination?

5 A. No. Generally, they're -- they're like
6 water bottoms and things like that that -- that
7 might get pulled out of a tank.

8 Q. What's a "water bottom"?

9 A. Depending on the season, there will be water
10 that enters the gasoline or diesel, anywhere from
11 the refinery or some tanks along the way.

12 And as you pull this material off the main
13 line and you put it into a tank and things settle
14 out to quiescent conditions, you might end up
15 with a little bit of water that was entrained in
16 the product and it will actually fall to the
17 bottom of the tank. And to ensure that we
18 minimize the chance of corrosion, that water is
19 pulled off.

20 Q. Have you ever heard of the SUPERB program in
21 South Carolina? It's like the South Carolina
22 Underwater -- Underground Petroleum something or
23 other Bank?

24 A. I have not.

25 Q. Okay. Do y'all participate in Superfund,

1 CERCLA, anything like that?

2 A. In -- what do you mean "participate"?

3 Q. Well, I'm not an environmental permitting
4 expert, so I use that term very loosely. Are you
5 regulated in any way, shape, or form by the EPA
6 CERCLA program?

7 A. Not that I'm currently aware. We've had
8 some material back -- I don't even recall
9 the -- even the -- the decade, but there were --
10 there were materials that were petroleum
11 contaminated soils and things of that nature that
12 were taken to landfills that have since closed
13 their doors and been subject to CERCLA action.

14 Q. So you manage all of the environmental
15 permitting for the entire country, everywhere
16 where Colonial Pipeline operates?

17 A. I oversee the individuals who do the
18 permitting, yes.

19 Q. Okay. And in every jurisdiction over which
20 you have the oversight for permitting, is
21 Colonial Pipeline treated as a transportation
22 company?

23 A. Yes, for the direct Colonial lines of
24 operations.

25 Q. I guess there's subsidiaries?

1 A. There's subsidiaries and things like that,
2 as well.

3 Q. In any instance that you can think of in the
4 entire United States which you oversee the people
5 who do the permitting, is Colonial Pipeline, the
6 one at issue in this case, the company at issue
7 in this case, treated -- or subject to
8 regulations that apply exclusively to
9 manufacturers?

10 A. Nothing is coming to mind, no.

11 MR. CARTIN: I think that might be all
12 I have for you. Michael?

13 MR. KOZLAREK: I do not have any
14 questions.

15 MR. MAYBANK: I just a few quick ones.

16 CROSS-EXAMINATION

17 BY MR. MAYBANK:

18 Q. He said were you subject to any permit that
19 relates exclusively to manufacturers. You don't
20 know which permits, if any, relate exclusively to
21 manufacturers, do you?

22 A. That's -- that's true.

23 Q. Okay. And as far as you know, there's not a
24 single one that relates exclusively to
25 manufacturers, correct?

1 A. Correct.

2 Q. All right. We're going to go over real
3 quickly. We -- as you know, Colonial applied for
4 pollution control exemption and they were granted
5 it for some equipment and denied it for others.
6 So I'm going to go exclusively over just the ones
7 where it was granted.

8 So let's start with water -- wastewater
9 pollution equipment. Can you -- you just very
10 briefly describe that equipment?

11 A. Right. So those are the facility drain
12 lines and those serve as a means to isolate the
13 station.

14 Should we have an issue with a station or a
15 tank, we can isolate it from the main lines and
16 be able to contain and mitigate the emergency;
17 that also allows us to limit any further escape
18 of product into the -- into the environment.

19 Q. Okay. And what's stormwater pollution
20 control equipment that was approved by the DOR?
21 Can you briefly describe it?

22 A. Yeah. So that was dike drains and those are
23 used in conduction -- in coordination with the --
24 the berms at our larger tanks and it allows us to
25 maintain a closed system.

1 Should there be a tank overfill or a tank
2 breach, the secondary containment system would
3 contain that. And, additionally, it allows us
4 during a rain event to inspect to make sure that
5 that water is clean before we release it to
6 offsite properties.

7 Q. Okay. And describe secondary containment as
8 approved by the DOR.

9 A. So that was for our sump at -- at North
10 Augusta.

11 Q. What's a -- let me interrupt you. What's a
12 "sump"?

13 A. So a "sump" is a -- it can be used as
14 secondary containment, but it's really a means
15 of -- it's a system that can contain product that
16 is segregated out and could be something like a
17 transmix. It could contain sting water. And
18 depending on what that material is, it will send
19 it to the appropriate tank for storage or -- or
20 re-injection into the pipeline.

21 Q. So sump is a product; it's not a machine?

22 A. It's a -- it's like a subsurface tank in a
23 way.

24 Q. Oh, okay.

25 A. It's not regulated like a -- like a typical

1 tank.

2 Q. Okay. I interrupted you. You were
3 describing secondary containment.

4 A. Right. So secondary containment, that --
5 that was the sump at North Augusta, which was
6 approved. And, again, for -- it has multiple
7 uses, but one of those uses is if you have a tank
8 that is at risk of overflow because of a pressure
9 surge in the line, you can actually direct it to
10 the sump and mitigate the -- the chance of that
11 tank overtopping.

12 Q. Okay. And then let's turn to air pollution.
13 If you'll describe what a tank internal floating
14 roof is.

15 A. So an internal floating roof is a -- they're
16 generally very lightweight, aluminum, oftentimes
17 honeycomb-patterned roofs that actually floats on
18 the -- on top of the liquid. And that eliminates
19 that vapor area between the -- the actual dome
20 top of the tank and the product surface. So you
21 eliminate that -- that surface area air interface
22 and it reduces emissions.

23 So as the tank is exercised, that roof will
24 actually float on the product and minimize the
25 amount of emissions that are generated from that

1 and pushed out as you fill the tank up.

2 Q. Okay. And that relates, obviously, to air
3 pollution, right?

4 A. It does.

5 Q. Okay. All right. Let's start -- if you'll
6 tell us where these assets are located. Starting
7 with wastewater pollution equipment, where --
8 where is that equipment located?

9 A. Okay. So the -- the wastewater as the
10 facility valves, the two valve upgrades that were
11 done was at Gaffney and Simpsonville.

12 Q. Okay. All right. And does every facility
13 with drain lines have the -- one of those?

14 A. Yes, that's -- that's true.

15 Q. So would that include Belton and
16 Spartanburg?

17 A. Yes.

18 Q. All right. And it's -- so tell us where
19 stormwater pollution control is located that --
20 that was approved by the DOR.

21 A. So that project was at Belton and that was
22 an upgrade of -- of the lines. As I mentioned,
23 they work in conjunction with the secondary
24 containment berms and that allows us to close off
25 that area should a breach occur and contain that

1 material in the dike. And then, also, during a
2 rain event, we can -- we can capture that water,
3 ensure that it's cleaned prior to discharge
4 offsite.

5 Q. Okay. And so tell us where secondary
6 containment is located.

7 A. Secondary containment that was approved was
8 at North Augusta.

9 Q. And do you also have it in Belton,
10 Spartanburg, and Gaffney?

11 A. Yes, we generally have -- have sumps at most
12 facilities and multiples at other facilities.

13 Q. Okay. And tell us where tank -- the
14 internal floating roof is located.

15 A. So those -- those tanks were at Spartanburg,
16 the ones that were upgraded.

17 Q. Okay. And there's -- are there also
18 tanks -- do you use those wherever you have gas
19 tanks?

20 A. Yes, we try to use the internal floating
21 roofs for gasoline, and with distillate, we may
22 use a cone roof or something -- something of that
23 nature because of the less -- the lower
24 volatility. It does not -- it's not required to
25 have the -- the internal floating roof aspect.

1 It can just have a dome.

2 Q. Okay. And where do you have gas tanks on
3 your system; do you recall?

4 A. There are ...

5 Q. Multiple?

6 A. Yes. There's -- certainly every tank farm
7 and most pump facilities on line one would have
8 gasoline, like a relief tank or something of that
9 nature --

10 Q. Okay.

11 A. -- contain transmix.

12 Q. Okay. All right. I might have one more
13 question. Let me ...

14 MR. MAYBANK: I don't have anything
15 further.

16 MR. CARTIN: Just one follow-up.

17 RECROSS-EXAMINATION

18 BY MR. CARTIN:

19 Q. Is Colonial Pipeline Company classified as a
20 manufacturer in any jurisdiction with which you
21 have interaction or your subordinates have
22 interaction on environmental permitting?

23 A. Not that I recall.

24 MR. CARTIN: Okay. Thank you.

25 MR. MAYBANK: Just one follow-up.

1 RECROSS-EXAMINATION

2 BY MR. MAYBANK:

3 Q. He didn't -- he didn't say classified as a
4 manufacturer by who, did he? Whether it's EPA or
5 DOT or --

6 A. No.

7 Q. -- or any other state or federal agency?

8 A. Huh-uh (negatively responds).

9 Q. Is that correct?

10 A. That's correct.

11 MR. MAYBANK: I have nothing further.

12 (There being no further questions, the
13 deposition of Mr. Hughes concluded at
14 3:11 p.m.)
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1 (On the record at 3:15 p.m.)

2 JOSHUA STANLEY, having been duly sworn,
3 examines and testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. ANTLEY:

6 Q. Good morning, Mr. Stanley. My name is
7 Marcus Antley, III. I'm an attorney representing
8 the South Carolina Department of Revenue. I will
9 be taking your deposition in the matter of
10 Colonial Pipeline Company versus South Carolina
11 Department of Revenue and Abbeville, Aiken,
12 Anderson, Greenville, Laurens, and York Counties.
13 Have you had your deposition taken before?

14 A. No.

15 Q. Okay. So this is going to work where I'll
16 ask you a lot of questions and then the court
17 reporter will write everything down. So try to
18 answer everything verbally.

19 A. (Nods head affirmatively.)

20 Q. Ask me any questions rather than your own
21 counsel, or any other person, questions
22 clarifications, definitions, explanations of any
23 words, questions that I ask, any documents
24 presented during the course of the deposition.
25 And you're required to abide by those

1 instructions.

2 A. Okay.

3 Q. You are also advised that during this
4 deposition or any breaks taken during the
5 deposition, you cannot discuss the subject matter
6 of this deposition with any party, including your
7 attorney, and you must not ask for assistance in
8 answering any of the questions asked to you.

9 Since you do have the right to ask me to
10 clarify any question or document given to you,
11 then if you answer the questions, it will be
12 assumed that you understood them.

13 A. Okay.

14 Q. Is there any reason, such as being under
15 unusual stress, a physical or mental condition,
16 or being under the influence of any substances
17 that would prevent or limit you today from giving
18 truthful answers to my questions?

19 A. No.

20 Q. Okay. What is your name?

21 A. Joshua Stanley.

22 Q. Can you spell that for the court reporter?

23 A. J-O-S-H-U-A S-T-A-N-L-E-Y.

24 Q. Okay. And you are here as the designee of
25 Colonial Pipeline Company; is that correct?

1 A. That's correct.

2 Q. All right. I'm handing you what's been
3 marked as Exhibit 13. You are here to testify --
4 it's on the second page -- to subject areas of
5 six and seven; is that correct?

6 A. That's correct.

7 Q. Okay. All right. What is your date of
8 birth?

9 A. 12/12/1974.

10 Q. And what's your educational background?

11 A. I have a bachelor's degree in commerce and
12 engineering sciences from Drexel University.

13 Q. How did you prepare for your deposition
14 today?

15 A. We did a -- our team prepared yesterday and
16 we read through some of the questions that would
17 be -- likely to be asked.

18 Q. Okay. Did you go through any documents?

19 A. Yes.

20 Q. What documents did you look at?

21 A. I can't name them specifically. There were
22 a lot.

23 Q. Would it -- in general, what did they cover?

24 A. They -- it covered topics and questions that
25 we would likely be asked today regarding the

1 case.

2 Q. Okay. But no documents like Colonial
3 Pipeline's internal documents?

4 A. No.

5 Q. Any kind of -- okay.

6 A. No.

7 Q. Okay. So where do you work?

8 A. I work at Colonial Pipeline Company.

9 Q. And what is your job title there?

10 A. Manager of corrosion prevention.

11 Q. Okay. And what's your job responsibilities
12 as manager of corrosion prevention?

13 A. I'm responsible for maintaining the
14 integrity of our pipeline asset.

15 Q. Where is your job located?

16 A. In Alpharetta, Georgia.

17 Q. Who directly reports to you?

18 A. I have a corrosion engineer that reports to
19 me out of our corporate office. I have -- I have
20 four managers of corrosion projects who report to
21 me and they're located in the field.

22 So they would -- one's located in -- in
23 Texas, in Beaumont, Texas; the other one is in
24 Athens, Georgia; third one is in Chattanooga,
25 Tennessee; and the fourth is in Woodbury, New

1 Jersey.

2 Q. So that's five --

3 A. Five total.

4 Q. -- direct reports? Okay. Who do you report
5 to?

6 A. I report to David Pearson, the director of
7 asset integrity.

8 Q. And how long have you been in your role as
9 manager of corrosion prevention?

10 A. 2014, so about five years, little over five
11 years.

12 Q. And before that, where did you work?

13 A. I was a corrosion program manager in our
14 Northeast district --

15 Q. So at Colonial --

16 A. -- at Colonial Pipeline. I was in that role
17 for about three years.

18 Q. Okay. What's the responsibilities of a
19 corrosion -- corrosion manager; is that what you
20 said?

21 A. Yeah, the -- yeah, corrosion program
22 manager.

23 Q. Program manager, okay.

24 A. So at that time, the position was
25 responsible for implementing a lot of the

1 corrosion mitigation projects that are required
2 by our regulatory body.

3 Q. Okay. So as part of that corrosion
4 mitigation, do you also have to be aware of -- of
5 state and federal laws regarding corrosion --

6 A. Yes.

7 Q. -- and protection?

8 A. Yes. We are -- we're regulated by PHMSA and
9 the PHMSA has specific guidelines in their -- in
10 their -- in their CF -- 49 CFR 195 that -- that
11 specifically mentions corrosion prevention and
12 how we're to mitigate corrosion on our system.

13 Q. Okay. I want to talk about each part of the
14 assets that Colonial has claimed as exempt. With
15 pipeline coatings, could you explain their use
16 and -- by Colonial and how they help prevent
17 corrosion or --

18 A. So in short, the pipeline coating is applied
19 over a pipeline or really any -- any asset that's
20 metallic, that's steel, and it isolates the --
21 the pipeline from the environment that is causing
22 the pipeline to corrode.

23 So a pipeline is -- was made from iron ore,
24 initially, and it's always trying to get back to
25 iron ore, so it's always trying to corrode and --

1 and pit. And that is the way to isolate the
2 pipeline from its environment and ultimately
3 protecting it from trying to go back to its iron
4 ore state and -- and it prevents it from
5 corroding, essentially.

6 Q. Is the coating on the inside and the outside
7 of the pipeline?

8 A. The coating on our system is -- we have
9 very -- we have a very few, very small length of
10 pipe that has coating on the inside; a few
11 hundred feet.

12 But the -- the coating that I'm referring to
13 is external coating and that is -- yeah, because
14 our main threat on our pipeline system -- the
15 main threat of corrosion is external corrosion.

16 Q. And is that pipeline coating -- is that pipe
17 coating, is that on all of the external pipeline?

18 A. Yes.

19 Q. Okay. Do you -- do you apply the pipe
20 coating or does Colonial apply the pipe coating
21 or do they buy the pipe with the coating?

22 A. During original installation of the pipe,
23 probably a little bit of both. Usually, we buy
24 it from the pipe mill already coated. But during
25 our original installation, there was some field

1 coating that occurred.

2 So there's -- there's equipment machines
3 that can apply coating out in the field after
4 it's in the trench, so -- so both.

5 Q. Is it -- is there more pipeline that you buy
6 with the coating already on it or do you apply it
7 to more -- what's more common? What's --

8 A. So -- so -- so back in the late 1960's, I
9 would say there's probably a lot more field
10 coating and -- but I don't know exactly how much
11 was field coated off the top of my head.

12 In today's world, in the last 20, 30 years,
13 just about all of it is coated in the -- in
14 the -- in the pipe mill before we get it. And
15 there's some minor field coating that occurs when
16 the joints are put together, welded together in
17 the field when you're constructing the pipeline.

18 Q. Do you know when the pipe is purchased
19 if -- if they're -- if the coating is billed
20 separately from the pipe itself or if it's all
21 grouped together?

22 A. It's -- that -- that depends. If the
23 coating mill -- if the pipe mill that
24 manufactures the pipe also does the coating, then
25 it's probably all lumped into -- into one bill.

1 In some cases, we have to buy the pipe after
2 it's manufactured and then rail it to another
3 facility that does the coating work. So that
4 might be two different purchases, two different
5 bills.

6 Q. So are you able to determine how much of the
7 pipeline cost is from the coating versus the rest
8 of the pipe?

9 A. I don't think I know that, the answer to
10 that.

11 Q. Is that something, though, you'd be able to
12 determine or is it all --

13 A. Well, a --

14 Q. -- grouped together?

15 A. -- a majority of our coating on our pipeline
16 system is from the late sixties, early seventies,
17 and I don't know that -- I don't know that I -- I
18 could even have access to records from then.

19 Q. Okay.

20 A. Yeah.

21 Q. For the pipeline coating that's claimed on
22 the 2017/2018 property tax exemption, is that
23 from the 1960's and '70's or is that more recent?

24 A. It -- it is. It's from that era. I mean,
25 it's possible that we may be able to -- I don't

1 know the answer to that. I'd have to -- I'd have
2 to ask some people if that's something that we'd
3 be able to get. I just don't know.

4 Q. Okay. All right. So cathodic protection,
5 could you explain what that is and how Colonial
6 uses it?

7 A. Okay. So cathodic protection is -- it's an
8 electrochemical process that prevents our
9 pipeline and all of the other assets; tanks,
10 pipelines, really anything metallic that we bury
11 in our ground as part of our system.

12 It's required by -- by PHMSA, by the Code of
13 Federal Regulations to -- to have cathodic
14 protection applied to it. So it -- so it
15 prevents the pipeline from corroding.

16 There's -- there's several parts to a
17 cathodic protection system. You're always going
18 to have an anode, you're always going to have a
19 cathode, you're going to have a rectifier that
20 powers the system, and you're going to have wires
21 that -- that attach the anodes and cathodes to
22 the -- to the power supplier, to the rectifier,
23 and you have to have an electrolyte.

24 So it works if there's -- if the pipeline or
25 other asset is in contact with the soil or water

1 or some sort of electrolyte.

2 So the way we use it is, is we -- we perform
3 surveys along our pipeline system on regular
4 intervals and we're constantly monitoring the
5 cathodic protection levels.

6 It's required by PHMSA that we meet certain
7 levels of cathodic protection so we ensure that
8 our pipeline is not actively corroding.

9 And -- and we're constantly adjusting the
10 systems we have or adding new systems as we need
11 throughout our -- throughout the course of the
12 life of the pipeline.

13 The -- I mean, the anodes are typically made
14 out of Titanium with a mixed metal oxide outer
15 film or coating, or they may be made out of
16 graphite or sometimes they're made out of high
17 silicon cast iron.

18 But they're essentially the sacrificial part
19 of the circuit. So we're -- we're sacrificing
20 the anode and the cathode is -- is always a part
21 of the circuit that gets protected.

22 So we need to meet certain voltage levels to
23 ensure we have the proper protection, and that's
24 one of the things that we monitor and install.

25 So it is required by the government and it's

1 put in place to -- to prevent the pipeline from
2 essentially creating pits and holes that could --
3 where product could possibly release from the
4 pipeline.

5 Q. So the cathodic protection systems, how big
6 are they?

7 A. So they -- they are -- the anodes themselves
8 might be about five- or six-feet long by maybe
9 three to eight inches in diameter, so they're
10 long tubes.

11 We may put in anywhere from five to 25
12 along -- along the -- the pipeline, along the
13 edge of our right-of-way. So it may -- it may
14 cover 500 to a thousand feet.

15 And then there's a power supply. The power
16 supply is probably -- I'd say it's maybe two feet
17 tall by maybe 18 inches deep by -- by maybe
18 18 inches wide.

19 And it's a -- it's a cabinet that's mounted
20 to a power pole and -- and it needs to have
21 access to AC power. So usually it's alongside of
22 a street where we have -- already have power --
23 power poles installed. And the AC power gets fed
24 into the rectifier and the rectifier converts
25 that power to DC and that -- that's the purpose

1 of the rectifier itself.

2 And the rest of it's just the wires that are
3 attached. One wire attaches to the pipeline and
4 the other wire attaches to the anodes. So -- so,
5 physically, you may only see a very -- a small
6 footprint on a -- on the side of a power pole,
7 but underground it could be thousands of feet
8 long.

9 Q. How many systems are -- cathodic protection
10 systems are there in South Carolina?

11 A. Last I checked, we have 121 systems.

12 Q. Just in South Carolina?

13 A. Just in South Carolina.

14 Q. And the automatic shut-off valves, could you
15 tell me about those?

16 A. I can talk about that. So an automatic
17 shut-off valve is -- is a -- is a -- a device
18 that we use to isolate product in our pipeline.

19 So it can be -- it can be operated remotely
20 from a controller, for instance, from our control
21 room in -- in Atlanta. They can be operated
22 there or they can be operated locally by a local
23 technician or operator at a facility.

24 The purpose of the valve is to isolate the
25 pipeline in the event that we have a situation

1 where possibly a -- maybe a corrosion pit caused
2 a release of product and we may detect that.
3 Then we can isolate the -- the pipeline to
4 prevent product from contaminating the -- the
5 ground, water, and air.

6 Q. So these three things, these pipe coatings,
7 cathodic protection, automatic shut-off valves,
8 are they located only on the pipeline itself, or
9 are they also located in facilities, like the
10 Belton facility, the Spartanburg facility?

11 A. They're -- they're located -- they're --
12 they're required for every piece of metal that
13 touches the ground.

14 So on our aboveground storage tanks, on the
15 bottom side to the storage tanks, we have
16 cathodic protection there. We have cathodic
17 protection on all our facility piping, conduits,
18 any sort of flanges or anything in a facility,
19 valves. And we have cathodic protection on our
20 entire pipeline system that interconnects our
21 facilities.

22 Q. So if it touches the pipeline and the
23 ground, then you get -- then you have to have
24 those.

25 A. Yeah. So as soon as you put a piece of

1 metal in the ground, it will -- it will corrode
2 back to its iron ore state; that's just a natural
3 phenomenon.

4 Essentially, iron ore has a very -- very low
5 energy level. And then when we refine steel and
6 we process it and make a pipeline out of it,
7 we're putting a lot of energy into it.

8 As soon as you put it back into the ground,
9 the energy wants to -- wants to release. So --
10 so that natural phenomenon is going to -- it's
11 going to corrode the pipe almost immediately.

12 So we are required by -- by PHMSA to install
13 cathodic protection on any new pipelines,
14 pipeline or asset within a year after
15 installation to ensure that the corrosion
16 doesn't -- doesn't occur, so.

17 So we install it on new -- on new pipes, we
18 install it immediately. And cathodic protection
19 has always been on our system.

20 We've -- we've -- we've definitely enhanced
21 and beefed up our cathodic protection over time.
22 As we learn more, do more surveys across our
23 system, we -- we -- we continue to add more
24 cathodic protection. So, today, we have a lot
25 more than we had 20 years ago.

1 Q. Does Colonial Pipeline Company, do they own
2 any, I guess, property that has metal that
3 touches the ground that does not have pipeline
4 coatings, cathodic protection, and then automatic
5 shut-off valves?

6 A. No, it -- it has all of that and that's
7 all -- that's all required, so. It's -- you
8 know, we are -- we're inspected and audited on
9 a -- on a regular basis by -- by PHMSA and
10 that's -- and they check to make sure that --
11 that we have that and not only do we have it, is
12 it operating effectively.

13 Q. So it doesn't matter if it's an actual part
14 of -- if it's the actual pipeline. If it's any
15 facility related to ...

16 A. If it's a -- if it's a -- if it's a piece
17 of -- if it's a asset that touches or handles
18 hazardous material, you know, our products, then
19 it's required to have cathodic protection. And
20 the main purpose is to prevent a release of -- of
21 product into the environment.

22 Q. And is it required because it's part of a
23 pipeline company or ...

24 A. It's required because it's considered a
25 hazardous material.

1 Q. Okay. So even companies that are not
2 pipeline companies would be required to have that
3 kind of protection?

4 A. So pipe -- so natural gas companies are
5 required. They -- they file 49 CFR 192. Liquids
6 cover -- or have to abide by 49 CFR 195.

7 Waterlines are not -- do not require to have
8 cathodic protection. Some of them do because
9 they like to protect their asset and they don't
10 want to lose money with the water leaking out of
11 the pipes, but it's not required. So there's
12 chemical pipelines that -- that require cathodic
13 protection, so yeah.

14 Q. Do you know if refineries are required to
15 have cathodic protection?

16 A. Refineries are regulated by someone other
17 than PHMSA.

18 Q. Okay.

19 A. So I -- I don't know what those requirements
20 are specifically.

21 Q. Is the purpose of pipeline coatings,
22 cathodic protection, and automatic shut-off
23 valves, is it purely pollution control or are
24 there other purposes?

25 A. It is. The main purpose is -- is to keep

1 the product in the pipeline and keep the product
2 from releasing. The main purpose of -- of PHMSA
3 is -- is public safety. So that's -- that's the
4 main concern. That's why the regulations are in
5 place.

6 Q. So when you say --

7 A. So it -- it preserves the asset. So it's --
8 it's something that's in our best interest, as
9 well. Preserve the asset, but ultimately it's
10 keeping the public safe by keeping the hazardous
11 product in the pipeline; that's the main purpose.

12 Q. You said keep the public safe. Does -- does
13 that mean not just pollution, but just --

14 A. Well --

15 Q. -- people?

16 A. Yeah, the public and environment, I should
17 say, the -- yeah. So, obviously, there -- there
18 could be explosions and things associated with a
19 release, so that's -- that's a different concern.
20 But contamination into the groundwater or into a
21 waterway or into the air is -- is -- is also a
22 major concern with public safety of the -- of the
23 environment and people.

24 Q. So I'm going to -- you kind of got into it
25 there, but for each -- for each of those,

1 pipeline coatings -- pipe coatings, cathodic
2 protection, automatic shut-off valves, let me
3 know if any of these are different.

4 But what is the source, quantity, and types
5 of pollution that -- that pipeline coatings --
6 excuse me -- pipe coatings, cathodic protection,
7 and automatic shut-off valves prevent, mitigate,
8 eliminate, treat, abate, or control?

9 A. Colonial transports gasoline and several
10 distillates, diesel fuel, jet fuel, fuel oils.
11 So those are the products. Those are the
12 contaminants that -- that we're preventing.

13 Q. Okay. And what kind of pollution does that
14 prevent?

15 A. I mean, it prevents pollution to the
16 groundwater, to the waterways, and to the air.

17 Q. There's no noise pollution, right, with all
18 of these?

19 A. Not -- not with our system.

20 Q. Okay. So if the pipe coatings fail, what
21 happens?

22 A. If the pipe coatings fail, then -- then
23 the -- the metal, the -- the external surface of
24 the pipeline is in contact with the earth and the
25 environment and that's when corrosion start to

1 occur.

2 Corrosion does not occur where the -- where
3 the coating's in good condition. So if there's
4 a -- if there's a pit or a hole that develops in
5 a pipeline and the product releases out, it's --
6 it's definitely due to a -- we call it a
7 "holiday," which is a -- which is a defect in --
8 in the coating where it wasn't effective or -- or
9 maybe it fell off because it was mechanically
10 abraded during construction or maybe over time
11 the environment just pulled it off. And, you
12 know, coatings do have a life, so.

13 Q. And what happens if the cathodic protection
14 fails?

15 A. The cathodic protection -- if the cathodic
16 protection fails, then -- then you're relying a
17 hundred percent on -- on the coating to be
18 perfect and that -- that doesn't exist.

19 Coatings are never perfect. Even -- even
20 the day you put one in, there's always a pinhole
21 or a holiday somewhere and we know that. That's
22 why coatings and cathodic protection are -- are
23 required to be applied together.

24 Q. What about the automatic shut-off valves?
25 What happens if they fail?

1 A. The automatic shut-off valves fail, then we
2 can no -- we can't isolate the product. So in an
3 emergency where we detect an integrity problem or
4 a release on our system, we would not be able to
5 isolate that release.

6 Q. What U.S. or state agency requires the
7 abatement of -- of those pollution -- those types
8 of pollution? So -- I'm sorry. What -- what
9 U.S. or state agency requires the pipe coatings,
10 cathodic protection, and automatic shut-off
11 valves?

12 A. PHMSA is -- PHMSA is the federal agency.

13 Q. And how -- could you -- it's -- what's the
14 acronym for that?

15 A. Pipeline and Hazardous Material Safety
16 Administration.

17 Q. Do pipe coatings, cathodic protection, and
18 automatic shut-off valves have any kind of
19 production purpose? Do they --

20 A. No.

21 Q. Outside of the environmental concerns?

22 A. They -- they do not have any -- when you say
23 "production," you mean production within the
24 pipeline as far as a revenue generator or what --
25 what do you mean by that?

1 Q. Do they have any -- for example, we had an
2 earlier witness discuss about how product is
3 blended. Is -- does it have any role --

4 A. Oh, is --

5 Q. -- in that blending process?

6 A. I understand. No, it has nothing to do with
7 the -- with the product or the production of
8 product inside the pipeline.

9 Q. Okay. Does -- do pipe coatings, cathodic
10 protection, and automatic shut-off valves, that
11 help -- does that help make transporting the --
12 whatever product that Colonial Pipeline is
13 transporting, does that help make it more
14 efficient?

15 A. No.

16 Q. Okay. Does it have a safety purpose, as
17 well?

18 A. A safety --

19 Q. I think you might have gone into this.

20 A. So we talked a little bit about the --
21 keeping the environment and people safe, so for
22 that -- that purpose, yes.

23 Q. Okay. In your experience, are there
24 instances where pipe coatings, cathodic
25 protection, and automatic shut-off valves are

1 used when they're not required by state or
2 federal law?

3 A. Are they used when they're not required?
4 Yeah, they're used all the time. You're talking
5 about just in our pipeline or just in the
6 industry, in general?

7 Q. Both.

8 A. There's -- I mean, there's -- any company
9 you own is an asset that's made of metal and they
10 would want -- want to preserve that asset or
11 prevent a release from their asset, then yes.

12 Waterlines was the example I gave.
13 Definitely not required, but -- but if you lose
14 water out of your system and that's your
15 business, you lose revenue, so. So it's -- it
16 keeps the asset safe.

17 Power plants use them. There's companies
18 that transport air and I don't believe they're
19 required, but they -- they use it, so.

20 Q. So water, air, those are things that
21 wouldn't cause pollution, right?

22 A. I'm not -- well, if it's straight nitrogen
23 or straight carbon dioxide, I guess there could
24 be some pollution associated with that, but
25 that's not really my line of expertise, so I

1 don't --

2 Q. And -- but water, there wouldn't be any
3 pollution from that, would there?

4 A. From water? It depends what kind of water
5 they're -- they're transporting, so. Obviously,
6 drinking water, no, but -- but there is -- there
7 may be some sewer lines that -- that use cathodic
8 protection that -- there's cast iron sewer lines
9 out there and definitely don't want that being
10 released into our -- our water supply.

11 MR. ANTLEY: I think that's all I have.

12 MR. CARTIN: Just got a couple quick
13 questions for you.

14 CROSS-EXAMINATION

15 BY MR. CARTIN:

16 Q. What is this coating made out of? Is it
17 like plastic or is it some sort of like thick,
18 metallic paint?

19 A. So over the years, the coating has evolved.
20 Originally, our original system has what's called
21 an "asphalt enamel." It's an asphalt
22 petroleum-based coating. It's probably maybe a
23 quarter-inch thick.

24 Q. Uh-huh (affirmatively responds).

25 A. In some cases, it could be a half-inch

1 thick; just depends on how -- how they applied
2 it. There's several variations of the asphalt
3 coating.

4 And then later, the polyethylene become very
5 popular. So the -- the two main lines that run
6 through South Carolina have an extruded
7 polyethylene and an asphalt enamel coating, so
8 those two.

9 So, today, when we -- when we do pipe
10 remediation work, we use epoxies. So all new
11 pipe that we buy is coated from the factory with
12 an epoxy coating, and when we do a repair or a
13 replacement on our system, we're using an epoxy
14 coating.

15 Q. And in your position at Colonial Pipeline,
16 do you interact with folks from other pipeline
17 companies at --

18 A. I do.

19 Q. -- conferences and so forth?

20 A. Yes.

21 Q. Are you aware of any other pipeline
22 companies that do similar or the same work as
23 Colonial Pipeline that use untreated pipe as a
24 matter of course?

25 A. Uncoated pipe?

1 Q. Uncoated pipe.

2 A. Uncoated? No, that's required by -- by most
3 agencies, federal and state.

4 Q. Okay. And this cathodic protection, I guess
5 the missing piece I just didn't -- the question
6 was never asked was, so they're generating
7 electronic current that prevents a chemical
8 reaction from happening?

9 A. Right.

10 Q. Is that what -- so what --

11 A. Right. So -- so corrosion is a loss of
12 electrons. So the power supply feeds the cathode
13 with electrons and in the electrolyte, there's a
14 chemical reaction where the water molecules are
15 separated and hydrogen ions are forced to the
16 cathode and it creates a -- a protective layer
17 near the pipeline. So there's -- there's
18 electrons flowing through the wires --

19 Q. Uh-huh (affirmatively responds).

20 A. -- and there's a chemical reaction that
21 takes place at the interface of the end of any
22 cathode.

23 Q. And the automatic shut-off valves, just so I
24 understand how this thing works, let's say I'm in
25 my backyard, I got a really rowdy nine-year-old,

1 say, "Go outside and just dig a hole, get some
2 energy out," and he digs and he digs and he digs
3 and he puts a big old hole in Colonial Pipeline's
4 pipe and it starts shooting gas everywhere. Does
5 the automatic shut-off valve somehow sense that
6 and shuts down the pipeline; is that how it
7 works?

8 A. We -- we have -- not on that -- we have --
9 we have controllers that are monitoring pressure
10 across our pipeline system and we have
11 computational models that are monitoring. And
12 when -- when there is a release, they can detect
13 it, and then they would -- they would shut --
14 they would -- they would perform a shutdown. So
15 they would close the valve.

16 Q. When you have a release like that, do you
17 measure the monetary loss of the release?

18 A. I'm sure they do. I'm not usually in those
19 conversations, but yes.

20 MR. CARTIN: All right. I don't think
21 that's -- I don't think I have anything
22 else. Michael?

23 MR. KOZLAREK: I don't have any
24 questions.

25 MR. MAYBANK: I just had a few.

1 CROSS-EXAMINATION

2 BY MR. MAYBANK:

3 Q. You say PHMSA regulates you, but does EPA
4 and DHEC have jurisdiction over -- for example,
5 let's say, over spills?

6 A. Not for cathodic protection work.

7 Q. Okay. So basically PHMSA is your sole
8 regulator?

9 A. Yes.

10 Q. All right. And then what is a -- what
11 exactly is a anode and a cathode? Are those
12 pieces of metal?

13 A. Anode and cathode. So an anode is a piece
14 of metal that is sacrificing, giving up
15 electrons. So it can really be anything. I can
16 take two pieces of steel and I can make one the
17 anode and one the cathode. One will be --

18 Q. Right.

19 A. -- always be protected. The other one will
20 always -- will corrode over time. The anodes
21 that we use are specifically designed to -- to
22 discharge current without consuming quickly.

23 Q. Okay.

24 A. So -- so -- so they're specially made to
25 last anywhere from 20 to a hundred years over

1 time, where if you were to use just any piece of
2 metal, it would consume very quickly. We'd have
3 to constantly replace the anode.

4 Q. And you're required to put it on your
5 pipeline, did you say, within a year of
6 installing pipe?

7 A. Within one year of new construction,
8 correct.

9 Q. And was this requirement in place all the
10 way back in 1962 when the facility was made?

11 A. So post 1971, I know coatings were required.
12 Now, it doesn't mean that you don't have coated
13 pipe. It just means that it became a federal
14 requirement.

15 Cathodic protection, I don't know that I can
16 answer exactly when that was required. It might
17 be '71 or --

18 Q. A long time?

19 A. -- or maybe -- maybe a little bit after
20 that. That, I don't remember that specifically.

21 Q. Okay. And does the law require you to
22 reapply the cathodic protection if it fails?

23 A. The law requires us to monitor our system
24 for cathodic protection levels. So we have
25 12,034 test stations, which is basically a -- a

1 fixture in the pipeline right-of-way and in
2 stations. It looks like a three-inch poly --
3 polyethylene tube, and there's wires attached to
4 the pipe in those tubes.

5 So -- so every year we visit these locations
6 and take a reading. We're required to provide
7 those readings every year to PHMSA and they need
8 to meet a certain level to show that they -- that
9 the cathodic protection is effective.

10 We also every five years, we perform what's
11 called a "close interval survey." And we have
12 someone walk the entire pipeline and take a
13 reading every two and a half feet on the system.

14 And any readings that do not meet our
15 criteria for cathodic protection, then we have a
16 remediation plan and we go out and remediate,
17 which means add cathodic protection or adjust our
18 current cathodic protection, or bring the levels
19 up to satisfactory levels.

20 Q. Okay. And so when they do the -- the
21 weekly -- you say they check it weekly; did you
22 mention?

23 A. We -- well, we check -- we check --
24 rectifiers are also required, the power supplies
25 that run the cathodic protection systems. They

1 are required to be -- to be read for performance
2 bimonthly.

3 Q. Okay.

4 A. The test stations out in the right-of-way
5 and in stations, they're an annual requirement.

6 Q. And do they have to be tested manually or
7 can you sit back and look at a machine and see if
8 they're working?

9 A. The test stations out in the right-of-way
10 and in stations have to be read manually. There
11 are devices that can read them automatically, but
12 due to the size of our system, that would be a
13 very expensive option.

14 Q. Uh-huh (affirmatively responds).

15 A. So we have people that read those and we
16 have people -- crews that walk the pipeline and
17 take measurements every two and a half feet on
18 five-year cycles.

19 The rectifiers, we have -- we do have those
20 read by a remote -- it's called a "remote
21 monitoring unit," which is mounted next to the
22 rectifier. And it's reading the rectifiers real
23 time and alerting us when it falls below a level
24 parameter we might have set.

25 But we do physically go out about twice a

1 year and read those manually to make sure they're
2 working properly and -- and -- and the rectifier
3 is physically still standing there on the pole
4 and not knocked over.

5 Q. And how -- how big a crew do you have to
6 assist you with cathodic protection?

7 A. For annual surveys in South Carolina, I
8 believe we have two corrosion technicians who are
9 responsible for taking the annual readings. The
10 close interval survey readings, it will be a crew
11 of anywhere from maybe four to 15 people. Just
12 depending on availability and number of
13 pipelines, we might be surveying simultaneously.

14 Q. And do you use independent contractors, as
15 well?

16 A. We do use independent contractors for the
17 close interval survey work, yes.

18 Q. Okay. And, specifically, the pollution that
19 it prevents, that would be both air and water.
20 If you had a horrible spill, would that generate
21 air pollution, too?

22 A. Yes. Well -- yes, there are -- there are
23 vapors from our product that absolutely would
24 cause air pollution.

25 Q. Okay. You've talked about federal law

1 requirements. Are there also industry standards
2 or best practices?

3 A. So the -- the CFR 195 references a NACE
4 standard for coatings and cathodic protection and
5 that standard is -- is a NACE SP0169. So they
6 defer to the industry standard for -- for
7 cathodic protection and the entire industry uses
8 that standard.

9 Q. And what is the -- what's the industry group
10 name?

11 A. NACE?

12 Q. Yeah.

13 A. NACE is National Association for Corrosion
14 Engineers.

15 Q. Okay. And so y'all have -- are you a member
16 of that?

17 A. I am a member.

18 Q. And y'all have your own safety standards,
19 then, or protection standards?

20 A. We -- we -- we apply the NACE standards into
21 our own operating procedures.

22 Q. Okay. Well, who is NACE? NACE is the
23 National Association of ...

24 A. For Corrosion Engineers.

25 Q. Corrosion Engineers, okay.

1 A. So -- so a lot of the experts in the
2 industry form committees and they create
3 recommended practices and they're reviewed by
4 peers and then over time, the recommended
5 practice may become a standard practice, which --
6 which holds a little bit more weight in the
7 industry.

8 Q. Okay.

9 A. So for years, the -- the NACE standard used
10 to be a RP0169, recommended practice, but now it
11 has become a standard practice --

12 Q. Okay.

13 A. -- for at least ten, 15 years.

14 Q. So we've been over cathodic protection.
15 Let's turn to pipeline coatings. How long has
16 the law required pipeline coatings?

17 MR. CARTIN: Object to the form. You
18 can answer.

19 Q. Well, let me -- let me ask you again. Does
20 state or federal law require pipeline coatings?

21 A. Yes.

22 Q. And which law requires them? May be more
23 than one.

24 A. The -- I believe it was the Safe Pipeline
25 Act of 1971, something similar to that.

1 Q. Okay. So is it -- are they still required
2 today?

3 A. Yes.

4 Q. And is it -- is it entirely different
5 statutory scheme for coatings as it is for
6 cathodic protection, or are they just wrapped
7 into the same sections?

8 A. The -- the way that -- the way the
9 regulations are written, they both reference NACE
10 SP0169 and they're both wrapped into that
11 standard.

12 Q. Okay.

13 A. And the regulations do specifically say not
14 only do we have to have coatings, but we have to
15 repair them when we find them defective.

16 Q. Okay. And where in the system do you do the
17 coating? The entire system or portions of it
18 or ...

19 A. Where do we -- are you asking me where do we
20 have coating?

21 Q. Yeah.

22 A. We have coating on our pipeline. We have
23 coating on all facility pipe, below-ground tanks.

24 Q. And where does that asset -- when's pipeline
25 coating required to be applied?

1 A. Pipeline coatings is required before the --
2 anything we install is required to have a coating
3 on it before it's installed.

4 Q. Installed? Okay.

5 A. Yes.

6 Q. So before it becomes operational?

7 A. That's correct.

8 Q. All right. Do you have to reapply it? You
9 mentioned, obviously, there's times where it's
10 defective, but just from --

11 A. The coating --

12 Q. -- age, does it wear out?

13 A. The coating does have a life; approximately
14 25 to 30 years is what's advertised by coating
15 manufacturers. It doesn't mean it's going to
16 necessarily fail in 30 years.

17 So we perform a lot of our cathodic
18 protection surveys and we have other coating
19 assessment surveys that we perform on a regular
20 basis to determine the effectiveness of our
21 coating.

22 Q. Okay. If you can describe -- you went into
23 detail on the cathodic protection surveys. If
24 you can tell us about the pipe -- the coating
25 surveys.

1 A. So when we perform a cathodic protection
2 survey, a close interval survey, the readings --
3 the readings get very low and sometimes fall
4 below our criteria for cathodic protection; that
5 is an indication that we may have a coating
6 problem.

7 So we do further investigation. We look at
8 our in-line inspection logs, which actually
9 measures metal loss in the pipeline, and we
10 can -- we can integrate and match up the two to
11 see if we're seeing metal loss.

12 Because where we're seeing metal loss, we
13 definitely have a coating problem. So we use
14 several data sets. Cathodic protection is a very
15 important one, and in-line inspection is the
16 other tool that we use to assess coating and --
17 and perform, you know, remediation.

18 Q. And do the same employees do the protective
19 coatings investigation as cathodic protection or
20 is it a different set?

21 A. The corrosion technicians are typically
22 the --

23 Q. They're doing both?

24 A. Do both, that's correct.

25 Q. Okay. All right. And is -- do you have

1 independent contractors who just do protective
2 coating? Is it a specialized task?

3 A. The -- the actual coating application itself
4 is done by contractors.

5 Q. Okay.

6 A. The coating assessment is usually done by --
7 done by Colonial, but -- but they can also be
8 done by contractors, as well.

9 Q. And does -- does state or federal law
10 require these inspections?

11 A. The regulations are -- don't specifically
12 tell you maintenance intervals, but it does state
13 that where you find defective or deficient
14 coating, it must be repaired.

15 Q. Okay.

16 A. So they leave it up to us to determine what
17 programs to use.

18 Q. All right. And just to state the obvious
19 and then I'll be through. The -- the isolation
20 valve -- if you didn't have an automatic shut-off
21 valve and -- and you had an issue, would the
22 environmental problem be you would have more
23 pollutants coming out?

24 A. That's correct. So when -- when -- when
25 there's a leak on our -- on our pipeline system,

1 gravity -- essentially all the -- all the product
2 within the pipe, the gravity will cause it to
3 leak out of the pipe.

4 So -- so without an isolation valve, all the
5 product to a certain elevation level would leak
6 out. But with an isolation valve, the -- you can
7 isolate the -- the amount of product that leaks
8 out of your system.

9 Q. And do state or federal law require
10 isolation valves?

11 A. Yes.

12 Q. Uh-huh (affirmatively responds).

13 A. It doesn't --

14 Q. The difference --

15 A. It doesn't tell us exactly how many. It
16 relies on us to evaluate our system and
17 understand where they're needed and where we need
18 to install them.

19 Q. Okay. So it requires you, but not a very
20 specific requirement, then, I guess?

21 A. That's correct.

22 Q. Okay. And how long do they last, automatic
23 shut-off valves? Pretty good little while?

24 A. I would expect they last at least 30 years.

25 Q. Uh-huh (affirmatively responds). That may

1 be it for me. Let me look here real quick.

2 Oh. Do you have an inspection program for
3 the automatic shut-off valves or is that pretty
4 obvious?

5 A. We have -- we have maintenance that the --
6 our corrosion -- I mean, excuse me -- our
7 operations technicians at the facilities perform.
8 They perform annual preventative maintenance
9 activity on -- on the valves. And for external
10 corrosion, we have cathodic protection that we
11 maintain for the valve, as well.

12 Q. And your competitors use coating and
13 cathodic protection, as well?

14 A. Absolutely.

15 Q. Would it be fair to say literally every
16 single mile of pipe in the U.S. today has
17 cathodic protection and pipeline coating?

18 A. As far as I know, yes. There are exceptions
19 for -- there are --

20 Q. Yeah, I'm just talking about petroleum
21 products.

22 A. Right, as far as I know.

23 MR. MAYBANK: I don't have anything
24 further.

25 MR. CARTIN: Don't have anything.

1 Michael?

2 MR. KOZLAREK: Yeah, I've got a couple
3 of follow-ups real quick.

4 CROSS-EXAMINATION

5 BY MR. KOZLAREK:

6 Q. I think Mr. Maybank asked you if without the
7 automatic shut-off that the environmental damage
8 would be worse if there were a release of product
9 and you -- I'm paraphrasing heavily -- said
10 "yes;" is that --

11 A. That's correct.

12 Q. Is that a fair -- is that a fair
13 characterization?

14 A. Yes.

15 Q. Would you also assume that the cost to the
16 company, to Colonial or to the shipper of the
17 product, would also be worse if more product left
18 the pipeline?

19 A. Yes.

20 Q. Okay. When did you say that the coatings
21 were required? I think I heard you say 1971 is
22 when you thought the law was --

23 A. That's right, 1971, yes.

24 Q. Okay. And -- and cathodic protection, did
25 you say when you thought that --

1 A. I -- I --

2 Q. -- law came into being?

3 A. I did not know a specific year when it was
4 required. It -- it -- yeah, I don't know exactly
5 to make a comment on that, but I know it's --

6 Q. Okay.

7 A. -- required now.

8 Q. Okay. And when did -- I think I heard you
9 earlier and it may have been one of the other
10 witnesses, I apologize, but I thought I heard you
11 say earlier that -- that coatings have been in
12 South Carolina on Colonial's pipeline since the
13 pipeline was installed in, let's say, '62.

14 A. Yes.

15 Q. Okay. And what about cathodic protection?

16 A. We have -- we have always had cathodic
17 protection on our system. It has been enhanced
18 over the years significantly to meet more
19 stringent regulatory requirements that were
20 implemented over time.

21 Q. And what about the use of valves? Were
22 those also in place back in '62 when the pipeline
23 was installed?

24 A. Yes.

25 Q. So those three assets would have been used

1 prior to any kind of regulatory requirements that
2 they be used?

3 A. That's correct.

4 Q. So why would they have been used in 1962 if
5 they weren't required by state or federal law?

6 A. It's in our -- it's in the best interest to
7 protect the asset and keep the product in the
8 pipeline. So at the time, a decision was made to
9 spend the extra money. Coatings were being used
10 and cathodic protection was being used well
11 before 1971 and -- and most of the companies were
12 using them. But it wasn't a federal requirement,
13 so not all were using them.

14 So it makes good -- it's a good investment.
15 It makes good financial sense and -- to protect
16 your asset and to keep the -- the product from --
17 from being released from your pipeline and --
18 and -- and causing a lot of concerns such as
19 pollution, contamination.

20 MR. KOZLAREK: I don't think I have
21 anything else. Thank you.

22 (There being no further questions, the
23 deposition concluded at 4:06 p.m.)

24
25

1 CERTIFICATE OF REPORTER

2
3 I, Cassandra E. Vance, Court Reporter and
4 Notary Public in and for the State of South
5 Carolina, do hereby certify that I reported the
6 30(b)(6) deposition of COLONIAL PIPELINE COMPANY
7 on the 6th day of August, 2019; that the
8 deponents were first duly sworn to tell the
9 truth, and that the foregoing is a true and
10 correct transcription of the testimony taken
11 under oath.

12 I further certify that I am neither attorney
13 nor counsel for, nor related to or employed by,
14 any of the parties connected with this action,
15 nor am I financially interested in said cause.

16 I further certify that the original of
17 said transcript shall be hereafter sealed
18 and delivered to Marcus "Trey" D. Antley,
19 III, Esquire, South Carolina Department of
20 Revenue, 300A Outlet Pointe Blvd., Columbia,
21 South Carolina 29211.

22 This sealed original transcript shall
23 be retained by the above party, who shall be
24 responsible for filing same with the Court
25 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 Vance

Cassandra E. Vance, Court Reporter
Notary Public for South Carolina

My commission expires: 12-13-2027

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

Colonial Pipeline Company)
)
Petitioners,)
)
v.)
)
SC DOR & Abbeville County,)
Anderson County, Greenville County,)
Aiken County, Laurens County)
& York County)
)
Respondents.)
-----)

MOTION HEARING

Monday, January 6, 2020
10:03 a.m. - 12:28 p.m.

The motion hearing before the Honorable Ralph King Anderson, III, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 6th day of January, 2020 before Tiffiny Evans, Court Reporter and Notary Public in and for the State of South Carolina.



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Also Present:

J. Keith Fuqua, Tax Director Colonial Pipeline

INDEX**PAGE****CALL TO ORDER:**

THE COURT. 4

POSITION STATEMENTS:

MR. MAYBANK. 4
 MR. ANTLEY. RESPONSE. 37
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 MR. CARTIN. 91
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EXHIBITS

(No exhibits were marked during this hearing.)

STIPULATIONS

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



CALL TO ORDER:

THE COURT: Thank you. Y'all be seated. Give me just a second to get logged on. This is a hearing in the matter of Colonial Pipeline Company, petitioner, versus South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, York County, and Laurens County. There must be another file -- and Aiken County. The Docket Number is 18-ALJ-17-0443-CC. And so the record be fair, it's a summary judgment hearing. All right. Mr. Maybank.

MR. MAYBANK: Thank you.

THE COURT: It's kind of hard for them to make me feel sorry for you sometimes, but you would send out one motion, and you'd get three attached back.

POSITION STATEMENT BY MR. MAYBANK:

MR. MAYBANK: We have gone through a lot of trees on this case. I will say that. I'll jump right into it then. The issue before the Court is whether Colonial is an Industrial plant, and our position is that's the only issue before the Court. The pollution control statute in the constitutional version had several criteria



1 to qualify as a pollution exemption, but the
2 DOR has denied it on the basis that Colonial
3 failed one criteria; that we're not an
4 industrial -- quote, "industrial plant." So,
5 that's our -- our case today is well, you know,
6 we're an industrial plant. There is one
7 procedural issue, before I get into my
8 argument, we did want to address, and that is,
9 the DOR filed a second amended prehearing
10 statement. Now, they've -- they granted the
11 pollution control exemption, and we are here
12 today on two years: 2017 and 2018. So, in 2017
13 and 2018, they granted the pollution control
14 exemption request for the majority of what we
15 requested -- and I'll go into that six times by
16 the end of the day -- but they denied it for
17 three pieces of equipment. So, in the -- in
18 the -- so, that final agency determination,
19 they didn't deny it, in their first prehearing
20 statement, they didn't deny it -- for certain
21 equipment -- well, and always denied it for
22 three pieces of equipment. But they didn't
23 deny it for certain equipment. Then, in their
24 third prehearing statement, they denied it for
25 all the equipment. Now, they -- they filed --



1 I call it the third prehearing statement; it's
2 the second amended prehearing statement. They
3 filed that because we have consistently argued
4 that by granting the pollution control
5 exemption for the majority of our request, they
6 have conceded, by definition, that we are an
7 industrial plant. So, not surprisingly, they
8 filed a second amended prehearing statement,
9 denying it for all the equipment. Now, they
10 filed that without filing a motion. And then,
11 our -- our contention is that that's an invalid
12 amendment and so, basically, an invalid
13 filing.

14 **THE COURT:** What do you think about this. The way I
15 look at this, we have a final determination.
16 They haven't amended their final determination.
17 I don't know if they're even outside that time
18 frame, but it's a De Novo hearing, so it's
19 almost like, now, they're in the position that
20 they are now arguing against their own final
21 determination to say -- which I don't know if
22 they would have the burden of proof or not, on
23 that. But you're saying, okay, I've got a
24 final determination. I went this way on my
25 final determination, but now in the De Novo



1 hearing, I want to argue that my final
2 determination is not correct and this is what
3 should be done. That's the way I kind of look
4 at it.

5 **MR. MAYBANK:** Right. And that is in -- in essence.
6 And it's, you know, from a due process grounds
7 it'd be like, you know --

8 **THE COURT:** It's an odd situation that I've never
9 had.

10 **MR. MAYBANK:** It would be like DHEC, two hospitals
11 fighting over a Certificate of Need, for a
12 Certificate of Need expansion, where they want
13 two more hospital beds, and all of a sudden
14 DHEC files a second amendment prehearing
15 statement and says, we never should have
16 granted you the Certificate of Need to begin
17 with. That's, in essence, what we have before
18 you today.

19 **THE COURT:** Yeah, that would be the same thing.

20 **MR. MAYBANK:** So, we -- we'd argue that that would
21 -- is invalid. So, the sole issue -- in our
22 opinion, the sole issue before the Court is
23 whether we're an industrial plant. And we're
24 gonna give a good argument, and they're gonna
25 give an equally good argument, whether we are



1 or we aren't.

2 **THE COURT:** So you concede their argument's good?

3 **MR. MAYBANK:** They've -- they've done a good job so
4 far. They're not gonna prevail, but they've
5 done a good job. So, we have -- I'm not gonna
6 spend much time on this part of my argument,
7 arguing that -- whether the specific equipment
8 meets the pollution control exemption. We have
9 covered that in a brief and if they -- if their
10 argument is that we have failed in our burden
11 of proof of the specific equipment, I'll
12 address that in my reply brief. I'll go into
13 it without going a whole lot into the
14 particular equipment. So -- and our -- again,
15 the sole issue before y'all today is whether
16 we're an industrial plant. Unfortunately,
17 there's no South Carolina statute or case law
18 definition of industrial plant. There's really
19 no federal definition either. As I'll get
20 into, we meet the definition, factually. I'll
21 get into that in the painful detail over the
22 next few -- few minutes. But in addition, that
23 you'll hear me say six times today, the DOR has
24 conceded we are an industrial plant, because
25 they granted the pollution control exemption



1 for much of what we requested in 2017 and 2018.
2 So, by definition, by granting the exemption
3 for most of what we requested, they have
4 conceded that we are an industrial plant. In
5 addition, they have also -- and this is not in
6 the record, and we hope to, perhaps, provide
7 it, they've given the same exemption to
8 Transco, which is a natural gas pipeline
9 company. So, in addition to -- to factually
10 proving that --

11 **THE COURT:** So, they've given that exemption to
12 Transco, and that matter has not been appealed,
13 so it's filed?

14 **MR. MAYBANK:** It's being appealed as we speak.

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

16 **MR. MAYBANK:** But it's not before you today.

17 **THE COURT:** But they haven't taken a different
18 position on that case?

19 **MR. MAYBANK:** Correct.

20 **THE COURT:** All right.

21 **MR. MAYBANK:** So, in addition, dictionary definitions
22 and environmental regulatory references support
23 our position, as I'll get into. We have
24 numerous environmental permits from DHEC and
25 Spartanburg Water Authority, including one for



1 storm water discharges associated with
2 industrial activity. There's not a whole lot
3 of case law from other states, but there were
4 a couple of cases, and while we couldn't find
5 a lot, there is a Florida Supreme Court case
6 that held that the Food Distribution Center
7 constituted an industrial plant. And DOR held
8 that in -- our DOR held the waste water
9 treatment facility was entitled to -- was an
10 industrial plant, by granting pollution control
11 sales tax exemption, because they processed
12 water generated by manufacturers. Now, we ship
13 virtually everything. We ship -- it has been
14 produced by manufacturers -- refineries here in
15 the -- in the United States. So, the counties
16 and the DOR argue that the -- that only a
17 manufacturer constitute industrial plants. A
18 quick comparison between the pollution control
19 sales tax exemption statute and the property
20 tax exemption statute shows the -- the fallacy
21 of that. The sales tax exemption statute is
22 exclusively -- our general assembly exclusively
23 limits it to manufacturers, processors, and
24 others. So, the general assembly knows how to
25 do it. If they wanted a pollution control



1 exemption statute limited to manufacturers,
2 they know how to do it. They did it for the
3 sales tax. With that, I'll turn it to our --
4 our detailed argument. As stated below, in
5 2017 and 2018, we listed about \$1.6 million.
6 We're not talking about a huge amount of money.
7 \$1.6 million in 2017 and about 1.5 million in
8 2018 as pollution control equipment. And we
9 argued that these -- the equipment were exempt
10 from property taxes under the code and under
11 the constitution. So, in 2017 and 2018, they
12 granted the exemption for waste water pollution
13 control equipment, storm water pollution
14 control equipment, secondary containment
15 equipment, and floating roofs. But they denied
16 the exemption for the other assets, which are
17 pipe coatings, cathodic protection, and
18 automatic shut-off valves, on the basis that
19 our facilities were not an industrial plant.
20 Again, under the department determination and
21 the prehearing statement, that's the issue
22 before you: Are we an industrial plant? And
23 then specifically, just to give you the
24 specifics of it, on August 15th, 2017, the
25 government services division of the DOR issued



1 a pollution control -- a proposed -- property
2 tax proposed assessment granting the exemption
3 application for waste water pollution control,
4 storm water pollution control, secondary
5 containment, and tank floating roofs for
6 property tax year 2017, but they denied it for
7 cathodic protection, pipeline coding, and
8 automatic shut-off valves. Then, on April
9 23rd, 2018, the government service division
10 received an application from us, basically
11 asking for the same thing. And -- and they
12 issued a proposed assessment for the same
13 equipment -- they granted it for the same
14 equipment that they had in 2017 and denied it
15 for the same equipment that they had denied in
16 2017. And so, that was done on July 27th of
17 2018. So, they -- then in August of 2018, they
18 forwarded the 2018 exemption to DHEC. And DHEC
19 submitted a letter -- and we'll -- we'll put
20 the letter up on the board in a few minutes.
21 Well, why don't we go ahead and put that -- the
22 DHEC letter on the board, now. DHEC basically
23 -- well, actually I might get back to that
24 later. DHEC granted -- basically, said it was
25 pollution control equipment, and so we have



1 quoted that, their determination, in their
2 letter. So, the -- the assessment in dispute
3 is for 2017; 1.6 million, and for 2018; 1.5
4 million. So, the disputed items equal \$1.6
5 and-a-half million. So -- so, the disputed
6 item that -- I'll get into this more in my
7 reply if they -- if they raise the issue -- are
8 pipeline coatings, which are required by the
9 federal government, cathodic protection, which
10 is required by the federal government, and
11 automatic shut-off valves.

12 **THE COURT:** That's required by the federal
13 government for what purpose?

14 **MR. MAYBANK:** For pollution control, and -- and
15 specifically, pipeline coatings are required
16 because pipelines corrode. Pipelines are made
17 out of steel and iron and they corrode when
18 they -- when water touches them and when the
19 dirt touches them and a lot of them are
20 underground. So, they corrode, and if they
21 corrode too much, you get minuscule holes that
22 pop out and then the oil seeps out of the
23 holes. The cathodic protection is designed to
24 keep the corrosion down. I know it's a very
25 technical subject, but it keeps the corrosion



1 down as well. Again, pipeline coatings and
2 cathodic protection, they do the same thing.
3 They protect the pipes from leaking. And
4 you're generally not talking about massive oil
5 pouring out of the ground, you're talking about
6 small little holes where oil is squirting out
7 24/7. And then, the automatic shut-off valve
8 is designed in the event that there is a
9 leakage, they can shut down that pipeline and
10 to prevent any further leakage you got there.
11 So, briefly, and then I'll get into the painful
12 detail in a minute --

13 **THE COURT:** Oh, we're not at the painful detail?

14 **MR. MAYBANK:** You'll know when it gets painful, and
15 it's coming. We have a couple of overheads.
16 If we can turn the overhead machine on.

17 **(Off record discussion.)**

18 **MR. MAYBANK:** Go ahead and put that one up. So,
19 every -- every quote from our website, "Every
20 day, Colonial Pipeline safely and efficiently
21 delivers more than a hundred million gallons of
22 gasoline, home-heating oil, aviation fuel, and
23 other refined petroleum products." We receive
24 these products from about 30 refineries, and
25 that's a little difficult to see, but what



1 happens is -- the way the process works is --
2 is unrefined petroleum, or crude, comes in
3 through a tanker. It's then sent to a
4 refinery. The refinery then -- and sometimes
5 it's through a tanker; sometimes it's under the
6 ground, here in the United States. The
7 refinery, then in turn, turns it into gasoline.
8 It goes into refinery storage and then our role
9 in the supply system is that the pipeline
10 storage and the refined products pipeline; we
11 then send it to a local terminal, and it
12 eventually makes its way to the local gas
13 stations and the -- as well as multiple other
14 uses, other than the local gas stations.

15 **THE COURT:** So, when I look at this, I would take
16 the phrase "gasoline" and, potentially, insert
17 "gasoline, kerosine, diesel fuel" or "airline."

18 **MR. MAYBANK:** Correct.

19 **THE COURT:** And it would be one of those others?

20 **MR. MAYBANK:** Correct. And I'll get -- actually,
21 get into it in a sec. So, specifically in
22 South Carolina, Colonial ships
23 ultra-low-sulfur diesel, heating oil, marine
24 diesel, jet fuel, and kerosene. And what
25 ultra-low-sulfur diesel and jet fuel are



1 shipped as -- as finished products. The other
2 products mix in the shipment system. So,
3 Colonial moves products through it system,
4 product comes into contact with each other;
5 regular gasoline and premium gasoline come into
6 conduct with each other, and -- and that can
7 create specification issues, affect the
8 products outcome or hurt the gasoline's
9 distillation point. So, if you have premium
10 gasoline and regular gasoline in the same
11 pipeline, that's fungible goods. So, at some
12 point they mix, and at that point, as I'll get
13 into in a minute, we have to unmix it. So, the
14 mixture of these products, when premium
15 gasoline runs into regular gasoline, is called
16 transmix. And Colonial has to turn the
17 transmix back into the original products.
18 They've got to take a certain quantity that's
19 touched each other and put it back into either
20 premium gasoline or regular gasoline. And this
21 is obviously -- that's obviously a very
22 controlled process. And Colonial handles
23 transmixer blending operations in South
24 Carolina and primarily at our tank farms, pump
25 stations, and delivery facilities here in South



1 Carolina. And so, basically, we have to tell
2 our customers they are getting what they paid
3 for. In some cases, they get exactly what they
4 shipped, but in other cases, gasoline being
5 fungible, they get it after we have cleaned it
6 up through the transmix. So, we have to
7 isolate the product, the gasoline; reinject it,
8 and manage that product and, basically, support
9 the removal and disposal of that product or
10 inject it or blend it into gasoline. And I'm
11 quoting from the deposition. So, Colonial also
12 has to add drag-reducing agents in the system.
13 This is a product that reduces the friction.
14 We also have to remove water that accumulates
15 in the ground.

16 **THE COURT:** So, you inject the drag-reducing agent.
17 I noticed that when I read off the pleadings,
18 except for the replies. I didn't get all
19 those.

20 **MR. MAYBANK:** Right.

21 **THE COURT:** So, I assume by making the statement
22 that you inject it, also leads to the inference
23 that after you inject it, you have to take it
24 out?

25 **MR. MAYBANK:** Take it out.



1 **THE COURT:** So, that would be all of the gas -- all
2 of the products, or just some of the products?

3 **MR. MAYBANK:** That would be all the products, I
4 would assume.

5 **MR. FUQUA:** It actually uses it up as it goes.

6 **MR. MAYBANK:** Oh, it's used up as it goes through.

7 **MR. FUQUA:** The heat causes it to dissipate.

8 **THE COURT:** Dissipate.

9 **MR. FUQUA:** There's also a little bit left in it,
10 but ---

11 **THE COURT:** Okay. But that's the minimus as far as
12 the functionality of the product.

13 **MR. MAYBANK:** It -- it reduces -- it, basically,
14 makes it ship faster.

15 **THE COURT:** No, I was asking --

16 **MR. MAYBANK:** Right.

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

18 **MR. MAYBANK:** Colonial also has to -- to remove
19 water on a daily basis. That water is called
20 "sting." Through various and sundry ways,
21 water gets into the system and so every day, in
22 South Carolina, that sting water has to be
23 removed and -- and disposed of. Colonial also
24 regrades fuel in this state. Regrade is a
25 process which Colonial changes a label of the



1 product or the product's grade. So, the
2 classic one would be, you take regular gasoline
3 and you turn it into premium gasoline, or you
4 take premium gasoline and turn it into regular
5 gasoline. So, we -- we regrade product in
6 South Carolina. So we've had to constantly
7 measure gravity, pressure, and temperature of
8 the products. And equipment's also used to
9 measure and detect leaks. To go into detailed
10 description of what we do -- let me put up the
11 second overhead. Colonial operations are
12 composed of 550 miles of pipeline, two tank
13 farms, three mainline booster stations, and one
14 delivery facility, expanding 11 counties in
15 South Carolina. Of the 550 pipeline miles in
16 South Carolina, 230 are mainline miles, 74 are
17 stub-line miles, and 125 miles are delivery
18 lines. So, we have two main pipelines in South
19 Carolina; pipelines one and two. Why don't we
20 -- before this one, that national -- why don't
21 we quickly put up the national one. This just
22 shows you the pipeline operation in the United
23 States. So, it's starts -- it ends in New
24 England, and it starts over in the Gulf Coast.
25 And so, pipeline -- we ship pipeline all the



1 way -- starting in Pasadena and ending up in
2 New York City, in Boston. So, that's the
3 Colonial pipeline one and two, through the
4 United States, and then we'll put up the South
5 Carolina pipeline.

6 **THE COURT:** So we can be clear, the "Pasadena" was
7 Pasadena, Texas.

8 **MR. FUQUA:** Yes.

9 **MR. MAYBANK:** So, it starts in Texas and ends in New
10 England, there. So -- so the -- so the pipes
11 move product at a very high velocity, and they
12 typically deliver to breakout tankage, or tank
13 farms, in Belton and Spartanburg. And you can
14 see pipeline one and two up there. We also
15 operate two-tank farms in South Carolina.
16 They receive pipe -- petroleum products from
17 lines one and two, in the tankage, and then
18 that product is delivered out from the tankage
19 to multiple delivery lines to customers. So,
20 Belton Junction is 130-acre above-ground
21 breakout and delivery facility, located in
22 Anderson County. It's staffed by operators
23 24/7 and that tank farm is composed of 20
24 tanks. All the tank farms have sting systems
25 that remove water off the tanks. The tanks are



1 drained. The sting water released daily. And
2 we're also required to do tank maintenance of
3 all the tanks, as well as pipeline integrity
4 checks. So, the tank -- the tanks are
5 summarized: Gasoline, 12 tanks; distillate, 7
6 tanks; and transmits, 1 tank. Then we have
7 three mainline booster stations located in
8 South Carolina, in Anderson, Simpsonville, and
9 Gaffney. The Spartanburg delivery is a 74-acre
10 above-ground breakout and delivery facility,
11 and that tank farm is composed of 22 tanks as
12 summarized below: Gasoline, 13 tanks;
13 distillate, 6 tanks, and 3 tanks are actually
14 out of service. But we have a little Google
15 map, there, we can just show you. That's an
16 example of one particular tank farm. So, the
17 -- we use -- we have to use multiple pumps to
18 maintain the flow at both the main and the
19 delivery lines. There are three major pump
20 stations in South Carolina. On lines one and
21 two, Typically, these have four to five pumps
22 per station and then they're also pumped at
23 the tank farms. Belton and Spartanburg both
24 have booster pumps, which put out low pressure
25 at a very high flow rate, and all -- and most



1 of the facilities have oil water separators to
2 make sure that in the case of an emergency,
3 Colonial is able to protect the -- the
4 environment. We provide other support to
5 customers; for example, we provide petroleum
6 storage services at Belton and Spartanburg
7 facilities. Those are done for -- for third
8 parties. Third parties would -- would lease
9 that storage space. And as you can imagine,
10 all of this requires a substantial manpower.
11 The Charlotte, South Carolina operation team
12 has 32 team members, consisting of the
13 following: One operation manager, six -- two
14 lead operators, six senior operators, eight
15 aid? operators, one regular operator, two lead
16 technicians, two senior technicians, five
17 technicians, three road inspectors, one
18 planner, and one administrative assistant. And
19 these are all based out of Belton, Spartanburg
20 and Charlotte. And also based at these
21 facilities, are southeastern district support
22 personnel, consisting of one senior field
23 project manager, one field project manager, six
24 project inspectors, two corrosion technicians,
25 one environmental specialist, and one safety



1 specialist. We also use a large number of
2 independent contractors in addition to our
3 employees, and our employees are on the job
4 24/7. And the number of independent
5 contractors are, typically, more than the
6 number of contract employees. So, you have
7 quite -- 70 or so people, on a daily basis,
8 that are -- that are tending to the pipeline
9 flow. So, the sole issue in our opinion -- the
10 sole issue before you today is whether all of
11 that constitutes an industrial plant. And so,
12 the -- the constitutional provision and the
13 statute exempt all facilities or equipment of
14 industrial plants, which are designed for the
15 elimination, mitigation, prevention, treatment,
16 abatement, or control of water, air, or noise
17 pollution, both internal and external, required
18 by the state or federal government and used in
19 the context of their business. So, our
20 particular equipment, as DHEC has said, is
21 designed for elimination, negation, prevention
22 or control of water -- primarily water, but
23 some air pollution. It's required by the
24 federal government. In our brief, we gave you
25 the CFR references which will require cathodic



1 protection, the plastic coating on the pipes
2 and the shut-off valves, and obviously used in
3 the context of our business. So, that's the
4 issue, is whether we are an industrial plant.
5 Now, we're not aware of any DOR policy
6 documents or case law that defines industrial
7 plant. In Wikipedia, there are a number of
8 dictionary definitions, however. And Wikipedia
9 defines "industrial plant" within the
10 definition of "physical plant" as follows:
11 "Physical plant, mechanical plant, or
12 industrial plant, or where context is given.
13 Often just 'plant' refers to the necessary
14 infrastructure used in operation and
15 maintenance of a given facility. The operation
16 of these facilities, or the department or
17 organization which does so, is called "plant
18 operations" or "facility management". And
19 Wikipedia says, "Industrial plants should not
20 be confused with manufacturing plants in the
21 sense of a factory." So, one -- another
22 definition of "industrial plant" -- and these
23 are very -- they correctly pointed out, are
24 very circular -- but Webster's Online
25 Dictionary, an industrial plant: "Buildings for



1 carrying on industrial labor." Mnemonic
2 Dictionary defines "industrial plant" as
3 "Buildings for carrying on industrial labor."
4 The Free Dictionary says ---

5 **THE COURT:** Well, what is "industrial labor"?

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

7 **THE COURT:** What is "industrial labor"?

8 **MR. MAYBANK:** It's circular. In our opinion, you
9 know, transporting a hundred million gallons of
10 -- of petroleum on a daily basis is certainly
11 industrial labor, but it's all kind of
12 circular. And then, there is other dictionary
13 definitions. Let me find it here. There are
14 other dictionary definitions. Merriam-Webster
15 definition of plant: "The land, buildings,
16 machinery apparatus, and fixtures employed in
17 carrying on a trade or an industrial business."
18 That's their primary -- Merriam-Webster's
19 primary definition and then they give three
20 sub-definitions: "A factory or workshop for
21 the manufacturer of a particular product, also
22 power plant." The second one is: "Total
23 facilities available for production or
24 service." Third is: "Buildings or other
25 physical equipment of an institution." And



1 Random House -- Webster's Dictionary defines it
2 as: "The buildings, equipment, et cetera,
3 necessary to carry on any industrial business."
4 And --

5 **THE COURT:** Well, that takes it right back to
6 industrial.

7 **MR. MAYBANK:** Right. It does. And then, Oxford
8 English Dictionary, the definitive record of
9 the English language, according to them: "The
10 premises, fittings, and equipment of the
11 business of an institution; a factory, a place
12 where industrial process is carried out, and
13 extended use of workers employed in a business,
14 institution, or factory, frequently with a
15 modifying word." And those -- those dictionary
16 definitions are all in our -- one of our
17 responses. So, there's also -- I would -- I'm
18 not going to claim it directly on point, and --
19 and we're going to prevail based on it, but
20 there are some environmental regulatory
21 references under state and federal government.
22 So, the federal government just says, "An
23 industrial plant is any fixed equipment or
24 facility, which is used in conjunction -- in
25 connection with or as part of any process or



1 system for industrial output." Our pollution
2 control act defines pollution, and pollution
3 means, "The presence in the environment of any
4 substance, including industrial waste." And we
5 think that's significant because we have a
6 number of permits for industrial waste. So,
7 industrial waste is defined in the statute.
8 Industrial waste means: "Any liquid, gasless
9 solid, or other waste substance, or a
10 combination thereof, resulting from any process
11 of industry, trade, or business." So, that's
12 the South Carolina Pollution Control Act. In
13 the context of industrial revenue bonds, all
14 arise by statute number 4-29-110. The South
15 Carolina Code defines a project eligible for
16 industrial revenue bonds as: "Any commercial
17 enterprise engaged in storing, warehousing,
18 distributing, transporting, or selling products
19 of industry." So, the Industrial Revenue bond
20 act specifically covers our process. "Any
21 commercial enterprise", obviously we're
22 commercial, "engaged in storing, warehousing,
23 distributing, transporting, or selling
24 products of industry." Last -- second of all,
25 we have a number of environmental permits from



1 DHEC and the Spartanburg Water and Sewer
2 Authority that are designated for industrial
3 activities like petroleum bulk storage stations
4 and terminals. And so, the first one -- we'll
5 just put the overhead of the permit. The
6 permit, as you can imagine, is huge, so we're
7 just putting up the first page of it. So
8 that's the permit. NPDES, general permit for
9 storm water discharges associated with
10 industrial activities. Now, that -- that's
11 issued by DHEC and the definition says, "To be
12 eligible to discharge under this permit, you
13 must have a storm water discharge associated
14 with industrial activity from your primary
15 industrial activity." The -- the permit
16 specifically references "industrial plant." It
17 says, "Storm water discharges associated with
18 industrial activity." And then, the permit
19 provides a definition section, which references
20 sludge as industrial -- as an industrial
21 substance. Sludge is defined as follows --
22 sludge means industrial sludge, and industrial
23 sludge is: "Liquid residue generated during
24 the process." We also have a general permit
25 for discharges from petroleum-contaminated



1 ground water. It defines sludge the same.
2 "Sludge" means "industrial sludge" and waste
3 water means "industrial waste water." If we
4 have a general permit for discharges from both
5 petroleum storage facilities, and it contains
6 the same definition of "industrial waste water"
7 and "industrial sludge." Now, there are -- we
8 couldn't find a whole lot of cases, but we did
9 find a couple of cases. And the Supreme Court
10 of Florida has interpreted "industrial plant"
11 in several cases regarding tax issues. For
12 example, in Jacksonville Port Authority versus
13 Florida, the Court determined that a food
14 distribution center with some-180 retail
15 outlets constituted an industrial plant. And
16 so, basically this is a food distribution
17 center, much like us. It provided food to 180
18 retail facilities, and -- and they held that
19 that -- the Court held that it was an
20 industrial plant, and it referenced several
21 cases and included the legislature, "Intended
22 the phrase to be literally construed." In
23 another case, the Court held that a commercial
24 laundry facility constituted a, quote,
25 "industrial plant" under -- it was basically



1 under Florida law. And they considered several
2 factors in reaching this conclusion, such as
3 whether the plant contributes to the
4 prosperity of the state, the clientele, the
5 size of the plant and the number of employees.
6 And they noted the plant -- the word "plant"
7 -- quote, "plant", end quote -- applied to
8 facilities that render services or process or
9 distribute products. Furthermore, in the North
10 Carolina case, Richards versus Jolly, the Court
11 turned to the common meaning of the word
12 "plant" to relate to the statute. The Court
13 stated, "In its common usage a quote, "plan",
14 end quote, is defined as: "Land, building,
15 machinery, apparatus, and fixtures employed in
16 carrying on the trade or an industrial
17 business", and they cited Merriam-Webster's
18 dictionary definition. We couldn't find any
19 property tax cases across the country dealing,
20 exactly, with the issue that we have today, but
21 we did find a couple of sales tax cases. And
22 there's, actually, quite a few sales tax cases
23 dealing with refineries. But we did find two
24 cases that dealt with shippers as opposed to
25 refineries, and in these cases they held -- and



1 these were sales tax exemption statutes for
2 manufacturers. So, the natural gas companies,
3 which are exactly like us, they're just
4 shippers. There are no refineries involved.
5 The Court held that they were manufacturers for
6 purposes of certain equipment for the state's
7 sales tax exemption statutes. And there is a
8 -- there is a DOR policy document. There are
9 two of them, actually. In revenue ruling 91-8
10 and revenue procedure 05-1, the DOR held that
11 portions of waste water treatment facilities
12 met the sales tax exemption for pollution
13 control and machinery and equipment. So, the
14 DOR held, by definition, that waste water
15 facilities met the industrial plant
16 requirement, and they -- they noted and
17 actually had, as we have in our reply brief,
18 you're required -- the water treatment plant
19 was required to spell out what percentage of
20 its product came from manufacturers. And if
21 more than a third of it came from a
22 manufacturer then they were entitled to the
23 exemption. Virtually -- a great majority, if
24 not all, of our product being transported came
25 from manufacturers, i.e., refineries. Lastly,



1 but most importantly though, the short answer
2 to this dispute is in 2017 and 2018, the DOR,
3 by definition, conceded we were an industrial
4 plant. And they have conceded that point all
5 the way up until the third prehearing
6 statement -- the second amended prehearing
7 statement. And they conceded it by granting
8 the pollution control exemption for the
9 majority of the equipment that we -- we
10 requested. They denied it for three, but gave
11 it for four others. So, by definition, the
12 DOR, twice in two separate years, has said that
13 Colonial Pipeline is an industrial plant. Now,
14 their third amended pretrial brief date, as we
15 repeatedly pointed that out -- and I think
16 they could see, yeah, if we gave it in two
17 years for most of the equipment they asked,
18 they are an industrial plant, and therefore we
19 have to revoke it for all, or we granted it for
20 all, or we certainly conceded that they are an
21 industrial plant. So, in conclusion then, and
22 I won't go into the law. I know you deal with
23 it all the time; ambiguities resolved in favor
24 of the taxpayer exemptions versus the normal
25 law, so I'll --



1 **THE COURT:** I got that down.

2 **MR. MAYBANK:** I'm going to skip over all of that.

3 So, in conclusion then, we operate a system of
4 pipelines, tanks, valve manifolds, injection
5 equipment, water management equipment, pumping
6 booster stations across the state. Our
7 operations begin in the Gulf Coast and -- and
8 end in New York Harbor. We employ between 30
9 and 35 operators and technicians on a full-time
10 basis and on a 24/7 basis in South Carolina,
11 and we use an equal number of independent
12 contractors while they continue their simple
13 pipeline company. And we -- we did not own the
14 pipe that we shipped. We do a lot more than
15 just shipping of product. We have to do
16 transmix. The product comes -- premium
17 gasoline comes into contact with regular
18 gasoline. That creates transmix and then we,
19 in turn, have to -- to turn that transmix back
20 into the product that -- according to its
21 specifications. On a daily basis, we have to
22 deal with sting, which is the water that comes
23 in connection with the operation. We provide
24 blending operations. We provide storage
25 facilities for our customers. So, we do a lot



1 more than just simply ship gasoline through --
2 through the state.

3 **THE COURT:** All right. I got all of that, and
4 honestly, I see your point on a lot of that
5 stuff. The area that I've got a question for
6 you about is, the respondents contend that the
7 pipeline, or the enhancements to the pipeline,
8 that they're not related to the manufacturing
9 process. And I do see that even with that
10 argument -- so, I'll tell you I can already see
11 a concern that I have, and I'll ask them. But
12 if you say the overall facility is involved in
13 manufacturing, I don't know how you can --

14 **MR. MAYBANK:** And we don't contend we're a
15 manufacturer.

16 **THE COURT:** Okay. But you must contend you're
17 involved in some type of manufacturing process
18 with the transmixing and all of that. So, what
19 I'm asking is: If the pipelines, or the
20 materials that you're seeking the exemption
21 for, are not related to the transmixing, the
22 sting, and the other aspects of it, then how do
23 you claim the exemption?

24 **MR. MAYBANK:** Because the sales tax statute
25 specifically says for the pollution control



1 exemption you have to be a manufacturer. The
2 property tax statute does not. It uses a far
3 broader term, "industrial plant." So, for
4 those three things to be exempt, cathodic
5 protection, covering, and the shut-off valves,
6 we have to be an industrial plant. We
7 certainly concede that. So, the question is:
8 Is this industrial -- 100 million gallons,
9 transmix, sting, multiple pumps -- is that,
10 quote, "industrial"? And -- and I don't see
11 how anyone could argue that's not industrial.
12 Now, on the manufacturing side, we do -- as I
13 said, we do other services, transmix being one,
14 but if this was a sale's tax case, we would
15 have a lot heavier burden to -- to climb, but
16 it's not a sales tax case. Our general
17 assembly limits property taxes to, quote,
18 "industrial plant." So, it -- it would seem --
19 DHEC says it's industrial, the Pollution
20 Control Act says it's industrial. The
21 Pollution Bonds Act -- I mean the, yeah, the
22 Pollution -- the Revenue Bond Act says its
23 industrial and the DOR has said, in the water
24 treatment plant, if the stuff that comes in is
25 from manufacturers, well, then that's enough,



1 even though we're a treatment plant, not a --
2 considered a classic manufacturer.

3 **THE COURT:** All right, sir. When I consider
4 "industrial", then do you reach the platform of
5 "industrial" as a result of transmixing, sting,
6 and the blending operations, or is the
7 transportation process an industrial process?

8 **MR. MAYBANK:** I don't think there's any doubt. I
9 mean 100 million gallons of petroleum coming
10 through, I don't -- and I don't know -- if that
11 ain't industrial, I don't know what is
12 industrial.

13 **THE COURT:** All right. And so that's an industrial
14 act, but is -- then, you're not just
15 industrial, you're an industrial plant.

16 **MR. MAYBANK:** Right. Correct. And the definition
17 of "plant" is about as broad as it possibly
18 could be.

19 **THE COURT:** Okay.

20 **MR. MAYBANK:** And -- and the definition of
21 industrial is about -- is extremely broad, too.
22 And I think part of that is because DHEC wants
23 to regulate, you know, everything. So DHEC
24 says it's industrial, our general assembly
25 says it industrial, they have defined



1 industrial plant, but we qualify for Industrial
2 Revenue bonds, and we have case law from other
3 states that say it's industrial.

4 **THE COURT:** All right. Thank you.

5 **MR. MAYBANK:** That's it for me, Your Honor. Thank
6 you.

7 **RESPONSE BY MR. ANTLEY:**

8 **MR. ANTLEY:** Good morning, Your Honor. Marc Antley
9 the III, counsel for the Department. I will
10 primarily defer to my memo in response,
11 whereby, to respond to some of this -- most of
12 the statements that the taxpayer has made, but
13 I will go into a couple points just to make
14 sure I can clarify. At the end they were,
15 again, focusing on the word "industrial." The
16 definition of "industrial", as the Department
17 stated in its response -- or in its memo is:
18 "Of or related to industry." That's not an
19 issue. The issue is industrial plant and the
20 world "plant."

21 **THE COURT:** So, you're going to define -- you'll
22 concede it's an industry?

23 **MR. ANTLEY:** It's of or related to industry.

24 **THE COURT:** Okay. So -- but it's just not a plant?

25 **MR. ANTLEY:** Yes, Your Honor. "Industrial plant"



1 together. But yes, the "plant" part of
2 "industrial plant" is where the issue is.

3 **THE COURT:** Help me. If it's related to industry,
4 then you don't really stick them back together,
5 you just come back to whether it operates as a
6 plant. I mean, I don't want to trick you, to
7 me, you need to -- okay. All right. Proceed.

8 **MR. ANTLEY:** A couple of other things -- or a few
9 other things; more than a couple. Mention of
10 other pipelines, that's not in the record.
11 That's not relevant. I can say, at least for
12 -- at least for 2019 forward, all
13 transportation companies, which were -- or all
14 -- all pipeline companies would be treated the
15 same and denied this exemption because they
16 would not have the facilities or equipment of
17 industrial plants. Another area where it
18 seemed like might -- there might be some
19 confusion is, industrial plant isn't
20 necessarily limited to manufacturers, but it is
21 limited to companies at least similar to
22 manufacturers. An example would be a utility,
23 where they would have an electric-power plant
24 that is producing electricity. So, that would
25 be another example. That's not ---



1 **THE COURT:** Takes you back to your utilities
2 approach that y'all used.

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

4 **THE COURT:** All right. Well, why would it have to
5 be limited to utilities? I mean, that's ---

6 **MR. ANTLEY:** Not necessarily.

7 **THE COURT:** Okay. That's just an example.

8 **MR. ANTLEY:** That's an example, Your Honor. And I
9 think it's -- it's probably the closest to a
10 manufacturer. It's an easy example of
11 something that is producing a product, as
12 opposed to transporting that product, which is
13 what the taxpayer does here.

14 **THE COURT:** I'll go back. Now that I'm on the
15 subject. So were on industrial plant. My
16 concern was, it's not -- I don't think it said
17 industrial. It didn't say just "Industrial
18 plant." It said "Or company."

19 **MR. ANTLEY:** Later on it says, "Manufacturer or
20 company."

21 **THE COURT:** Okay.

22 **MR. ANTLEY:** And -- and so, I think that's -- that's
23 where you're -- you're thinking. And so, the
24 Department's position is that "manufacturer"
25 informs the definition of "company." If -- if



1 "company" is as broad as what the taxpayer
2 construes, then there's no need to use the word
3 "manufacturer" because, of course, "company"
4 would include manufacturers. So, using the
5 term "manufacturer", it helps inform the
6 definition of "company." It means something
7 similar to a manufacturer. The -- the
8 exemption itself also goes down and has the
9 discussion of -- of how to evaluate when there
10 is a dual -- a dual purpose --

11 **THE COURT:** Yeah.

12 **MR. ANTLEY:** -- of production versus pollution
13 control. So, again, you have this -- this term
14 "production" tied into this exemption, where
15 the taxpayer, in this case, is transporting a
16 product, not actually producing it.

17 **THE COURT:** Well, they are transporting a product
18 that -- and the transporting of that product --
19 that product becomes of a different quality,
20 wouldn't you agree; the transmixing? And then,
21 they have to do something -- I would think that
22 would be a process by which you take that
23 product and convert it back to what it
24 originally was. And would that -- would not
25 that process, even if you don't say it's



1 manufacturing, it would come under the "or
2 company" because it's of similar nature of a
3 manufacturer. And that's what I've been trying
4 to resolve in my mind is the conversion from --
5 back to the gasoline product, or whatever
6 purified product it should have been, that
7 requires some process. Or are you going to
8 tell me that's not a process?

9 **MR. ANTLEY:** Your Honor, I would say that is
10 transportation related. It's related to
11 maintaining the quality of the product. The
12 over -- it's -- it's ancillary. The main
13 purpose of what the taxpayer does is transport
14 product from point A to point B. It's -- it
15 would be similar to a truck that has
16 refrigeration. It's maintaining the quality of
17 -- that's carrying produce. It's maintained
18 the quality of that product during transport.

19 **THE COURT:** I think you're very smart. And your
20 helper over there is, too. But I think that's
21 getting a little bit silly. And correct me
22 when I'm wrong, but when you say, "that's just
23 like transporting". I mean -- Amazon
24 transports. All these different companies
25 transport. And transporting a refrigerated



1 product, they move that product from how they
2 -- it was originally delivered to them in the
3 same -- and they deliver it in the same
4 character as how it was placed in their hands.
5 This situation is one in which the product is
6 delivered to them in one characteristic. Some
7 of the product develops a different
8 characteristic; therefore, they have to do some
9 process to change that product and that's not
10 typical transportation. This is unique. So,
11 then I have to say, mentally, all right, this
12 isn't typical. There's a uniqueness involved,
13 so what -- how do I characterize that unique
14 activity that occurs? If it is a process by
15 which they change it back, then would that not
16 be, at least, an industrial process, if not a
17 manufacturing process, but something of similar
18 to a manufacturing process. And that's what I
19 want to know: Where am I wrong if I think that
20 way?

21 **MR. ANTLEY:** It might be -- depending on how your
22 focus is, if you zoom in -- but if you zoom
23 out, you see that you have a product that's the
24 same when it goes in -- it's, essentially, the
25 same as it goes in the pipeline as when it



1 comes out. The way the pipeline works is when
2 one product is in front of another, there's an
3 inter -- there's a mixing. It's -- they --
4 their term, according to their deposition, is
5 "interface." And so, this interface has to be
6 re-separated into the process that it
7 originally had, so that the customer gets the
8 same thing they bought at the starting point at
9 the delivery point.

10 **THE COURT:** So, by zooming out, I'm going to zoom
11 out far enough where I just ignore the
12 transmixing process, and therefore, I will
13 logically reach the result that you wish to me
14 to reach.

15 **MR. ANTLEY:** Yes, you would reach the -- the --
16 what I'd like. So, another example would be
17 ---

18 **THE COURT:** I don't want to ignore it, though. I
19 think I want to zoom back in ---

20 **MR. ANTLEY:** Okay.

21 **THE COURT:** --- and figure it out.

22 **MR. ANTLEY:** So, another example would be -- well,
23 let's get back to another obvious
24 transportation company. So, a tanker truck.
25 That's part of this process. If you could --



1 oh, here it is. I'll put this back on the
2 projector. This is the image they showed up
3 there -- supply chain, earlier. So, that
4 tanker truck, inside the engine, if we zoom in
5 and we look at what's going on inside that
6 engine, there's gas that's going in there.
7 That gas is combusting, creating energy, and
8 that's pulling the truck. That's -- that's
9 making the truck move from point A to point B.
10 That's -- if we zoom in, we can -- we can
11 always find something.

12 **THE COURT:** Well, I could distinguish that, because
13 what's on the back of the truck stays the same;
14 nothing changes. So, that's just part of the
15 delivery process. I would put that as the fact
16 that when -- at least on the subject we're
17 discussing now -- Mr. Maybank argues that
18 there's all these different pumps. So, what --
19 that's part of the transportation process.
20 Now, you could argue that, well, that's part of
21 the plant, but we're not on that subject right
22 now. So, I could distinguish yours on the
23 truck. The truck is just a vehicle by which
24 you're transporting that particular item. But
25 my issue is that these products change and that



1 change has to be re-engineered somehow or
2 another. And that's what I'm trying to figure
3 out, but go ahead.

4 **MR. ANTLEY:** Okay.

5 **THE COURT:** Keep giving me examples. Maybe you'll
6 hit one that I'll buy.

7 **MR. ANTLEY:** Okay. They did mention another
8 activity: Blending operation. I just want to
9 make sure it's clear that that does not occur
10 in South Carolina.

11 **THE COURT:** Yeah, okay. That's the one that occurs
12 in Georgia or Charlotte.

13 **MR. ANTLEY:** I don't -- I don't even think it occurs
14 -- I think it occurs nearer to the refinery.

15 **THE COURT:** Okay.

16 **MR. ANTLEY:** But just want to make sure that that --
17 that does not happen in South Carolina.
18 Another procedure, or something they didn't
19 call the process is pre-grading. That's when
20 -- and this is in the -- from their deposition
21 -- when, for example, a higher-octane gasoline
22 mixes with a lower-octane gasoline, you can --
23 you can call that mixed gasoline the lower
24 octane, even though it's actually a little --
25 it's probably a little higher, somewhere in



1 between, you get to regrade it at that lower
2 octane. Based on my understanding of that
3 deposition, it doesn't work the other way, and
4 there's no process happening --

5 **THE COURT:** I'll agree. There's no process in that.
6 You're electing to say that if I was to do a
7 cathodic --

8 **MR. ANTLEY:** Cathodic protection?

9 **THE COURT:** Yeah. If I was to burn it, and it would
10 produce an octane level of 89, or whatever, so
11 that's not up to the premium level, but it's
12 not below the regular level, so I can now call
13 it the regular gasoline. I don't buy that as
14 a process, either.

15 **MR. ANTLEY:** Okay. And those are the -- the main
16 points I wanted to -- well, I actually have one
17 more that I'd like to address before I go into
18 just an overview of our position. The issue,
19 the procedural issue. As Your Honor pointed
20 out, this is a De Novo hearing and, also, in
21 the Petitioner's reply, they said that the
22 Respondent should have amended its prehearing
23 statement, rescinding it's partial grant of the
24 pollution control exemption. In Paragraph 31
25 of the stipulation of facts it -- it says that



1 we did amend the second. We -- In our second
2 amended prehearing statement, we clarified that
3 it was for all property -- the denial was for
4 all property.

5 **THE COURT:** So I can be clear: So, you've got -- you
6 issued a division decision or a determination
7 that some of the product -- or some of the
8 products that they sought an exemption for were
9 pollution control products, correct?

10 **MR. ANTLEY:** So, the government services division of
11 the Department of Revenue -- when they originally
12 submitted -- when the taxpayer originally
13 submitted their exemption application, they
14 granted it for four of the three items. It's
15 not a majority. It may be a majority of items,
16 but as far as value, it's actually a minority
17 of the value.

18 **THE COURT:** Okay. Four of the three items --

19 **MR. ANTLEY:** But it was granted.

20 **THE COURT:** In the division?

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

22 **THE COURT:** All right. How about when the
23 Department made it's determination?

24 **MR. ANTLEY:** The Department determination is that
25 the taxpayer is not entitled to an exemption



1 under 12-37-228-8. It's that -- it's that
2 broad of a statement. It does not go down to
3 say, specifically, "only for these three
4 items." But because of that initial grant, the
5 Department -- and because of some of the
6 questions in the deposition by the taxpayer's
7 counsel, the Department wanted to make sure it
8 was completely clear, so we consulted with all
9 the parties, before issuing that second amended
10 prehearing statement, to make sure that this
11 denial would apply to all items that that --
12 and that Department determination, that is the
13 final agency decision so what happened at the
14 Government Services Division --

15 **THE COURT:** Where I can be clear, now, because I
16 missed that earlier. The Department's
17 determination -- the way that you word it, or
18 the Department worded it, applied to
19 everything?

20 **MR. ANTLEY:** Yes, Your Honor. Because there's a
21 threshold issue of facilities or equipment of
22 industrial plants, so that -- if they're not an
23 industrial plant, than they don't meet that
24 threshold issued for any of those items.

25 **THE COURT:** Okay. All right. Now, I don't see --



1 if that's -- if I buy it that way, you wouldn't
2 be arguing against yourself, you would just be
3 ---

4 **MR. ANTLEY:** That's correct, Your Honor. And to
5 continue down that. In -- also in the
6 stipulation of facts, the assessments take into
7 account denying all the property that was
8 claimed as exemptions. It's not limited to the
9 original three that were denied. Also, to the
10 extent that this Court needs a motion, the
11 Department will be glad to move -- or hereby
12 moves to amend it -- or to file an amended
13 second prehearing statement.

14 **THE COURT:** I've been a judge since 1995. Elected
15 in '94, started in '95. I don't think I have
16 ever asked anybody to file a motion.

17 **MR. ANTLEY:** Okay.

18 **THE COURT:** You can file one if you want; that's
19 always your decision. I don't ask people to
20 file motions.

21 **MR. ANTLEY:** And to the extent -- so, the Department
22 moves -- just so it's clear, the Department
23 moves to have a second amended prehearing
24 statement filed as amended -- or to have their
25 -- our original prehearing statement amended as



1 what's been filed as the second amended
2 prehearing statement.

3 **THE COURT:** You're moving that now?

4 **MR. ANTLEY:** Yes, Your Honor. To make it sure that
5 -- to satisfy the taxpayer's concerns that
6 there is not a motion.

7 **THE COURT:** Well, I think we may have to address
8 that at a separate time frame. I don't know if
9 I want to get into all that right now. And as
10 for you, do you have any objection to that?

11 **MR. MAYBANK:** Well, we would object to it because we
12 have -- the Administrative Law Court rule
13 specifically says it should be granted unless
14 a party is prejudiced. Obviously, we're being
15 prejudiced.

16 **THE COURT:** I'll get into that argument later on.

17 **MR. MAYBANK:** Right. And I totally agree this is
18 not the time to ---

19 **THE COURT:** Okay.

20 **MR. MAYBANK:** --- label it.

21 **THE COURT:** Well, I'll address that later.

22 **MR. ANTLEY:** Okay. Would you like me to move on
23 from that? There's also a judicial economy
24 issue to rescinding that ---

25 **THE COURT:** Let's just address that later.



1 **MR. ANTLEY:** Okay.

2 **THE COURT:** If you wish to make that motion, how
3 about more formally make it ---

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

5 **THE COURT:** -- outside of this hearing. Because
6 right now I want to deal with the summary
7 judgment.

8 **MR. ANTLEY:** Okay. Okay. So, back to the beginning
9 of the Department's argument. So, this issue
10 is right for summary judgement. There are no
11 material issues in dispute. The Department --
12 in addition to the stipulations of fact, the
13 Department conducted a 30(b)6 deposition of the
14 taxpayer. The Department did not dispute the
15 taxpayer's representation of its operations in
16 -- in that deposition, other than, perhaps, the
17 characterization or their framing of those
18 operations. But the underlying fact is we do
19 not dispute. We do not dispute the number --
20 for example, the number of storage tanks they
21 have; number of employees they have. That --
22 that's not an issue. The only issue is whether
23 or not all of these -- all these -- this
24 equipment and these activities, whether or not
25 those would constitute facilities or equipment



1 of an industrial plant, which would allow them
2 to qualify for this exemption.

3 **THE COURT:** Along those lines, if there are portions
4 of the facility that is industrial activity,
5 then why would not the operation of the entire
6 facility be considered an industrial plant?

7 **MR. ANTLEY:** So, you said "industrial activity." Do
8 you mean industrial plant?

9 **THE COURT:** You've got a facility, and if you've got
10 a facility out there, and portions of that
11 facility are conducting industrial activity,
12 then -- not everything they do is industrial
13 activity, but a percentage. Let's say 30
14 percent -- we'll pick a figure -- is engaged in
15 industrial activity, then why would not the
16 facility be considered an industrial plant?

17 **MR. ANTLEY:** By industrial -- I'm not sure what you
18 mean by "industrial activity." If you mean
19 producing or manufacturing; is that ...

20 **THE COURT:** Yeah, producing something.

21 **MR. ANTLEY:** Okay. They're producing something?

22 **THE COURT:** There's an industrial process going on
23 that would not -- or why would not it be
24 considered an industrial plant? I'm not trying
25 to trick you, but I am asking you needling



1 questions to try to get an answer.

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

3 **THE COURT:** For me to make a decision.

4 **MR. ANTLEY:** So, that would -- I think that goes,
5 again, to how -- how zoomed in we're gonna get.
6 If -- I can point to the -- this item.

7 **THE COURT:** Yes, sir.

8 **MR. ANTLEY:** So, for example, if we have a refinery,
9 and we say that the -- the industrial plant is
10 the refinery, any facilities or equipment of
11 the refinery, they fall -- they would fall in
12 this square right here. So, that's an -- that
13 would be the equipment of an industrial plant.
14 At the most, you might hit this area, okay?
15 So, I'm not sure how you would zoom in to -- I
16 don't know if there's some -- some little
17 facility in here that would consider -- if Your
18 Honor would consider them to be an industrial
19 plant.

20 **THE COURT:** Well, I'm asking you about the
21 transmixing aspects of converting it back to
22 sellable products, and all that. So, if that
23 is an industrial process, then at what point
24 would you discount that industrial process as
25 creating the inference that it is an industrial



1 plant?

2 **MR. ANTLEY:** I think it would -- if you're gonna
3 zoom into it on that level and say it's an
4 industrial -- I guess that -- whatever is doing
5 transmix -- separating, transmixing, you're
6 gonna define that as an industrial plant.

7 **THE COURT:** I guess you're saying "zoom in." I'm
8 saying that if I find that something is
9 occurring at this facility that is
10 characterized as an industrial process --
11 because you even said that they do industry.
12 This is an industry. At what point does the
13 fact that a facility that is engaged in
14 industry become a plant? Why would it not be
15 a plant? And I can see you saying, well, okay
16 there's a minuscule amount of industry
17 occurring at this facility; therefore, it can
18 not be an industrial plant. I would imagine
19 it, you know, to the other extreme, so that
20 maybe you can see my point. If you have an
21 industrial plant that's producing a product, if
22 it's a manufacturer, even, of a product, that
23 plant is going to have human resource, so
24 that's not going to be manufacturing anything.
25 They're going to have trucks bringing things



1 in; trucks leaving. They're going to have
2 people who -- maintenance crews that may
3 maintain the manufacturing process, but some of
4 them may be just cleaning up the area;
5 landscaping and everything else. So, obviously
6 a manufacturing facility that is clearly
7 characterized as an industrial plant doesn't
8 fully and completely engage in industrial
9 activity in order to reach that
10 characterization. So ---

11 **MR. ANTLEY:** I think I might ---

12 **THE COURT:** So, therein lies my question now, is ---

13 **MR. ANTLEY:** I understand. I think I understand
14 your question, now. So, I -- I think that
15 might be a better way of putting it, then.
16 Instead of my analogy of zooming in and
17 zooming out. Whatever the activities they
18 would do, that would be -- that Your Honor
19 might consider -- and producing or
20 manufacturing would be de minimus in comparison
21 to the grand operation of what a taxpayer does,
22 and that's transporting the product from point
23 A to point B. It -- if it's more than that,
24 then maybe they're really not a pipeline
25 company; maybe they're really a manufacturer



1 and should be assessed at the higher assessment
2 ratio for manufacturers, which is another --
3 another element that's built into this is, it's
4 reasonable that the legislature might not have
5 offered this exemption to transportation
6 companies because transportation companies
7 already benefit from a lower assessment ratio
8 than manufacturers and utilities. So, they're
9 -- they're playing it -- they're trying to walk
10 a thin line and -- and say that they're very
11 similar to a manufacturer, but they're not a
12 manufacturer for assessment purposes, only for
13 the purposes of this exemption. And -- and so,
14 they can't have it -- they can't have it both
15 ways. If it's more than de minimus, then they
16 might -- they might be venturing more into
17 being more properly characterized as a
18 manufacturer.

19 **THE COURT:** That's interesting, so I've got to think
20 that through, now, but when you say
21 "transportation", you can be a transportation
22 company that's involved in industrial
23 production, can't you not? I noticed one of
24 these people argued they're just a
25 transportation company, and I don't know --



1 that maybe just a too simplistic approach here.
2 But can you answer that?

3 **MR. ANTLEY:** So -- so, they are -- they are complex.
4 But complexity doesn't -- is not what decides
5 whether or not you're an industrial plant.

6 **THE COURT:** Yeah.

7 **MR. ANTLEY:** In fact, some -- and this is in one of
8 -- I think, either my response or my reply. I
9 think it's in my response. One of the cases
10 they cited from out-of-state says that -- said
11 that -- that size really doesn't matter. You
12 can be really small and be an industrial plant,
13 or you can be really big and be an industrial
14 plant. That -- that doesn't matter. That's
15 not the determining factor.

16 **THE COURT:** Yeah. I agree with you on all that.

17 **MR. ANTLEY:** Okay.

18 **THE COURT:** I really do.

19 **MR. ANTLEY:** I'm sorry. Could you, maybe, restate
20 your question?

21 **THE COURT:** Let's just move on.

22 **MR. ANTLEY:** Okay.

23 **THE COURT:** I've interrupted you a bunch. Did you
24 find out where you were?

25 **MR. ANTLEY:** I think I've gotten through most of



1 this, and Your Honor's already stated this, but
2 I'll just be very brief as far as the burden of
3 statutory construction, We have a South
4 Carolina Supreme Court -- a Supreme Court of
5 South Carolina case, on point, as to how this
6 exemption is construed. The burden -- and this
7 is language directly from that case: "The
8 burden is on the Claimants to prove their
9 rights to an exemption by bringing themselves
10 clearly within the conditions imposed by the
11 statute." Later on, in that same -- in that
12 same opinion, the -- the Court goes on to say,
13 "The language of a tax exemption statute must
14 be given its plain, ordinary meaning and must
15 be strictly construed against the claimed
16 exemption."

17 **THE COURT:** So this is C ...

18 **MR. ANTLEY:** This is TNS Mills ---

19 **THE COURT:** TNS, okay.

20 **MR. ANTLEY:** Yes, Your Honor. TNS Mills versus The
21 Department of Revenue. So, that makes it clear
22 that the taxpayer bears the -- and with
23 pollution control exemption, the taxpayer bears
24 the burden and any kind of statutory
25 construction is not in there. It's construed



1 against the taxpayer. This is just high-level.
2 The -- the pollution control exemption only
3 applies to facilities or equipment of
4 industrial plants. And that phrase, "Must be,
5 again, construed against the taxpayer." So,
6 when we -- so looking at the term "industrial
7 plant" ---

8 **THE COURT:** Well, can I ask you about -- because
9 that's interesting. The statutory construction
10 of that term would be construed against the
11 taxpayer, but the factual aspects of that term
12 are not construed against the taxpayer, are
13 they?

14 **MR. ANTLEY:** I -- If I'm understanding your question
15 correctly, I don't think the -- there's no --
16 we don't -- we're not disputing the facts.

17 **THE COURT:** This is kind of like what we had at
18 Amazon. You gotta' analyze what the statute
19 means. And what the statute means, they have
20 to bring themselves clearly within that.

21 **MR. ANTLEY:** Yes.

22 **THE COURT:** But the facts of the case by which you
23 reach -- once you get the meaning, the facts
24 of the case are not something that is
25 construed against them. I mean, they got to



1 reach their burden but that's 50 percent
2 burden ---

3 **MR. ANTLEY:** Yeah, I'm thinking I'm understanding
4 your question.

5 **THE COURT:** --- well, 51 percent.

6 **MR. ANTLEY:** The answer then is, yes, and I don't
7 think we have any material facts in dispute.
8 So I don't think there would be any fact that
9 would necessarily need to be construed either.
10 One way or the other. Facts are facts.

11 **THE COURT:** Well, maybe, I might have -- let me look
12 if I can find that. I can't find it right now,
13 but I thought there was some -- because there's
14 just an underlying question of is separating
15 refinery products an industrial function, do
16 you think that there's a dispute about that?

17 **MR. ANTLEY:** If it's industrial ---

18 **THE COURT:** Is separating refinery products, the
19 transmixed products, an industrial function?
20 Do you think there's a factual dispute about
21 that, or do you -- because to say that you
22 don't, would mean that you must agree with them
23 that it an industrial function.

24 **MR. ANTLEY:** If industrial is defined as of/or
25 related to industry?



1 **THE COURT:** Yeah.

2 **MR. ANTLEY:** I don't think we have -- I don't think
3 there's a dispute over that.

4 **THE COURT:** Okay.

5 **MR. ANTLEY:** The question is whether or not that is
6 producing or manufacturing a new product.

7 **THE COURT:** You got there. I thought maybe there
8 was a dispute on that. I think that was my
9 main -- oh, pipeline, is there a genuine issue
10 of material fact regarding whether it's
11 pollution control property, but you cleared
12 that argument on that one, so I'll move on, so
13 go ahead. So your argument, I think your
14 correct.

15 **MR. ANTLEY:** So the term of industrial plant based
16 on its common usage, and how it's also used in
17 the context of property taxes always related
18 to manufacturing, production, outputting the
19 product where the input is different from the
20 output. According to the Merriam-Webster
21 dictionary industrial means, "Of or related to
22 industry", as I stated. And a plant, "Is a
23 factory or workshop for the manufacture of a
24 particular product." Always within the
25 context of South Carolina property taxes plant



1 is used in relation to manufacturing or
2 production. Even the exemption itself refers
3 to a manufacturer. It also uses the term,
4 "production" twice in discussing the dual
5 purpose.

6 **THE COURT:** You went through that real fast, so you
7 said industrial is related to industrial
8 production or output?

9 **MR. ANTLEY:** Industrial plant is related to ---

10 **THE COURT:** Industrial production or output?

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

12 **THE COURT:** I saw that in the Federal statute, but
13 so if this is industry, if what converting the
14 transmix and other stuff is industry, and that
15 as a result of that industry, they produce
16 something or there's an output of something,
17 which would be the new gasoline that is now
18 sellable, would that not be industrial
19 production or output? **MR. ANTLEY:** I think
20 it's, again, the de minimus or the zooming in;
21 however, you want to look at it. It's the
22 same -- a customer is paying to get that
23 product moved from point A to point B. What
24 happens in between doesn't -- that's not as
25 important as long as the product they get on



1 their end is what they paid to be transported.

2 **THE COURT:** Okay. When you say de minimis, I got a
3 feeling they are going to argue it's not de
4 minimis. You are going to argue that it is.
5 How do I evaluate from making a determination
6 under the requirements of summary judgment that
7 there not be a genuine issue of material fact?
8 How do I reach that determination?

9 **MR. ANTLEY:** As I said, I don't think there's any
10 dispute of what they do. It's just they may
11 say, well, you know, a hundred -- or however
12 many, you know, 30 storage tanks that makes us
13 -- that's more than de minimis. We would
14 disagree, and, Your Honor, could decide
15 whether or not 30 is de minimis or not.

16 **THE COURT:** Okay. Is there -- is there something
17 in the facts, which I can now evaluate de
18 minimis or not in the facts of this case?

19 **MR. ANTLEY:** I believe the stipulation of the facts
20 talks about the percentage of product that's
21 the same as when it started as where it ends.

22 **THE COURT:** Oh, there is? Okay. I'll look for it
23 then.

24 **MR. ANTLEY:** And I'm not sure that the whole
25 deposition has been provided to this Court



1 yet, but there's a lot of discussion of the
2 taxpayer's overall operations. It may have
3 been, but I'm not sure. If that would be
4 helpful, I'm sure we could file it.

5 **THE COURT:** Yeah. Can't tell you what would be
6 helpful at this point. I am thinking through
7 things. All right. Go ahead.

8 **MR. ANTLEY:** As I said, it's complex, and it maybe
9 big, but there's still a transportation
10 company, which the South Carolina Constitution
11 code regulations all distinguish from
12 manufacturers and utilities as a distinct kind
13 of company. And since they enjoy that lower
14 assessment ratio, it's reasonable to think
15 that the General Assembly did not extend this
16 exemption to them. The taxpayer is, in
17 effect, the same as a tanker truck, they're
18 moving product from point A to point B. If,
19 according to their very liberal and broad
20 definition of industrial plant than a tanker
21 truck could qualify. The muffler on that
22 tanker truck is there to reduce noise
23 pollution, so then it should be able, in
24 theory, to qualify for the pollution control
25 exemption. Surly, that's not what the General



1 Assembly was thinking, and we know that
2 exemption statutes are not construed with
3 relief. So all activities, all property in
4 South Carolina, is transportation related.
5 All activities in South Carolina is
6 transportation related. As a transportation
7 company, the taxpayer has no facilities or
8 equipment of industrial plant in South
9 Carolina, and therefore they do not qualify for
10 the pollution control exemption.

11 **THE COURT:** Thank you.

12 **MR. CARTIN:** Your Honor, can we take a brief
13 restroom break?

14 **THE COURT:** No. Because you'll go a lot faster if I
15 ---

16 **MR. CARTIN:** With your great Christian mercy, will
17 you allow me ...

18 **THE COURT:** Yeah. We'll have a break. Thank you.

19 **(A break was taken from 11:22 am. to 11:31 am.)**

20 **THE COURT:** All right. Y'all be seated. So you're
21 ready?

22 **MR. KOZLAREK:** Yes, Your Honor, I am.

23 **THE COURT:** Okay. Well, have it.

24 **MR. KOZLAREK:** Your Honor, Michael Kozlarek. I
25 represent four of the intervening counties;



1 Abbeville, Anderson, Greenville and York.

2 **THE COURT:** Okay.

3 **POSITION STATEMENT BY MR. KOZLAREK:**

4 **MR. KOZLAREK:** So I have for the Court two ways to
5 get out of the quandary that the Court has
6 raised about transmix, and just, generally,
7 this quagmire that we seem to find ourselves in
8 now. The first one is the re-separation of
9 transmix doesn't happen in the pipeline. It
10 happens in a very small area on the taxpayer's
11 property. So to the extent -- and I think the
12 Court was getting at this earlier, to the
13 extent that these pollution controls --
14 assuming its pollution control equipment -- but
15 to the extent that it exists, and it exists on
16 the pipeline, then it is not related to the
17 re-separation of the transmix, and, therefore,
18 it's not part of that process. Again,
19 assuming that the Court is willing to go so
20 far as to say industry or industrial relates
21 to any process related to industry whatsoever.

22 **THE COURT:** I see one little defect in that though.
23 The processing of the transmix occurs outside
24 of the pipeline.

25 **MR. KOZLAREK:** Correct.



1 **THE COURT:** Where does the transmix occur?

2 **MR. KOZLAREK:** Inside the pipeline, but -- and Mr.
3 Antley did a very good job of pointing this
4 out. The difference between changing the
5 product or creating a product is one of the
6 taxpayer's own making. When someone hires
7 them to transport a product, they expect to
8 get the same quality product, and as Mr.
9 Maybank pointed out, it's fungible, but they
10 expect to get the same type and grade of
11 product and the same quantity that they bought
12 when it went into the transportation mechanism
13 as when it comes out of the transportation
14 mechanism. So the fact that the taxpayer,
15 because of its own mechanism of transport,
16 chooses to run product simultaneously or
17 back-to-back through the pipe to create the
18 transmix, and then separates it outside of
19 that mechanism, is completely different than
20 actually creating a new product in some of sort
21 of industrial process.

22 **THE COURT:** Yeah, but you're attributing the fact
23 that Colonial Pipeline chooses to conduct its
24 business in a certain way. Number one, we
25 don't know one way or the other, but I would



1 probably go with the presumption that the
2 refiners know how Colonial Pipeline is
3 conducting its business, and; therefore, they
4 do know that this transmixing is occurring,
5 but that could only be a presumption. But,
6 secondly, it appears to me you're telling me
7 that they choose to conduct their business in
8 a certain way that potentially results in a
9 tax deduction, and you believe that they
10 should not be allowed to make that choice, and;
11 therefore, it would make the choice of how to
12 conduct their business, that is, in a way that
13 results in transmixing, and that should be used
14 against them because they make that election.

15 **MR. KOZLAREK:** I'm simply pointing out that as is
16 in the record, there is testimony in the
17 deposition to this effect that they could
18 operate the way a trucking company, or the way
19 a railroad operates where a single product is
20 put into a railcar or a truck and that product
21 is delivered, and if a new different type of
22 product were to go into that same railcar or
23 truck, it would have to be cleaned first.
24 Well, the pipeline could be run -- and, again,
25 this is in the deposition -- the same way. A



1 single type of product could be pushed through
2 the pipeline, that pipeline could be cleaned,
3 and another type of product pushed through the
4 pipeline, and; therefore, there would be no
5 transmix, so the idea is ---

6 **THE COURT:** So they could operate it that way if
7 they wish to allow the counties to win their
8 case. But they choose to operate their
9 business, way before all this issue came up,
10 in the way that does distinctly different that
11 resulted in potentially them carrying on
12 industrial plant-like operations. So simply
13 because they make the election to do -- to
14 conduct their business in that way, why should
15 that be used against them?

16 **MR. KOZLAREK:** I don't think it should be used
17 against them.

18 **THE COURT:** Then what's your point?

19 **MR. KOZLAREK:** The point is if trucking companies
20 or rail companies did that, that is if those
21 tanks were cleaned, which they are,
22 periodically in between each type of product
23 that is put in them. Then under the same
24 theory, whatever, is mixed in those containers
25 would have to be disposed of, would also fit



1 under the taxpayer's definition of some sort
2 of industrial process activity. So the mere
3 cleaning out of the trucks and railcars would
4 be exactly the sort of transmix that would
5 occur. Now, I realize it's not two different
6 products, but it's the same type of industrial
7 activity that the taxpayer wants to suggest
8 gives them the right to this exemption. The
9 other -- to sort of backup, and I was hoping
10 to make it a little bit simpler, and I'm going
11 to leave the second way the Court can get out
12 of this 'till just a moment from now. But
13 under the taxpayer's definitions, all of them,
14 whether they're dictionary definitions or
15 they're definitions from other states, or
16 other regulations, all of them would include
17 things like restaurants. They would include
18 things like Amazon. The Industrial Revenue
19 Bond Act of South Carolina, for example, would
20 permit Amazon to get a revenue bond. Clearly,
21 the General Assembly did not intend for Amazon
22 to be treated as industrial plant. Again, I
23 can't point to a statute, or I can't point to
24 a regulation in much the same as the taxpayer
25 can't to establish what industrial plant



1 means, but it can't mean that. That would be
2 the definition of an absurd result. They are
3 completely different types of entities doing
4 something completely different. That's the
5 reason why manufactures, for example,
6 utilities, for example, that produce something
7 that is new and different and distinct from
8 the products that are brought in from the raw
9 materials. That is different than a
10 transportation company, even if the
11 transportation company chooses to mix two of
12 those products at the interface and then
13 separate them out later, it's the same
14 products going in as coming out as required by
15 the person who is actually getting the
16 transport product. They do not charge for
17 that. There is no additional charge to
18 transmix an untransmixed product because it's
19 not part of the transportation of the product
20 that the customer is paying for.

21 **THE COURT:** And I don't know if there's anything in
22 the record that explains how the charges are
23 broken down. I assume they charge for
24 transport?

25 **MR. KOZLAREK:** No, Your Honor.



1 **THE COURT:** They do all this for free?

2 **MR. KOZLAREK:** They charge a transport fee, but
3 there is evidence in the deposition that they
4 do not charge for the reprocessing of the
5 transmix from where the interface was back into
6 the two separate products. There is no charge
7 for that.

8 **THE COURT:** But you don't know, though, necessarily
9 whether there's a charge to conduct the
10 business in the way that they conduct the
11 business?

12 **MR. KOZLAREK:** Yes, Your Honor, but the deposition
13 testimony is they do not charge for the
14 transmix.

15 **THE COURT:** A separate charge?

16 **MR. KOZLAREK:** Correct.

17 **THE COURT:** But they charge to conduct the business
18 in a way ---

19 **MR. KOZLAREK:** Absolutely. Absolutely. The second
20 thing that no one else has raised, and this
21 was the second reason why I think the Court
22 could get out of this at least temporarily ---

23 **THE COURT:** Before you even go there, though, you
24 were doing your distinction of Amazon and
25 those. Because I think your Amazon argument



1 and restaurant argument was you're picking the
2 definition of industry, and I think Mr. Antley
3 was wise in his approach that he was doing
4 industry and plant, recognizing industry, but
5 trying to make the distinction about plant,
6 and so can you respond to that?

7 **MR. KOZLAREK:** Your Honor, I'm not actually arguing
8 for the particular definition of industrial
9 plant. What I'm simply saying is that the
10 nature of the definitions that are posited by
11 the taxpayer are so broad that they would
12 include basically everything, any type of
13 industry. It would include masons. It would
14 include electricians. It would include
15 restaurants, Amazon the MPBS permit that they
16 rely on repeatedly would include the United
17 States Postal Service and a salvage yard for
18 automobiles. Again, things that might be
19 important from ---

20 **THE COURT:** A salvage yard for automobiles could be
21 a plant.

22 **MR. KOZLAREK:** It could, Your Honor, except that
23 it's broad enough to cover somebody's who got
24 a hundred cars sitting in a salvage yard
25 that's doing nothing with them. And that's the



1 difficulty with every definition that is
2 posited by the taxpayer.

3 **THE COURT:** One of the definitions he used was -- I
4 thought was interesting is back to the federal
5 statute. Oh, plant -- yeah, industrial plant
6 where they said, "Any process of systems for
7 industrial production." So what they're saying
8 is that you've got industrial. There must be
9 a process or system occurring that results in
10 industrial production or output for there to
11 be a plant. What do you think about that?

12 **MR. KOZLAREK:** I think the answer is the product
13 coming in is the same product coming out, so
14 I'm not sure what production has actually
15 occurred.

16 **THE COURT:** Okay. You heard all my other questions
17 then. Well, let's just move on then.

18 **MR. KOZLAREK:** But I think that's the answer to
19 that question is literally the person who's
20 paid for that transportation expects the exact
21 same thing that went into the pipe to come out
22 of the pipe. The fact that the transportation
23 company may choose to put it in a tanker
24 versus a railcar versus a pipeline does not
25 impact the fact that they're really not



1 changing the product that went in from the
2 product that came out. It's not as though
3 there are raw materials at the beginning of a
4 plant that are made into a plastic. That is
5 completely different and separate from what
6 was put into the process to start with. It's
7 merely transmitting that through a pipe. It's
8 high tech. It's very impressive, uses lots of
9 people and lots of pipeline, but it really
10 doesn't change the product in any way from
11 what was transported to them to start with and
12 what's transported to the customer. The second
13 issue that I was going to raise, that no one
14 else has raised, and obviously, it's in my
15 materials is the issue about DHEC, and I want
16 to focus specifically on the language of 1237-
17 220(A)(8). I'm paraphrasing the beginning, but
18 essentially if the Department of Revenue is
19 faced with an exemption claim, it doesn't feel
20 comfortable making a decision as to the
21 specific pieces of property and whether they
22 -- not qualify for the exemption, but whether
23 they were pollution control equipment. The
24 Department of Revenue may have a number of
25 items that it has to check off in order for



1 1237-220(A)(8) to apply. For example: Was it
2 timely requested; was the method proper; does
3 it meet the definition of industrial plant?
4 These are the thing the Department of Revenue
5 has, in its sole discretion, to decide, but if
6 the Department isn't sure if this piece of
7 equipment is pollution control equipment, it
8 is entitled under the statute to ask a sister
9 agency to help, DHEC. The statute says, "As
10 request of the Department of Revenue, the
11 Department of Health and Environmental Control
12 shall investigate the property of any
13 manufacturer company eligible for the
14 exemption to determine the portion of the
15 property that qualifies as pollution control
16 property. Upon investigation of the property,
17 the Department of Health and Environmental
18 Control shall furnish the Department of
19 Revenue with a detailed listing of the
20 property that qualifies as a pollution control
21 property." There is nothing in this record
22 that that ever occurred. The taxpayer
23 referred to two letters, and, again, they're
24 in various filings from the Department of
25 Health and Environmental Control. Neither of



1 those letters does either of the two things
2 that are required of DHEC under the statute,
3 and the taxpayer never challenged that. So,
4 first, the Department is required to
5 investigate to -- and the statute says, "to
6 determine", which is important. The Department
7 of Health and Environmental Control must make
8 an affirmative determination that some portion
9 of the taxpayer's property that's being
10 claimed as pollution control property is
11 actually used as pollution control property.
12 The letters that came from DHEC are very
13 circumspect. What they say is we do not have
14 authority over pipelines. They are regulated
15 by the federal government, for example, the US
16 Department of Transportation.

17 **THE COURT:** That doesn't really matter, does it? I
18 mean, because they're asked to determine
19 whether this equipment is pollution-controlled
20 equipment. So it doesn't matter whether they
21 regulate it or not. It matters whether they
22 can make the determination of whether this
23 equipment is pollution-controlled equipment.

24 **MR. KOZLAREK:** Your Honor is making my argument for
25 me.



1 **THE COURT:** Well, Good.

2 **MR. KOZLAREK:** Precisely the point. Whether they're
3 regulated by some federal agency or not, the
4 Department under South Carolina Property tax
5 law -- excuse me, the Department of Health and
6 Environmental Control, is required to say
7 affirmatively, yes or no, this equipment is a
8 pollution-control property. Their letters do
9 not do that. What they say is we don't
10 believe we have authority to make that
11 determination, and, yes, in the second letter
12 they say but under the underground storage
13 tank regulation, which is completely separate
14 from a pipeline, we would consider this to be
15 pollution control property. So we're not going
16 to make a determination because we don't have
17 authority. Under a complete set of
18 regulations, we might consider this to be
19 pollution-control equipment, but it's not
20 under those set of regulations. So we're not
21 actually going to make a determination. The
22 taxpayer never challenged that. At that point,
23 that would have been the appropriate moment
24 for the taxpayer to say internally at DHEC,
25 we're going to ask for administrative review.



1 We're going to get a final agency
2 determination on whether you have authority to
3 make the determination that is required under
4 state property tax law. They did not do that.

5 **THE COURT:** Well, the statute says that the
6 Department can require them to do that, and
7 that they shall do that.

8 **MR. KOZLAREK:** Correct.

9 **THE COURT:** Would that not be the Department, that
10 they wish to have them clarify more
11 specifically the Department's authority to
12 bring that over to our Court, and, say, look
13 they shall do that. We, hereby, seek the
14 court order that they comply with the
15 requirement of the statute. That requirement
16 wasn't that the taxpayer could require them to
17 do it. It was the Department can require them
18 to do it.

19 **MR. KOZLAREK:** But the injured party is not the
20 Department of Revenue.

21 **THE COURT:** They argue that they're not injured,
22 because they're fine with what the ---

23 **MR. KOZLAREK:** The problem with that, Your Honor,
24 is that the Department not being the injured
25 party and having asked a sister agency to make



1 that determination, the Department has its own
2 set of criteria under the statute that it has
3 to determine. If DHEC had said to the
4 Department of Revenue, we are affirmatively
5 telling you this is not pollution control
6 equipment, the taxpayer gets denied, as they
7 did here, and challenges, we're going to
8 contest the case proceeding, and so the sole
9 reason that we were denied is because the
10 Department of Revenue said that the Department
11 of Health and Environmental Control said that
12 you're not using pollution control properly.
13 What sense would it make to have DOR, who had
14 to go ask another agency to make that
15 determination, defend the other agency's
16 determination. It makes more sense under the
17 statute that DHEC would have been the
18 appropriate agency to be challenged by the
19 taxpayer when they refused to give the
20 affirmative determination that the property
21 was pollution control property, or if they had
22 said we don't think its pollution control
23 property. Either way, the taxpayer would have
24 been the appropriate person to say, no DHEC,
25 you have the authority, you've made the wrong



1 decision. We're going to challenge you now
2 because once DOR issues a determination, if
3 that's the sole reason, it makes no sense to
4 argue against DOR who's simply going to point
5 you to DHEC. The second thing in the statute,
6 assuming you could read DHEC's letters to make
7 that determination, which, again, I think if
8 the Court reads the letters, it will be clear
9 there is no determination by DHEC, but the
10 second thing the statute requires is that the
11 Department of Health and Environmental Control
12 shall furnish the Department of Revenue with
13 a detailed listing of the property. Again,
14 there is nothing in this record that any
15 listing of property, detailed listing of
16 property, came back from DHEC to DOR. The only
17 thing in those letters are references to
18 general classes of material or property.
19 There is no way for DHEC to just send back,
20 again, under the statute, sort of this generic
21 we would consider these kinds of pieces of
22 property. Because the Department of Revenue
23 tasked with figuring out the actual piece of
24 equipment that is exempt or not exempt would
25 have no way to say, well, this piece might be



1 one of the ones that DHEC is talking about
2 versus this piece, which might not be one of
3 the ones DHEC is talking about, unless there
4 is an actual -- as provided in the statute --
5 detailed listing. It is conceivable that the
6 same kinds of property in one context may not
7 be used as pollution control property,
8 whereas, in another context, it may be used as
9 pollution control property. So simply saying
10 that generically these kinds or types of
11 property could be pollution control property,
12 doesn't give the DOR any ability to, actually,
13 essentially, strike off what's exempt from the
14 assessment. It leaves them still guessing; do
15 we cut it all off; do we not cut it all off;
16 is all of this pollution control property?
17 And, again, it doesn't meet the burden that
18 the statute poses.

19 **THE COURT:** I guess your argument would presume
20 that the original request by the Department
21 was not a detailed listing, and; therefore,
22 there was a requirement to thereafter detail
23 list?

24 **MR. KOZLAREK:** There is nothing that I'm aware of
25 in this record that in any way indicates that



1 DOR sent over a detailed list of property, but
2 even if ---

3 **THE COURT:** What was the request? One of these
4 three specific items?

5 **MR. KOZLAREK:** There were three -- when we -- I've
6 heard this a couple times both from the
7 taxpayer and the Department. It wasn't three
8 specific items. It was three types of
9 property, that is, there are coatings that are
10 on all of the pipe, but it's not -- obviously,
11 their pipes are in sections. The cathodic ion
12 protection are individual rods placed
13 throughout the pipelines, so it's not simply
14 as if there was one piece of each of these
15 types of property. It would literally be, and
16 I don't want to speculate on how many hundreds
17 of these pieces -- valves, for example,
18 there's not one valve on the pipeline, so it's
19 not simply enough to say, well, the valves
20 generally might be pollution control
21 equipment.

22 **THE COURT:** I was trying to find it. I just can't
23 find it in my notes, the specific, what they
24 asked about. Can you tell me what ...

25 **MR. KOZLAREK:** It's cathodic ion protection. It's



1 the coatings, and then the third one ---

2 **MR. CARTIN:** Automatic.

3 **MR. KOZLAREK:** Thank you. Automatic shut-off valve.

4 **THE COURT:** Pipe coatings, cathodic protection, and
5 automatic shut-off valves?

6 **MR. KOZLAREK:** Correct.

7 **THE COURT:** So your argument is -- and I don't know
8 what the pipe coatings were because the pipe
9 coating sounds like the cathodic protection.
10 It sounds like one in the same.

11 **MR. KOZLAREK:** They're different, Your Honor.

12 **THE COURT:** So your argument will be that asking
13 about the pipe coatings, the cathodic
14 protection, and the automatic shut-off valves
15 that those aren't detailed questions to begin
16 with?

17 **MR. KOZLAREK:** Correct, but even if they were ---

18 **THE COURT:** Well, if they were, then there would be
19 no need to give a detailed response because
20 you've already asked for that, which was
21 detailed to begin with.

22 **MR. KOZLAREK:** The way the statute reads DHEC is
23 required to provide a detailed list regardless
24 of what DOR sends over to DHEC.

25 **THE COURT:** All I'm trying to figure out is if was



1 a detailed list to begin with, then you don't
2 need to respond to it with a detailed list
3 because you already got it, so I was just
4 trying to figure out if this is detailed or
5 not?

6 **MR. KOZLAREK:** And our position is, no, it is not
7 that those are general types of property, not
8 specific pieces of property, because what the
9 Department of Revenue has to do in removing
10 property, essentially, in exempting it,
11 removing it from the assessment is not simply
12 we know what all the property is, and so we're
13 going to strike individual pieces. They may
14 not know that. They simply know that the
15 taxpayer has said here is the amount that
16 we're claiming is exempt based on these three
17 categories, and originally it was seven
18 categories, I believe, that the taxpayer could
19 claim were exempt. And so the Department of
20 Revenue doesn't necessary have this list of
21 individual valves by serial number or by model
22 number, and, again, if DHEC had actually
23 investigated, and had actually come up with a
24 detailed list, they could have said this valve
25 is exempt, but this valve is used for a



1 different purpose, and; therefore, we don't
2 think that valve is exempt. That is a
3 completely different structure than simply
4 saying pipe coatings -- generally, all the
5 pipe coatings on the pipe are exempt. Now,
6 pipe coatings may be a bad example, simply,
7 because they are by section of pipe.

8 **THE COURT:** Do you have any evidence that certain
9 automatic shut-off valves are exempt and
10 certain ones aren't?

11 **MR. KOZLAREK:** Thankfully, as not being the
12 taxpayer, I don't have the burden of proving
13 that.

14 **THE COURT:** I know. I'm just asking you.

15 **MR. KOZLAREK:** No, Your Honor, I don't.

16 **THE COURT:** We're dealing with genuine issues of
17 material fact.

18 **MR. KOZLAREK:** Absolutely, I do not.

19 **THE COURT:** So that's what I'm asking.

20 **MR. KOZLAREK:** I do not. But I also know that DHEC
21 didn't actually do that. Given the way
22 statute reads, DHEC should have investigated,
23 and should have determined, actually
24 determined, and then actually provided a
25 detailed list of which assets being claimed



1 are, in fact, pollution control property and
2 not for some other purpose.

3 **THE COURT:** See, what I don't know, when I hear you
4 make that argument is if all these things are
5 generically pollution control products and
6 therefore DHEC didn't need to go and say this
7 automatic shut-off valve is pollution control
8 and this one isn't because if they thought
9 that all this stuff under the USD- ---

10 **MR. KOZLAREK:** DOT.

11 **THE COURT:** Yeah. If all of these were pollution
12 control products, than they didn't need to do
13 that. I don't know one way or the other.

14 **MR. KOZLAREK:** And I agree with the Court the
15 difficulty is because the statute requires that
16 DHEC provide a list and that DHEC do an actual
17 investigation and make a determination, the
18 reason we don't know is because they didn't
19 actually do that.

20 **THE COURT:** Is there any evidence that they didn't?

21 **MR. KOZLAREK:** The only evidence we have is the
22 subpoena that two or three of us sent to DHEC,
23 and there is nothing in what DHEC sent us, to
24 all the parties, that in any way reflect any
25 type of investigation. They simply sent a



1 letter back, actually two different letters
2 back, saying what we've all said. Again,
3 there's no argument that the letters are what
4 they are.

5 **THE COURT:** Okay.

6 **MR. KOZLAREK:** So there is nothing that we have in
7 their material that they called Colonial up,
8 that they called DOR up that they did any sort
9 of background investigation that they went and
10 looked at pipeline. There's nothing in what
11 they supplied to us to indicate that they did
12 any kind of actual investigation of the
13 pipeline or that they provided any detailed
14 listing in response to the request.

15 **THE COURT:** Okay.

16 **MR. KOZLAREK:** The only other couple of comments
17 that I'll make, again, kind of goes back to
18 definitions, particularly from other states. I
19 mean the Florida cases that are referenced are
20 perfectly fine except they start with the
21 premise that the General Assembly in Florida
22 intended those exemptions to be liberally
23 construed ---

24 **THE COURT:** I saw that.

25 **MR. KOZLAREK:** --- which is the exact opposite of



1 South Carolina law, and that is the case we're
2 basically all arguing about. As the Court has
3 already described, you understand very well the
4 statutory construction arguments that are
5 inherent in this case, and then the last
6 comment I'll make was sort of this waste water
7 treatment facility as being an industrial
8 plant and how that doesn't actually relate to
9 what the taxpayer is doing. So waste water is
10 very simple. Waste water comes in as waste.
11 It's got solids in it. It's got dissolved bio
12 material in it. It's got lots of things in it
13 that we don't want in it. When it goes
14 through the treatment facility, it comes out
15 on the other side as a completely different
16 material. All of the sludge is removed. All
17 of the bio- -- dissolved bios are removed.
18 You basically get, essentially, almost clean
19 water coming out of the back side.

20 **THE COURT:** Now, you are saying all of that is
21 removed? I was sitting here thinking, but
22 would you drink it?

23 **MR. KOZLAREK:** I certainly would use it for
24 gardening or other reclaimed uses.

25 **THE COURT:** So maybe not all of it.



1 **MR. KOZLAREK:** Fair enough. Fair enough. That is
2 completely different than the transportation
3 system. The purpose of providing the waste
4 material to the treatment plant is so that the
5 product that leaves the treatment plant is a
6 different, mostly clean product. The purpose
7 of providing the product to the transportation
8 company is to get it from A to B. Regardless
9 of how tech it is, regardless of the fact that
10 they add drag reducing agents to make it more
11 efficiently flow through the pipe, the fact
12 that they push product up against one another
13 to make it flow efficiently through the pipe
14 because quote, "That's how you run a
15 pipeline", doesn't make it into an industrial
16 plant, and it doesn't make it into a waste
17 treatment facility where the purpose of
18 providing the waste water to the treatment
19 facility is to change the product that comes
20 in to a different product flowing out. Again,
21 if we were to take the taxpayer's definition,
22 what essentially would happen is the treatment
23 facility would take in waste water and pump
24 out waste water, and we would say treatment is
25 done. That is clearly, again, not what was



1 intended. It is a very different scenario
2 than what the taxpayer does. Unless the Court
3 has other questions ...

4 **THE COURT:** No, no. Mr. Cartin is all refreshed.

5 **MR. CARTIN:** Thank you, Your Honor. I am playing
6 third violin today, and so I think you have the
7 sense of the tune.

8 **THE COURT:** Okay.

9 **POSITION STATEMENT BY MR. CARTIN:**

10 **MR. CARTIN:** So I'll just try to hit a couple high
11 notes and then move on quickly. The first
12 thing I want to note is, you asked a question,
13 Your Honor, about whether DHEC needed to look
14 into the specifics of which equipment might
15 have been exempt and which wasn't. And the
16 question was, I believe, did they just ask for
17 the exemption for all of the pipeline
18 coatings, automatic shut-off valves and
19 cathodic protection across the entire
20 pipeline, and, in fact, they did not. In the
21 30(b)(6) ---

22 **THE COURT:** Where I could be clear, so y'all can
23 understand it, is, what I was asking, and I
24 don't know one way or the other, but if the
25 original question from the Department was



1 sufficiently detailed for them to just respond,
2 than, yes these products are pollution control
3 products then there was no -- there would be no
4 need to add further detail to that which was
5 sufficiently detailed in the beginning. So
6 therein lies my question.

7 **MR. CARTIN:** Your Honor, and I could read their
8 testimony to you from the 30(b)(6), so you can
9 hear a little bit about what they did.

10 **THE COURT:** Okay.

11 **MR. CARTIN:** So this appears on page 68.

12 **THE COURT:** Now, they is DHEC?

13 **MR. CARTIN:** Colonial Pipeline. It's a 30(b)(6)
14 deposition, yes, sir, Your Honor. It appears
15 on page 69, and I believe this maybe Mr. Fuqua
16 testifying, but, in any event, it is Colonial
17 Pipeline testifying. So the question is,
18 starting at line 8, "How long has Colonial had
19 these assets, pipe coatings, cathodic
20 protection, automatic shut-off valves, that
21 it's claimed as exempt." Answer, "Oh, well,
22 there's actually more dates on this schedule
23 as to when they were installed. I think the
24 oldest one on this list goes back to '06 and
25 the newest, it looks like in '16, maybe 2016."



1 Question, "Okay." Answer, "So we didn't go
2 back and try to claim all of the original
3 pipeline because it was old. How do determine
4 the value of something that is 60-years-old?
5 So we only went with things that have projects
6 that have been in the last 10 to 12 years at
7 the time we filed this." So there are -- the
8 question is was the request from the
9 Department specific enough that if DHEC
10 answered it, it would have been sufficient. I
11 don't think it was because it appears that we
12 have some different types of property that was
13 not requested in the exemption. So I would
14 have thought that when DHEC would have done
15 their investigation, they would have been
16 provided with a schedule of exactly what's
17 being claimed as exempt. I would imagine that
18 this technology has changed over the years.
19 What was appropriate in 1962, I believe, when
20 the pipeline was created, may not be what they
21 are using today. It may not meet the same
22 criteria, so I think to answer that question
23 just as briefly as I can, I think the answer
24 is no, it was not detailed enough without DHEC
25 doing it statutorily required function of



1 investigating and then furnishing. Judge,
2 it's taken me a while to come around to this
3 argument because at first I thought of it,
4 what does it matter. But the more and more I
5 looked at the statute, it's cast in the terms
6 of an imperative. It's what DHEC has to do,
7 and so I have slowly been convinced by Mr.
8 Kozlarek that this is actually an appropriate
9 and correct legal interpretation that once
10 it's gone -- once the request has been made to
11 the Department of Health and Environmental
12 Control, there is a requirement that it render
13 those decisions mandated by the statute, and
14 that that sort of holds up. The Court asked
15 earlier, is there a fact issue, and I think
16 that creates an issue.

17 **THE COURT:** Well, because that's -- while you're
18 talking, I'm thinking. All right. There is
19 the issue of -- you can say whether this is a
20 factual issue in the case in its entirety, or
21 whether this is a factual issue within the
22 narrow umbrella of what we're discussing now
23 of DHEC's responsibility, but if that's part
24 of your argument, it appears to me that from
25 what y'all are suggesting that this is a



1 factual issue of which there's no genuine --
2 that there may be a genuine issue of material
3 facts that you're leading me down to not
4 having summary judgment because I'd have to
5 decide then based on their evaluation of what
6 is pollution control, whether it was
7 sufficiently detailed to begin with and your
8 evaluation of whether it's not sufficiently
9 detailed to begin with. Can you answer that?

10 **MR. CARTIN:** So there are two different sides of a
11 Motion for Summary Judgment, obviously. One is
12 from the petitioner who has the burden of
13 proofing each and every element of the
14 exemption. The other is from the respondents,
15 and if there are four or five elements of any
16 particular legal theory that needs to be
17 proved, a respondent's Defensive Motion for
18 Summary Judgment. If we can show that as a
19 matter of law one of those elements cannot
20 possibly be shown as a matter of law, then
21 we're entitled to a summary judgment because
22 the petitioner could never prevail. And I
23 think -- that's why I think ours is
24 appropriate, and the Court could, if it
25 decides with our interpretation of industrial



1 plant, conclude that the petitioner could
2 never meet its burden and; therefore, grant us
3 summary judgment.

4 **THE COURT:** Let's just stick with this issue,
5 though. On this issue, I have to decide this
6 issue under the requisite that there be no
7 genuine issue of material fact, do I not?

8 **MR. CARTIN:** When you say this issue, meaning the
9 DHEC issue?

10 **THE COURT:** Yeah, the DHEC issue that you're
11 arguing that.

12 **MR. CARTIN:** I think you could make summary
13 judgment on multiple grounds.

14 **THE COURT:** I know. Right now you're arguing the
15 DHEC issue?

16 **MR. CARTIN:** Right.

17 **THE COURT:** So if I'm going to consider the DHEC
18 issue, do I not -- is there not a genuine
19 issue of material fact?

20 **MR. CARTIN:** There may a fact issue as to whether
21 it's pollution control or not, but the Court
22 can make a legal conclusion that because the
23 Department did not make that determination, and
24 it was required to, and it was not challenged,
25 that there's been a failure to exhaust the



1 administrative revenues, so it doesn't have to
2 reach that other issue.

3 **THE COURT:** All right. That's what I'm asking.

4 **MR. CARTIN:** The Transco case was mentioned. I
5 haven't a clue what Transco is, not any idea
6 in the world what it might be, and I just want
7 to highlight for the record that no facts are
8 in the record about Transco besides from
9 statements from counsel, or how it's been
10 treated by the Department, and I would
11 strongly ask the Court not consider anything
12 about that as part of the summary judgment.
13 There are a lot of definitions floating out
14 here. There was a statement in the reply that
15 was filed on Friday that Aiken and Laurens
16 County made the assertion that the Court
17 cannot rely on dictionary definitions, and
18 that is -- if that's what I said, that's not
19 what I meant to say. What I recall saying in
20 our response was that ---

21 **THE COURT:** You don't like Wikipedia a whole lot.

22 **MR. CARTIN:** I don't like Wikipedia, that was a
23 little -- that was a bit glib, and I do use it
24 to answer my children's questions from time to
25 time, and it is useful for that, maybe not for



1 the purposes here today, but I don't have any
2 ---

3 **THE COURT:** I don't know if there's ever been a
4 Court that has ever relied on Wikipedia, do
5 you?

6 **MR. CARTIN:** I'm not aware of one, Your Honor, but
7 what I meant was -- and I think Mr. Maybank
8 actually alluded to this, is that in this
9 particular case some of the definitions that
10 have been out there are so general and so
11 circular as to be absolutely not helpful.

12 **THE COURT:** Yeah, because they go right back to the
13 industrial again.

14 **MR. CARTIN:** Absolutely, Your Honor. So what I
15 think they're urging the Court to adopt as far
16 as industrial plant goes, is that
17 interpretation simply means the place where
18 business is done. And I don't think that's
19 what the statute requires, and I think in this
20 particular context, the legislature's given us
21 contextual clues as to what they mean.

22 **THE COURT:** What they're arguing, and what somebody
23 else is arguing, let's stay on point about
24 what I should do.

25 **MR. CARTIN:** Okay. And I think, Your Honor, that



1 you should interpret industrial plant to mean
2 the Court's going to have to fashion its own
3 definition. I don't think -- it's not defined,
4 so the Court's going to have to come up with
5 a sense of it, but I think it means the
6 physical location where goods or materials or
7 energy or other substances are actually and
8 substantially produced. And I take those
9 clues from the references in the statute
10 itself to the fact that if you have dual
11 purpose property you're supposed to look at to
12 determine the value at issue, you look at the
13 value of the property without pollution
14 control equipment compared to property with a
15 similar production capacity or capability.
16 There's a production element to it, and it
17 can't be more than de minimus, Your Honor. I
18 know Mr. Kozlarek mentioned the restaurant.
19 Well, if the Court adopts too broad of a
20 definition, what's to stop the Waffle House
21 from being considered a manufacturer, and
22 here's where I'm going with this. They make
23 these really tasty omelettes there. They take
24 an egg that's been transported to them. They
25 take cheese. They take ham and mix it



1 altogether, and they have produced an
2 omelette. It's simply got to mean something
3 more than the place -- it's a business. It's
4 got to mean more than the place where business
5 takes place, and there's some de minimus
6 construction of products coming together.
7 Similarly, Mr. Kozlarek drew some analogies
8 between barges, railway cars, and other
9 transportation companies, and, you know, the
10 thing as I was sitting over here, this may not
11 be a perfect analogy, but I was thinking of my
12 brother, soon to become a dairy farmer, so I
13 was thinking of transporting cows from one
14 farm to another. Before they do that, they
15 shoot them with antibiotics. So we've added
16 something to the cow before the transport to
17 make sure they don't get sick is transport.
18 Are they now a cattle producer? Is that
19 transportation company engaged in the
20 production of meat or milk or whatever else
21 the cows are going to be used for, no, it's
22 something incidental to the transfer, and I
23 think that was the point that Mr. Kozlarek was
24 making about the transmix.

25 **THE COURT:** That's interesting. So if the process



1 is incidental to the business, then it would
2 not be an industrial production, and; therefore
3 not an industrial plant?

4 **MR. CARTIN:** I think the Court looks -- has to look
5 at the general overall nature of the business,
6 and in this case, it's a transportation
7 company. That's what they do. They must have
8 said it a hundred times in there 30(b)(6)
9 deposition.

10 **THE COURT:** Yeah, but I'm still trying to figure
11 out, they could be a transportation company
12 that engages in another aspect of business. So
13 I have to decide in this case -- this is a
14 transportation company. That's clear. Whether
15 the other aspects of the business, the
16 processing of the transmix, is something that
17 would be an industrial process; would that not
18 be fair?

19 **MR. KOZLAREK:** Again, the -- to take industrial
20 process and industrial plant may not be the
21 exact same thing.

22 **THE COURT:** Correct me because that's what I'm
23 asking you.

24 **MR. CARTIN:** Yeah, I think here ---

25 **THE COURT:** I ask that question not to trick you



1 to, to help me figure this out.

2 **MR. CARTIN:** And I do think that the term,
3 "industrial plant", when used together, clearly
4 implies that there's a business operating, but
5 in the context of the statute there's got to
6 be some substantial production being done.
7 There's got to be some material alteration of
8 the product, and that's not really what's
9 happening here. Essentially, imagine a company
10 that transported furniture and when they get to
11 the end, they open up the truck and there's a
12 couple of broken tables there, and they put
13 them back together. They screw them back
14 together, and they stick them back on the
15 showroom floor. That's essentially what's
16 happening here. Because of the mode of
17 transport, they create transmix, and then they
18 got to re-separate out so they can actually
19 provide what went into the pipe. No different
20 than that, Your Honor, or if a truck
21 transporting eggs, and a couple of them break,
22 and you wash out the truck. A tanker
23 transporting kerosene, you go -- after you're
24 done with that kerosene, you wash out the
25 tanker, and put diesel fuel in it for the next



1 trip. That's essentially all that's happening,
2 and I think the 30(b)(6) deposition testimony
3 that's in the record when the Court can
4 examine it sort of at you're leisure, Your
5 Honor, I think it shows that and gives a
6 better sense of what the transmex process is,
7 and I think it is material. It's not a
8 separate process they paid for. There's not a
9 value add here for the end user. This is
10 essentially a cost of doing business that they
11 appear to eat, so that they can ---

12 **THE COURT:** I doubt they eat it. I just imagine
13 they price it in, or it's priced in.

14 **MR. CARTIN:** I think that is significant that it's
15 not an additional service that's provided. I
16 do want to address, Your Honor, you asked a
17 question about there's a statement in the DHEC
18 section that says, "If there's a request from
19 the Department of Revenue, the Department of
20 Health and Environmental Control shall
21 investigate the property of any manufacturer
22 or company." I do agree with Mr. Antley that
23 that term, manufacturer informs company. I'm
24 positive that there's potentially a different
25 explanation for that, and that is in business



1 a lot of different companies will separate the
2 property ownership function from the
3 operational function, and have maybe two
4 separate LLCs. One which leases physical
5 plant, property, and equipment from an other,
6 to where the operating entity could be the
7 manufacturer, but the landlord entity actually,
8 which is a company, actually owns the property
9 that is potentially subject to that. I think
10 that's a construction that's reasonable and
11 consistent with the way that businesses
12 operate in South Carolina, so I would throw
13 that out there. I don't think we briefed
14 that, but it occurred to me as I was sitting
15 here.

16 **THE COURT:** It occurs to me that having heard the
17 argument on that, I need to just stick with
18 industrial plant.

19 **MR. CARTIN:** Understood.

20 **THE COURT:** Would you agree with that?

21 **MR. CARTIN:** I think the key issue for disposing of
22 the -- deciding the respondent's Motion for
23 Summary Judgement is whether there's an
24 industrial plant.

25 **THE COURT:** All right. Thank you.



1 **MR. CARTIN:** I've spoken too much already, the
2 third violin.

3 **THE COURT:** Okay. Thank you very much.

4 **MR. MAYBANK:** I'll go quickly, Your Honor.

5 **THE COURT:** Well, I want to hear about the omelette?

6 **MR. MAYBANK:** Hear about the what?

7 **THE COURT:** The omelette. He said his argument was
8 that if I go with the processing, thought
9 process analysis, then you could argue that
10 producing an omelette is a process; therefore,
11 they're an industrial plant.

12 **MR. MAYBANK:** Yeah, there's actually quite also
13 quite a few cases on that. Ryan's ---

14 **THE COURT:** On omelettes?

15 **MR. MAYBANK:** On restaurants.

16 **THE COURT:** Okay.

17 **RESPONSE BY MR. MAYBANK:**

18 **MR. MAYBANK:** The Ryan's, which is a contingency to
19 the sales tax, they pushed that case around
20 the country, and so there's actually quite a
21 few cases on that, always on the sales tax
22 context. Ryan's -- you know, the restaurants
23 try to buy their ovens and all without paying
24 sales tax saying they're a manufacturer, and
25 the cases, and virtually every case, has



1 struck it down saying that you have to look at
2 the true object, and the true object is
3 they're a restaurant and not a manufacturer.
4 So there's actually a quite a few cases on
5 that.

6 **THE COURT:** Well, when I look at the true object,
7 also in the context of industrial plant.

8 **MR. MAYBANK:** And so ---

9 **THE COURT:** And that's the question. Would I look
10 at the true object in determining whether
11 Colonial Pipeline is an industrial plant?

12 **MR. MAYBANK:** I think you would. The distinction
13 between us and those cases, though, are what's
14 a true object; are you a restaurant or are you
15 a manufacturer? That's pretty -- you know,
16 Denny's, that's pretty easy. In our case, you
17 know, we're an industrial plant. I mean, the
18 Department has conceded we're industrial.
19 They say we're not an industrial plant. So is
20 a true object of us an industrial plant? We
21 would say that we were based upon several
22 things. One the dictionary definitions, and
23 the reason the dictionary definitions are so
24 unhelpful, is because industrial plant is such
25 a broad term. It's an extremely broad term.



1 From what they argued today, if this was a
2 sales tax case, they would have made a bunch of
3 good points because the pollution control
4 exemption for sales tax is limited to
5 manufacturers. By contract, for property
6 taxes, it's not limited to manufacturers.
7 It's limited to industrial plants. So we would
8 concede, that's -- are we an industrial plant
9 is the hard and perhaps the only issue before
10 the Court today. So you say, geez, Burney, the
11 burden of proof is upon you, which it is, how
12 is it that you are an industrial plant? And
13 we're an industrial plant based upon if you
14 look at the Industrial Revenue Bond Statute,
15 it specifically mentions any commercial
16 enterprise engaged in storing, warehousing,
17 distributing, transporting, or selling products
18 of industry. So we clearly meet the
19 Industrial Revenue Bond Statute. We clearly
20 meet -- we have about six permits, and DHEC
21 ---

22 **THE COURT:** Okay. Can I stop you there?

23 **MR. MAYBANK:** Sure.

24 **THE COURT:** Mr. Antley argued -- I think it was, or
25 maybe it was Mr. Kozlarek -- that Amazon can



1 get industrial revenue bonds, and they're not
2 ---

3 **MR. MAYBANK:** An industrial plant.

4 **THE COURT:** So what's the distinction there? When
5 you use industrial revenue bond argument, how
6 does that fit for this particular ...

7 **MR. MAYBANK:** I don't know that Amazon is the best
8 example to use because they have a huge plant,
9 and I don't know that they wouldn't be
10 considered industrial. If you look at -- I'm
11 trying to think of a good example that helps
12 me and that immediately sprang to mine, but
13 we've said that your whole determination is
14 what's an industrial plant. The dictionary
15 definitions are so circular, they're not that
16 helpful. Well, what's another definition,
17 Burnie, and the Industrial Revenue Bond Act is
18 one of those. Second of all, we do produce
19 industrial sludge and industrial water, and so
20 we have a permit specifically for rain water,
21 industrial water production -- and, Jim, you
22 want to quickly put that back up. So DHEC has
23 specifically said we are industrial. I don't
24 know that they say we're an industrial plant,
25 but DHEC says we are industrial. We have a



1 general permit for storm water discharges
2 associated with industrial activities, and
3 we've got about five of those, and all of
4 those refer to industrial waste water, or
5 industrial sludge. So what Mr. Kozlarek said
6 about the DOR's waste water, two policy
7 documents, not a single thing he said appears
8 in those policy documents. I don't think a
9 single thing he said appears anywhere in those
10 policy documents. Those policy documents don't
11 reference manufacturing. They don't reference
12 how much you clean out. They don't reference
13 whether you take sludge out or any of those.
14 They look at one factor, and, literally, one
15 factor. Are you cleaning water produced by a
16 manufacturer? Are we transporting oil curated
17 by a manufacturer? And the answer in both
18 cases is, yes. And in the DOR's two policy
19 documents, if they say if you could prove a
20 third of the waste water you treat came from
21 the manufacturer, then you're entitled to the
22 exemption. Well, a hundred percent of what you
23 do is done by -- is done by manufactures
24 because refineries are manufacturers. It's
25 very confusing, and shifting gears to the



1 transmix, it's very confusing, but let me read
2 you this portion of the deposition. The
3 question, "What's on a typical invoice for
4 that kind of product?" Answer -- and this is
5 page 145 of the deposition. Answer, "A
6 typical invoice would be their rate. There
7 would also be things associated with product
8 loss allocation and transmix allocation. Those
9 are the primary three things on the customer's
10 invoices based on just transportation." It's
11 very confusing because they don't separately
12 charge for it, but transmix is obviously baked
13 into their -- into their price. So they have
14 raised the issue of pollution control
15 exemption for the specific equipment. So here
16 is our -- we have filed, and they have brought
17 up the fact, well, gee, Burnie, maybe DOR
18 didn't ask for it, and they didn't ask for it
19 in very detail. This is almost impossible to
20 read, but these are, all of these, are what we
21 asked for there. This is a detailed listing.
22 So that's cathodic protection. You see the
23 specifics of cathodic protection. These are
24 the pipeline coatings. You see the specifics
25 of the pipelines coatings, and then move it



1 up, Jim, if you'll move that up -- oh, and I'm
2 sorry, the top one, the top one is the
3 shut-off valve. So that's the shut-off valve,
4 our specific request. This is in the
5 stipulation of facts by the way. This was the
6 property tax return we filed. So we asked for
7 the -- we gave a detailed listing of the items
8 that we thought were pollution control, so
9 there's storm water valve, cathodic
10 protection, and pipeline coatings, and you can
11 see it's very, very detailed, and so what did
12 DHEC produce then? So DHEC then gave us a
13 letter, and let me laboriously read the letter
14 because they contend the letter is not
15 detailed enough. Well, what more could we have
16 gotten out of DHEC than this letter. So it
17 says at the top, which is unfortunately, I
18 should have put it into my brief, but I
19 didn't. So the top of it says -- if you'll
20 pull it up, no the other way -- yeah. Says,
21 "DHEC does regulate underground storage tank
22 systems, UST systems under state law and
23 regulations, and many of the technologies
24 utilized by petroleum pipelines and USTs are
25 similar in design and purpose." So that's



1 what UST refers to and by summary judgment
2 memorandum law, and I should have included it,
3 but I left it know. But here DHEC goes on to
4 say, "Colonial has specifically listed three
5 items purported to be pollution control
6 equipment that remain an issue in the 2017,
7 and 2018 property tax determination: One
8 pipeline cathodic protection; two pipeline
9 coatings; and three automatic shut-off valves.
10 In the context of USTs, underground storage
11 tanks, each of these technologies would be
12 characterized by the Department as pollution
13 control equipment. USTs are designed to store
14 petroleum products, and corrosion protection
15 is required for all UST systems to prevent
16 petroleum releases into the environment.
17 Cathodic protection is one method to meet the
18 corrosion protection standards for USTs. Shear
19 valves, considered an automatic shut-off valve,
20 are installed to prevent or limit the extent
21 of petroleum release into the environment.
22 Pipeline coatings are designed to isolate the
23 pipeline to prevent corrosion. While releases
24 from petroleum pipelines would not generally be
25 directly to water but more likely to ground



1 surface, any release of sufficient size would
2 contribute contamination to surface waters;
3 therefore, the Department believes the list of
4 technologies could fairly be described as
5 pollution control equipment." So they've
6 listed and given a detailed listing. No, they
7 haven't given them all 12 of them. They said
8 it is pollution control, obviously see this in
9 our business, and then it's a pollution
10 control exemption equipment. I don't know what
11 more we could have asked from DHEC or why we
12 wouldn't have been satisfied with that, but in
13 any event, we have no appeals process. To the
14 extent we didn't like the letter, we would
15 just had to live with it. So as to Mr.
16 Kozlarek's reference that DHEC must make an
17 affirmative determination, they did. They
18 have to give a detailed listing of the
19 property, which they did. So it's somewhat
20 similar to the suit/case, that Duke was a
21 sale's tax -- pollution control sales tax
22 exemption case. Duke did not have what the
23 statute required because the NRC is not going
24 to give, you know, the DOR the kind of
25 information required, but the Administrative



1 Law Judge said, A, all they got to do is prove
2 a regulation covers it, and then writing the
3 law for Summary Judgement. We quote the
4 regulations have all required all three of
5 those items. And they say second of all,
6 you're supposed to have a detailed listing
7 from the agency, the NRC isn't going to give
8 it, and he basically waived that requirement.
9 So we -- looking to the Duke decision, again,
10 back for the eighth time today, in the final
11 agency determination, the final agency
12 determination says, "The taxpayer reported a
13 pollution control exemption for pipe coatings,
14 cathodic protection, and automatic shut-off
15 valves. And the entire rest of the Department
16 determination is related to just those three
17 items. So they conceded the other items. And
18 so by definition -- by definition, by
19 conceding the other items, they have conceded
20 that Colonial is an industrial plant, and that
21 in my mind, is the end of the entire case
22 right there. Now in their third prehearing
23 statement, you know, they, attempt to
24 reverse-steal, and for obvious reasons they
25 almost have to reverse-steal, and in my mind,



1 the case is over with in that regard. And I
2 believe that's all from me, Your Honor. Thank
3 you.

4 **THE COURT:** Okay. Thank y'all very much. I'll
5 issue the decision.

6 **(There being nothing further, the motion hearing**
7 **concluded at 12:28 p.m.)**

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