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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Appellate Case No. 2021-000219
Administrative Law Court Case No. 18-ALJ-0443-CC

Colonial Pipeline Company .....Respondent,

v.

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

FINAL BRIEF OF APPELLANTS AIKEN COUNTY AND LAURENS COUNTY

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INTRODUCTION

This case is about whether certain assets of Colonial Pipeline Company ("Colonial")—a transportation company—qualify as facilities or equipment of "industrial plants" and are, thus, eligible to receive a property tax exemption pursuant to section 12-37-220(A)(8) of the South Carolina Code (the "Exemption"). The Exemption grants a property tax exemption to certain assets when those assets are (1) considered "facilities or equipment of '**industrial plants**,'" (2) for the purposes of controlling pollution, (3) required by federal or state law, and (4) used in the conduct of the taxpayer's business. *See* S.C. Code Ann. § 12-37-220(A)(8) (emphasis added).

The primary disputed issue in this case is whether a transportation company's underground pipeline constitutes an "industrial plant," as that phrase is used in the Exemption. South Carolina law is clear that all property is presumed taxable and that the terms of a tax exemption statute must be strictly construed against the claimed exemption. However, the Administrative Law Court ("ALC") construed the term "industrial plant" so broadly that almost every single business enterprise operating within this State qualifies as an "industrial plant." The ALC's decision to assign such a broad, liberal construction to the meaning of terms in a tax exemption statute is reversible error under South Carolina law. Therefore, the ALC's findings that Colonial's pipeline infrastructure constitutes an "industrial plant" and that Colonial's property was exempt from taxation pursuant to the Exemption for tax years 2017 and 2018 must be reversed.

Additionally, even if the threshold requirement that Colonial's property is part of an "industrial plant" had been established (which it was not in this case), then it still remains necessary to determine the exact value—if any—of the property that is eligible for the Exemption. *See* S.C. Code Ann. § 12-37-220(A)(8). To make this determination, section 12-37-220(A)(8) contains a provision that limits the value of property eligible for the Exemption to the difference in the cost between the property at issue and property that has similar production capability without the ability

to control pollution (hereinafter referred to as the "dual purpose provision"). In other words, if there is no difference in the cost of a piece of property that is capable of controlling pollution and the cost of a similar piece of property that is not capable of controlling pollution, then no amount of the property is eligible to receive the Exemption.

When the ALC first applied the dual purpose provision, it properly recognized that section 12-37-220(A)(8) provides a tax exemption for only the value associated with a piece of property's pollution control function.[1] Then, after a hearing on the parties' respective Motions for Reconsideration, the ALC changed its decision on this issue. In the Amended Final Order, the ALC found that the dual purpose provision actually did not apply in this case—not to Colonial's pipeline coatings, cathodic protection equipment, or its automatic shut-off valve—because the "equipment at issue is not used to produce a product." (Amended Final Order 31 (Feb. 9, 2021) (hereinafter "Am. Order"); R. 0111).

Even though it was not necessary for the ALC to apply the dual purpose provision because Colonial's pipeline infrastructure does not constitute an "industrial plant," the ALC erred by finding that the dual purpose provision applies only to the property of *some* eligible companies, but not all companies that otherwise qualify for the Exemption. Additionally, the Record shows that there is absolutely *no* cost differential between Colonial's property at issue in this case and similar property that does not have the ability to control the pollution. Therefore, even if Colonial's pipeline infrastructure could be considered an "industrial plant," then there still is no value of Colonial's property that is eligible for the Exemption.

[1] For instance, with respect to Colonial's pipeline coatings, the ALC found that the pipeline coatings were ineligible for the Exemption because there was no cost differential between the pipeline coatings Colonial used in its business operations and the same or similar pipelines that did not contain coatings and, thus, did not contain the ability to control pollution. (Final Order 30–32 (Dec. 1, 2020) (hereinafter "Order"); R. 0076–0078).

Finally, the ALC erred by finding that Colonial established that its property was pollution control property even though the South Carolina Department of Health and Environmental Control ("DHEC") failed to determine the issue. Although the South Carolina Department of Revenue (the "Department") was not required to ask DHEC to make this determination, once the Department did make this request, section 12-37-220(A)(8) mandated that DHEC (1) investigate Colonial's property and (2) provide the Department with a detailed listing of Colonial's property that was pollution control property. After investigating Colonial's property, DHEC declined to issue the determination it is required by statute to render. Colonial's failure to subsequently request or demand that DHEC issue a determination was a failure to establish that the relevant property was pollution control property.

For these reasons, and as explained more fully below, the ALC erred (1) when it failed to strictly construe the term "industrial plant"; (2) when it failed to apply the dual purpose provision to a company's property after determining that company qualified for the Exemption; and (3) when it found that Colonial established that its property qualified as pollution control property even though DHEC failed to determine the issue. Therefore, the ALC's decision that Colonial's property is eligible for the Exemption for tax years 2017 and 2018 was in error and must be reversed.

STATEMENT OF ISSUES ON APPEAL

I. **DID THE ALC ERR WHEN IT FOUND THAT COLONIAL'S INFRASTRUCTURE QUALIFIES AS AN "INDUSTRIAL PLANT" UNDER SECTION 12-37-220(A)(8) EVEN THOUGH COLONIAL DOES NOT ENGAGE IN ANY MANUFACTURING OR PRODUCTION ACTIVITIES?**

II. **DID THE ALC ERR WHEN IT FOUND THAT SECTION 12-37-220(A)(8)'S DUAL PURPOSE PROVISION APPLIES ONLY TO SOME COMPANIES THAT ARE ELIGIBLE TO RECEIVE THE EXEMPTION?**

III. **DID THE ALC ERR WHEN IT FOUND THAT COLONIAL ESTABLISHED THAT ITS PROPERTY QUALIFIED AS POLLUTION CONTROL PROPERTY WHEN DHEC FAILED TO DETERMINE THE ISSUE?**

STATEMENT OF THE CASE

On April 19, 2017, the Department's Government Services Division received from Colonial an application for a property tax exemption for certain Colonial assets pursuant to the Exemption. (Joint Exhibit 20 ¶ 15 (hereinafter "Stip. of Facts"); R. 1992). In Colonial's 2017 application, Colonial sought the Exemption for its pipeline coatings, cathodic protection equipment, and automatic shut-off valve.[2] (Stip. of Facts ¶ 15; R. 1992). On August 15, 2017, the Department's Government Services Division issued a Property Assessment Notice for property

[2] Colonial also sought the Exemption for its wastewater pollution control equipment, storm water pollution control equipment, secondary containment equipment, and tank internal/external floating roofs for tax years 2017 and 2018; these assets are not at issue in this case. (Stip. of Facts ¶¶ 15 & 22; R. 1992 & 1993). Although the Department initially found that these assets qualified for the Exemption, the Department admitted that it did not ever consider whether Colonial's operations constituted an "industrial plant" in accordance with the Exemption. (Am. Order 14, n. 11; R. 0094). Accordingly, the Department attempted to correct this initial mistake and clarify its position that none of Colonial's property qualified for the Exemption because Colonial's operations do not constitute an "industrial plant" in its Second Amended Prehearing Statement. (Sec. Am. Prehearing Stmnt 4–5 (filed Sept. 4, 2019); R. 0181–82). However, the ALC denied the Department's amendment request and declined to consider whether these other Colonial assets qualified for the Exemption on the basis that this case was limited to the items originally denied by the Department (i.e., pipeline coatings, cathodic protection equipment, and automatic shut-off valve). (*See* Order Denying Motion to Amend Prehearing Statement; R. 0030; *see also* Dept.'s Mot. Alter Am. Order May 20, 2020 4–5 (filed June 1, 2020); R. 0696–97).

tax year 2017 denying Colonial's exemption application as to the pipeline coatings, cathodic protection equipment, and automatic shut-off valve. (Stip. of Facts ¶ 16; R. 2463).

On September 7, 2017, Colonial protested the proposed assessment for 2017. (Stip. of Facts ¶ 17; R. 2463). On September 20, 2017, the Department's Government Services Division notified the County auditors of Colonial's appeal of the 2017 assessment. (Stip. of Facts ¶ 18; R. 2463).

On October 19, 2017, the Department's Government Services Division forwarded the 2017 exemption application to DHEC for investigation into whether Colonial's claimed property—specifically, the pipeline coatings, cathodic protection equipment, and automatic shut-off valve—qualified for the Exemption pursuant to section 12-37-220(A)(8). (Stip. of Facts ¶ 19; R. 2464). On December 18, 2017, DHEC submitted a letter to the Department responding to the Department's request that DHEC investigate the applicable property, in which DHEC informed the Department that federal agencies—like the United States Department of Transportation ("USDOT")—regulate pipelines. (Stip. of Facts ¶ 20; R. 2464). DHEC also informed the Department it lacked any authority to permit, inspect, or enforce pipeline operations. (Stip. of Facts ¶ 20; R. 2464).

On or around April 11, 2018, the Department's Government Services Division forwarded Colonial's 2017 exemption application file to the Department's Office of General Counsel for Litigation for further analysis as to whether Colonial's pipeline coatings, cathodic protection equipment, and automatic shut-off valve qualified for the Exemption. (Stip. of Facts ¶ 21; R. 2464).

On April 23, 2018, the Department's Government Services Division received from Colonial another application for the Exemption for tax year 2018. (Stip. of Facts ¶ 22; R. 2464). Colonial sought the pollution control exemption for tax year 2018 on the same property as its 2017 exemption application. (Stip. of Facts ¶ 22; R. 2464). On April 26, 2018, the Department's Office of General Counsel requested that DHEC investigate Colonial's property to determine the portion

of the property that qualifies for the Exemption and furnish the Department with a detailed listing of the property that was pollution control property. (Stip. of Facts ¶ 23; R. 2464).

On July 27, 2018, the Department's Government Services Division issued a Property Assessment Notice for tax year 2018 denying Colonial's exemption application as to its pipeline coatings, cathodic protection equipment, and automatic shut-off valve. (Stip. of Facts ¶ 24; R. 2464). Colonial protested the proposed assessment for property tax year 2018 to the Department's Government Services Division by written correspondence postmarked August 13, 2018. (Stip. of Facts ¶ 25; R. 2464).

On August 14, 2018, the Department's Office of General Counsel forwarded Colonial's 2018 exemption application to DHEC and, again, requested that DHEC investigate Colonial's property to determine whether Colonial's property was pollution control property. (Stip. of Facts ¶ 26; R. 2464). In response, DHEC submitted a letter dated August 27, 2018, to the Department's Office of General Counsel and, again, noted that federal agencies like USDOT regulate pipelines, and that DHEC lacks authority to permit, inspect, or enforce pipeline operations. (Stip. of Facts ¶ 27; R. 2464–65).

On November 19, 2019, the Department issued a department determination denying Colonial's exemption applications for tax years 2017 and 2018. (Stip. of Facts ¶ 28; R. 2465). On December 5, 2018, Colonial commenced this proceeding by filing a request for a contested case hearing with the ALC. (*See* Req. Contested Case Hr'g (Dec. 5, 2018); R. 0113; Stip. of Facts ¶ 29; R. 2465). In its request for a contested case hearing, Colonial challenged the Department's decision that certain Colonial assets were *not* eligible for a property tax exemption for pollution control equipment pursuant to section 12-37-220(A)(8) of the South Carolina Code and Article 10, Section 3(h) of the South Carolina Constitution. (*See id.*; R. 0114). Colonial specifically challenged the Department's decision for tax years 2017 and 2018. (*Id.*; R. 0114).

On March 20, 2019, Abbeville County and Anderson County filed a Consolidated Motion to Intervene, which was granted by the ALC on April 16, 2019. (*See* Consol. Mot. Interv. (Mar. 20, 2019); R. 0136; Order Granting Consol. Mot. Intervene (Apr. 16, 2019); R. 0001). Greenville County filed a Motion to Intervene on May 17, 2019, which was granted by the ALC on May 29, 2019. (*See* Greenville Cty. Mot. Intervene (May 17, 2019); R. 0141; Order Granting Mot. Intervene (May 29, 2019); R. 0003). Aiken County and Laurens County filed a Motion to Intervene on May 28, 2019. (*See* Aiken Cty. & Laurens Cty. Mot. Intervene (May 28, 2019); R. 0146). York County also filed a Motion to Intervene on May 28, 2019. (*See* York Cty. Mot. Intervene (May 28, 2018); R. 0152). The ALC granted Aiken County's, Laurens County's, and York County's Motions to Intervene on June 13, 2019. (*See* Order Granting Mot. Intervene (June 13, 2019); R. 0005). Collectively, the referenced counties are the "Counties."

On December 11, 2019, the parties filed cross-motions for summary judgment on the issue of whether, as a matter of law, Colonial's infrastructure constituted an "industrial plant" for purposes of the Exemption. (*See* Colonial's Mot. Summ. J. (Dec. 11, 2019); R. 0242; Department's Mot. Summ. J. (Dec. 11, 2019); R. 0305; Aiken Cty. & Laurens Cty. Mot. Summ. J. (Dec. 11, 2019); R. 0186). A hearing on the parties' cross-motions for summary judgment was held on January 6, 2020. On March 6, 2020, the ALC filed its Order on Motions for Summary Judgment, denying all parties' motions. (*See* Order Mots. Summ. J. (Mar. 6, 2020); R. 0007).

A contested case hearing on the merits was held before the ALC on August 4–5, 2020. The ALC issued a Final Order on December 1, 2020, in which the ALC concluded that Colonial qualified for the Exemption, but it was not entitled to the Exemption for all of the disputed assets. (*See* Order 32–33; R. 0078-79). Pertinent to the issues on appeal, the ALC originally found that (1) Colonial's disputed equipment were "facilities and equipment of an industrial plant," but that (2) certain pieces of equipment were not eligible for the Exemption under section 12-37-

220(A)(8)'s dual purpose provision because there was no "calculable value differential" for the same property without the ability to control pollution. (*See* Order at 32 (R. 0078).

Following the ALC's December 1, 2020 Final Order, all parties filed a Motion for Reconsideration ("Motions"). (*See* Mots. Reconsid.; R. 0710, 0721, 0756, & 0824). On January 20, 2021, a hearing on the parties' respective Motions was held. On February 9, 2021, the ALC issued its Amended Final Order, in which the ALC concluded that (1) Colonial's disputed equipment constituted "facilities and equipment of an industrial plant," and (2) section 12-37-220(A)(8)'s dual purpose provision was inapplicable because Colonial's equipment is not used for production. (*See* Am. Order 31; R. 0111). In other words, the ALC originally determined that only certain disputed Colonial assets were eligible for the Exemption; then, the ALC subsequently found that *all* of Colonial's disputed assets were eligible for the Exemption for tax years 2017 and 2018. (*Compare* Order 32; R. 0078; *with* Am. Order 31; R. 0111). In response to the Amended Final Order, the Counties[3] and the Department each timely filed a notice of appeal.

STATEMENT OF FACTS

I. Overview of Colonial's Operations and Infrastructure.

Colonial is a pipeline company that first established its pipeline in South Carolina in 1962. (Tr. 90:25, 91:9–10, 96:17–20, 184:21–23, 187:12–15, & 230:10–11; R. 1531, 1532, 1537, 1625, 1628, & 1671). First and foremost, Colonial is a transportation company. (Tr. 44: 23–25; R. 1485). All of Colonial's South Carolina property is assessed at the transportation company ratio of 9.5%. (Tr. 51:7–19; R. 1492). Colonial does not make any products in South Carolina. (Tr. 45:4–6; R.

[3] Although all the Counties were intervenors in this case, the Counties are separately represented and filed individual notices of appeal. Aiken County and Laurens County are both represented by Parker Poe Adams & Bernstein LLP. Abbeville County, Anderson County, Greenville County, and York County (collectively, the "Other Counties") are represented by Kozlarek Law LLC.

1486; *see also* Am. Order 31; R. 0111 ("[A]ll parties agree Colonial is not engaged in production.")).

Colonial transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "refined petroleum products," and each, a "refined petroleum product") for its customers. (Stip. of Facts ¶ 1; R. 2462). In South Carolina, Colonial ships ultra-low sulfur diesel, heating oil, marine diesel, jet fuel, and kerosene. (Tr. 95:22–96:7; R. 1536–37). Colonial's main competitors—both nationally and in South Carolina—are transportation companies that move refined petroleum products through other means, such as trucks, railroads, and barges. (Tr. 94:4–10; R. 1535).

Colonial's South Carolina infrastructure consists of 515 miles of pipeline, two tank farms, three main line booster stations, and one delivery facility spanning eleven counties in the State. (Tr. 98:19–99:22; R. 1539–40). Because Colonial has over 515 miles of pipeline, its infrastructure traverses miles and miles of real property. The overwhelming majority of Colonial's pipeline is laid over agriculturally zoned property. (Tr. 55:14–17; R. 1496; Joint Ex. 14; R. 1916). Only a very small portion of the pipeline is zoned over property that is classified as industrial property. (Tr. 55:18–21; R. 1496).

Although Colonial provides other, ancillary services, Colonial primarily gets paid "for transporting barrels [of refined petroleum products] from point A to point B." (Tr. 95:7–20; R. 1536). Colonial does not refine any petroleum products; rather, Colonial receives petroleum products—after they have been refined—from approximately 30 refineries in the Gulf Coast region of the United States that it transports for its customers. (Tr. 121:1–14; R. 1562). Approximately 250 customers ship products through Colonial's pipelines. (Tr. 121:17–23; R. 1562). All of these customers are required to have title to the product as it travels through

Colonial's pipelines. (Tr. 123:1–4; R. 1564). At no point in time does Colonial own the refined petroleum products that it ships. (Tr. 93:17–20; R. 1534).

All of Colonial's pipelines are buried between four and five feet below ground. (Tr. 103:1–16; R. 1544). Thus, an observer on the ground would not be able to see the pipeline itself, although pipeline markers would be visible at certain levels. (Tr. 169:1–13; R. 1610). Two main Colonial pipelines run through South Carolina: Line 1 and Line 2. (Tr. 97:1–7; R. 1538). Line 1 and Line 2 run from Pasadena, Texas, to Greensboro, North Carolina. (Tr. 101:20–21; R. 1542). The South Carolina portions of Line 1 and Line 2 are each about 101 miles long. (Tr. 98:21–25; R. 1539). Line 1 transports gasoline, and Line 2 transports distillate, which includes jet fuel and ultra-low sulfur diesel. (Tr. 97:20–98:5; R. 1538–39). Line 1 was built in 1962. Line 2 was built in the late 1970s, but became operational in the 1980s. (Tr. 96:13–20; R. 1537).

Colonial also owns Line 29, which is a multi-products line that originates in Belton, South Carolina. (Tr. 98:11–18; R. 1539). Line 29 is approximately 75 miles long. Line 29 carries all of the refined petroleum products, with the exception of heating oil. Colonial transports between 180,000 to 185,000 barrels of refined petroleum products each day through the South Carolina portion of its pipeline. (Tr. 102:14–22; R. 1543). It also has a number of delivery lines, which run directly to truck terminals. (Tr. 99:6–7; R. 1540).

In addition to its South Carolina pipelines, Colonial also has two tank farms: one in Belton, South Carolina, and one in Spartanburg, South Carolina. (Tr. 98:6–10; R. 1539). Each tank farm includes pumps, motors, valves, manifolds, injection equipment, control systems, and other infrastructure aimed at transporting the product. (Tr. 113:6–114:8; R. 1554–55). The two tank farms receive petroleum products from Lines 1 and 2 into tankage and then that product is delivered out from that tankage to multiple delivery lines to customers. (Tr. 104:4–15; R. 1545).

Colonial does not refer to any of its property as a "plant," and it does not employ any employees classified as "plant managers." (Tr. 162:9–16; R. 1603).

Belton Junction is a 130-acre above ground breakout and delivery facility located in Anderson County. (Tr. 104:22–105:8; R. 1545–46). The tank farm is comprised of twenty tanks: twelve for gasoline, seven for distillate, and only one tank for storing Transmix.[4] (Tr. 106:9–12; R. 1547). The Spartanburg tank farm is a 74-acre above ground breakout and delivery facility. It is comprised of twenty-two tanks, including thirteen gasoline tanks, six distillate tanks, and three tanks that are out of service. (Tr. 107:5–22; R. 1548). The Spartanburg tank farm does not contain any tanks dedicated to storing Transmix. (*Id.* at 107:20–22; R. 1548).

Colonial also provides petroleum storage services at its Belton and Spartanburg facilities for third parties. (Tr. 110:1–20; R. 1551). Colonial charges its customers for its storage services. (Tr. 110:12–14; R. 1551). Additionally, truck terminals, which are owned by third parties, are strategically located close to the tank farm facilities in Belton and Spartanburg to facilitate transportation of the product to Colonial's customers. (Tr. 105:3–8; R. 1546). Delivery lines[5] from Colonial's facilities deliver the product to individual truck terminals where the product is ultimately delivered to Colonial's customers. (Tr. 112:5–113:2; R. 1553–54).

Every 50 to 60 miles along its pipeline (but as far as 75 miles apart), Colonial operates a "booster station" that increases pressure in the pipeline and allows for the continued movement of petroleum through the pipeline. (Tr. 108:22–25; R. 1549). To ensure the product is safely transported to its customers in a form that meets the customers' specifications, Colonial constantly

[4] When one refined petroleum product interfaces with another refined petroleum product, they mix to create a fluid called "Transmix." (Stip. of Facts ¶ 3; R. 2462).
[5] A delivery line is simply "that last bit of pipe that goes directly to a single terminal." (Tr. 112:23–24; R. 1553).

measures gravity, pressure, and temperature of the products it transports. (Tr. 141:8–18; R. 1582). Equipment is also used to measure and detect leaks. (Tr. 241:1–11; R. 1682).

The products Colonial receives are moved together "fungibly," meaning similar products are interchangeable and a customer may not receive the exact same product it paid Colonial to transport. (Tr. 124:11–23; R. 1565). Well over 90% of the products shipped by Colonial are fungible. (Tr. 125:20–25; R. 1566). Further, Colonial transports multiple products back-to-back through the pipe, which results in some mixing of the products where they interface. (Tr. 126:6–127:19; R. 1567–68). All products are shipped on a five-day cycle. (Tr. 126:6–7; R. 1567).

If Colonial only transported one product at a time in its pipeline, it would not generate any Transmix. (Tr. 167:24–168:4; R. 1608–09). Transmix does not meet the refined petroleum product specifications that can be sold for use. At any given time, Line 1 will generate/contain approximately 15,000 barrels of Transmix. (Tr. 130:14–16; R. 1571). Line 2 will contain approximately 12,000 to 16,000 barrels of Transmix. (Tr. 130:24–131:7; R. 1571–72). These barrels would account for approximately 15–20 minutes of pipeline flow on the five-day cycle of products. (Tr. 133:2–10; R. 1574).

Because Transmix is not always a saleable product, it must be handled differently. (Tr. 136:9–24; R. 1577). Although Transmix can exist in the pipeline itself, the vast majority of the pipeline is underground and, therefore, inaccessible on a practical level. Thus, the Transmix is primarily disposed of at Colonial's isolated tank farms, pump stations, and delivery facilities. (Tr. 137:12–21; R. 1578). The first step in dealing with Transmix is to isolate the Transmix. (Tr. 137:12–13; R. 1578). Colonial monitors the flow of Transmix using a variety of equipment at its tank farms, delivery facilities, and junctions. (Tr. 145:3–9; R. 1586). Colonial isolates the

Transmix by diverting the product into the single separate storage tank. (Tr. 146:17–25; R. 1587). Of the 42 tanks that Colonial owns in South Carolina, only one[6] is dedicated to storing Transmix.

Step two involves the actual disposition of the Transmix. Colonial's Director of Commercial Affairs and Special Projects testified that there are three ways to handle Transmix. (Tr. 149:3–16; R. 1590). First, certain Transmix can be re-sold as is, even though it does not technically meet the customers specifications. For example, a customer who purchased gasoline will accept a gasoline with an octane rating that is better than what it purchased (e.g., a customer purchased "regular" gasoline, but it received a product more akin to "premium" gasoline). (Tr. 149:4–10; R. 1590). Second, Transmix can be injected in smaller quantities back into the line. (Tr. 149:11–13; R. 1590). So long as the Transmix is injected in sufficiently small quantities that it does not impermissibly adulterate the other product by causing it to deviate from customer specifications, the Transmix can be handled using this recycling process. Third, Transmix that cannot be either sold as is or injected into another product is placed on trucks and shipped to an independent Transmix processor to be separated into saleable products. (Tr. 149:14–16; R. 1590). Importantly, Colonial does not do this processing itself, and there was no evidence presented that the processing occurs using any of the property involved in this matter (or even in the State of South Carolina).

Colonial also has to manage the movement of product through its pipeline. To accomplish this task, Colonial adds Drag Resisting Agents ("DRA") to the product as it is transported, which reduces the amount of friction loss. (Tr. 151:20–152:2; R. 1592–93). DRA allows higher flow rates through the pipeline. (Tr. 152:3–5; R. 1593). Colonial introduces DRA at its booster facilities and pump stations, as well as at tank farms and stub lines. (Tr. 153:8–25; R. 1594). Thus, DRA is only

[6] Put differently, approximately 2.3% of Colonial's storage tanks are devoted to holding Transmix.

introduced every 40 or 50 miles or so. Because DRA moves the product faster, using DRA helps to increase Colonial's revenue. (Tr. 187:12–23; R. 1628).

Colonial must also remove water that accumulates in and around the transported product through a process called "sting." (Tr. 156:20–24; R. 1597). Colonial removes "sting water" at the Belton and Spartanburg facilities. Most water gets into the product at the refinery level, but some water infiltrates the product through hatches at the tank farms and through condensation. (Tr. 157:4–16; R. 1598). Because water is heavier than petroleum products, it settles at the bottom of the tanks. (Tr. 159:16–25; R. 1600). When products are placed in the tanks, they are allowed to settle so that the water will sink to the bottom of the tank. (Tr. 159:6–10; R. 1600).

The actual process of removing sting water is very simple, as it involves nothing more than draining off water. (Tr. 160:2–4; R. 1601). Each tank has a small piece of pipe at the bottom of the tank. (Tr. 158:9–19; R. 1599). The sting water simply flows out of the pipe at the bottom of the tank. (Tr. 158:15–19; R. 1599). Colonial observes the flow through a glass aperture. When water stops flowing, and petroleum starts to drain through the pipe, Colonial stops the flow. (Tr. 158:17–19; R. 1599). Colonial collects the sting water and provides it to a separate company that Colonial pays to dispose of the waste product. (Tr. 160:5–10; R. 1601).

II. Colonial's Oversight of the Pipeline.

Colonial performs certain oversight activities in order to preserve the integrity of its pipeline and to ensure that no product Colonial is responsible for transporting is lost out of the pipeline. Although a number of Colonial's oversight activities are required by law and do aid in preventing pollution (e.g., leakage of refined petroleum products into the environment), the Record shows that Colonial would perform most, if not all, of these same oversight activities even if not required to do so by law. (Tr. 284–85; R. 1725–26). In the geographic area at issue in this case (which covers small parts of Georgia and North Carolina, as well as South Carolina), Colonial

employs 30–35 operators and technicians on a full-time basis (as well as a number of independent contractors) to oversee operations, run its facilities, make repairs, and respond to issues as needed. (Tr. 114:22–116:1; R.1555–57).

Lines 1 and 2 are operated from Alpharetta, Georgia. (Tr. 118:6–119:9; R. 1559–60). The Alpharetta office controls flow rates and pressure in the lines. (Tr. 118:24–119:2; R. 1559–60). Although Colonial employs a number of South Carolina based employees, Colonial's Director of Commercial Affairs and Special Projects testified that "at any given time, the vast majority of the pipeline probably doesn't have somebody physically with it." (Tr. 179:23–180:12; R. 1620–21).

Colonial's pipeline is monitored, at various intervals, both visually and mechanically. Mechanically, Colonial's control room monitors the pipeline from its Alpharetta office 24 hours a day. (Tr. 253:11–20; R. 1694). However, visual and physical inspections are far less frequent. Every two weeks, Colonial conducts an aerial inspection of the pipeline corridor by flying over the corridor in a plane. (Tr. 241:20–25; R. 1682). Once a year, Colonial mows the pipeline right of way and clears debris from the right of way. (Tr. 243:17; R. 1684). Right of way inspectors inspect the corridor periodically to ensure there are no encroachments on the pipeline; they also conduct flooding and erosion monitoring to ensure the pipeline has not become exposed. (*See* Tr. 246–49; R. 1687–90).

With respect to the pipeline coatings, Colonial has to replace periodically the coating on the older sections of the pipeline. Although unsure of the exact amount, Joshua Stanley, Colonial's Manager of Corrosion Prevention, testified that Colonial digs up and replaces "thousands of feet a year" of their approximately 2,719,200 feet of pipeline. (Tr. 289; R. 1730). With respect to Colonial's cathodic protection system, every five years, Colonial conducts a "close internal survey." During this survey, Colonial inserts an electrode into the ground every 2.5 feet to take a

polarization reading. (Tr. 266:16–25; R. 1707). The electrode checks voltage levels to ensure the cathodic protection equipment is still working properly. (Tr. 268:11–20; R. 1709).

Rectifiers form a part of Colonial's cathodic protection system and are physically inspected twice a year. (Tr. 281:2–9; R. 1722). Rectifiers are also monitored remotely to ensure proper functioning, and when Colonial detects that a rectifier is not functioning properly, Colonial sends out a crew to fix the rectifier. (Tr. 282:7–20; R. 1723). Colonial also uses devices called "smart PIGS" to identify cracks and compromises in the pipeline. (Am. Order 9; R. 0089). The PIGS, which are essentially small machines that are inserted into the pipeline, flow with the product, gather data, and transmit the data back to Colonial. (Am. Order 9; R. 0089). The PIGS are extracted from the pipeline approximately every 200 miles using a "PIG trap." (Am. Order 9; R. 0089).

Essentially, Colonial's oversight activities serve a practical purpose for Colonial's business operations: to ensure the integrity of the pipeline and to prevent loss of product. Joshua Stanley confirmed this at the hearing when he testified that "it costs a lot of money" when Colonial leaks product, so there is a business reason to prevent leakage. (Tr. 284:22–25; R. 1725). Put more simply, as Mr. Stanley testified, it "makes good business sense to not lose the product you're responsible for containing." (Tr. 285:18–20; R. 1726).

III. Colonial Property at Issue: Pipeline Coatings, Cathodic Protection Equipment, and Automatic Shut-Off Valve.

Colonial does not dispute the valuation of the property at issue in this case nor does it dispute the valuation method. (Stip. of Facts 2, n.1; R. 2462). Rather, Colonial argues that the property at issue is exempt from ad valorem taxation pursuant to the Exemption. (*Id.*; R. 2462). The assessment values in dispute are as follows:

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

(*Id.* at 2; R. 2462).

In this case, Colonial sought the Exemption specifically for its pipeline coatings, cathodic protection equipment, and automatic shut-off valve for tax years 2017 and 2018. Colonial's pipeline coatings, cathodic protection equipment, and automatic shut-off valve each serve a separate and distinct function, but all serve a common purpose for Colonial's operations: to preserve the integrity of the pipeline and to prevent loss of product. (Colonial's 30(b)(6) Dep. 65:7–13, 265:25–266:2, 266:7–9, 271:3–272:10, & 291:6–7; R. 1049, 1249–50, 1250, 1255–56, & 1275; Tr. 56:25–57:13; R. 1497–98).

Because Colonial's pipeline is comprised of steel pipes, which tend to corrode when exposed to air, water, or the ground, corrosion can result to the pipe. (Am. Order 8; R. 0088). A corroded pipe can form holes that lead to not only a loss of product out of the pipeline, but also a loss of pressure carrying capacity. (Am. Order 8; R. 0088). Colonial primarily uses pipeline coatings and cathodic protection equipment to prevent corrosion. (*Id.*; R. 0088). The automatic shut-off valve is used to isolate portions of the pipeline when maintenance is required and to prevent loss of product in the event a breach to the pipeline occurs. (*Id.*; R. 0088).

A. Pipeline Coatings

All modern pipelines are coated with a number of different substances aimed at protecting and preserving the pipeline, including asphalt based enamel, coal tar coating, extruded polyethylene, or fusion bonded epoxy. (Tr. 234:3–10; R. 1675). Colonial's pipelines are no

different, and these coatings are already installed when Colonial purchases the pipe. (Tr. 234:8–10; R. 1675).

Pipelines are usually buried underground to protect them from damage and to keep the pipelines from interfering with the movement of traffic. (Tr. 231–33; R. 1672–74). Underground, the exterior of the pipe is exposed to conditions that can lead to corrosion. Similarly, the interior of pipelines are also subject to corrosion, as a result of hydrogen sulfides, carbon dioxide, and water that may be contained in the products transported by the pipeline. (Tr. 231:19–23; R. 1674). Pipeline coatings prevent corrosion and, thus, the release of refined petroleum products from the pipeline. (Tr. 231:25–232:3; R. 1672–73).

The earliest pipelines were buried without any external coatings. (Tr. 231:24–25; R. 1672). To prevent corrosion, pipeline manufacturers and operators started to apply external coatings to the pipeline at the time of installation. Now, pipeline coatings are applied by the manufacturer at the time of manufacturing. Pipeline coatings have a typical lifespan of 25 years. (Tr. 235:2–6; R. 1676). Thus, though pipeline coatings have a very long lifespan, the coatings can and do break down over time (Tr. 235:2–6; R. 1676).

Colonial has used pipeline coatings since Colonial's pipeline was first constructed in 1962. (Colonial's 30(b)(6) Dep. 180:15–181:5; R. 1164–65). Pipeline coatings were not required by federal law until March 31, 1970 (Tr. 225–27; R. 1666–68).

B. Cathodic Protection Equipment

Cathodic protection equipment works in tandem with pipeline coatings to prevent breakdown of the pipeline. Mr. Stanley testified that "[t]he main purpose is – is to keep the product in the pipeline and keep the product from leaking." (Colonial's 30(b)(6) Dep. 265:25–266:2; R. 1249–50). Mr. Stanley further testified that cathodic protection equipment is used "all the time" when not required by federal law for all different types of companies that use a metal pipeline to

transport a product in order to avoid losing product out of the pipeline, even if the product does not cause pollution (e.g., water). (Colonial's 30(b)(6) Dep. 271:3–272:10; R. 1255–56).When Mr. Stanley was asked why Colonial would have used cathodic protection equipment prior to any law requiring cathodic protection equipment, Mr. Stanley stated that "it's in the best interest to protect the asset and keep the product in the pipeline . . . [,]" and "it's a good investment. It makes good financial sense . . . to protect your asset." (Colonial 30(b)(6) Dep. 291:6–17; R. 1275).

Colonial has used cathodic protection since Colonial's pipeline was first constructed in 1962. (Colonial's 30(b)(6) Dep. 180:15–181:5; R. 1164–65). Cathodic protection equipment was not required by federal law until March 31, 1970. (Tr. 225–27; R. 1666–68) .

C. Automatic Shut-off Valve

An automatic shut-off valve is a way to isolate product in Colonial's pipeline. (Tr. 236:21–22; R. 1677). When a breach occurs, the valve shuts off the flow of product to impacted portions of the pipeline. The purpose of the valve is to minimize the release of product if the pipeline is compromised or breached. (Tr. 236:24–237:4; R. 1677–78). Colonial only has one automatic shut-off valve in South Carolina that is controlled from Alpharetta, Georgia. (Tr. 236; R. 1677; Am. Order 8; R. 0088). There are two primary purposes of the automatic shut-off valve: to prevent loss of product if the pipeline were breached and to isolate areas of the pipeline when maintenance work is needed. (Am. Order 8; R. 0088).

Although Colonial's lone South Carolina automatic shut-off valve was installed in 1992, (Am. Order 8; R. 0088), Colonial has used automatic shut-off valves since Colonial's pipeline was first constructed in 1962. (Colonial's 30(b)(6) Dep. 180:15–181:5; R. 1164–65). Automatic shut-off valves were not required by federal law until October 4, 1969. (*See* Tr. 236:7–8; R. 1677); *see also Mobile Pipe Line Co. v. Com., Dep't of Envtl. Res.*, 62 Pa.Cmwlth. 145, 154–55; 435 A.2d

934, 938–39 (1981) (identifying 49 C.F.R. 195.260 and stating that this regulation was "first issued on October 4, 1969").

STANDARD OF REVIEW

In an appeal from the ALC, an appellate court may reverse or modify an ALC decision if the appellant's "substantive rights have been prejudiced due to constitutional or statutory violations; an agency exceeding its authority; unlawful procedure; an error of law; a clearly erroneous view of the evidence in the record; or an abuse of discretion." *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194 (2012); *see also* S.C. Code Ann. § 1-23-610(b). "Determining the proper interpretation of a statute is a question of law, and [an appellate court] reviews questions of law de novo." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

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

ARGUMENTS

All property in South Carolina is subject to taxation unless specifically exempted. *Long Cove Home Owners' Ass'n, Inc. v. Beaufort Cty. Tax Equalization Bd.*, 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997). Although all property is presumed taxable, the South Carolina

Constitution grants certain exemptions from ad valorem taxation. *See* S.C. Const. Art. X, § 3. The General Assembly is also permitted to enact additional statutory exemptions. *Id.* In this case, the Exemption has its basis in both the South Carolina Constitution and the South Carolina Code.

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

> Pursuant to the provisions of Section 3, Article X of the State Constitution, and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation: . . . (8) **all facilities or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by state or federal government and used in the conduct of their business.** At the request of the Department of Revenue, the Department of Health and Environmental Control shall investigate the property of any manufacturer or company, eligible for the exemption to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, the Department of Health and Environmental Control shall furnish the Department of Revenue with a detailed listing of the property that qualifies as pollution control property. **For equipment that serves a dual purpose of production and pollution control, the value eligible for the ad valorem exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution.** For the purposes of this item, twenty percent of the cost of any piece of machinery and equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. "Greige mill" means all textile processes from opening through fabric formation before dyeing and finishing.

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

Thus, in order for a taxpayer to receive the Exemption, the taxpayer must establish that the property at issue is: (1) the facilities or equipment of an "industrial plant"; (2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; (3) required by state or federal law; and (4) used in the conduct of the taxpayer's business.

IV. THE ALC ERRED IN FINDING THAT COLONIAL'S PIPELINE INFRASTRUCTURE QUALIFIES AS AN "INDUSTRIAL PLANT" UNDER SECTION 12-37-220(A)(8) EVEN THOUGH COLONIAL DOES NOT ENGAGE IN ANY MANUFACTURING OR PRODUCTION ACTIVITIES.

The parties disagree about whether Colonial's operations constitute an "industrial plant" under section 12-37-220(A)(8). If the term "industrial plant" is construed in a manner consistent with South Carolina law, it is clear that Colonial's pipeline infrastructure is not an "industrial plant." Because Colonial's pipeline infrastructure cannot be considered an "industrial plant," all of Colonial's assets are, therefore, ineligible to receive the Exemption.

The ALC erred by failing to strictly construe the language of section 12-37-220(A)(8) when it interpreted the meaning of the term "industrial plant." Specifically, the ALC found that the term "industrial plant" "means the land, buildings, machinery, apparatus, and fixtures employed in carrying on **a trade or an industrial business that uses systematic labor for some useful purpose**." (Am. Order 24; R. 0104 (emphasis added)). [7] The ALC's assigned meaning to

[7] With respect to its final interpretation of the term "industry," the ALC stated the following: "The Court nevertheless recognizes that defining 'industry' as 'systematic labor for some useful purpose' could, indeed, result in a very broad interpretation that would not fit within the term 'industrial plant,' including banks or restaurants." (Am. Order 21; R. 0101). Yet, this was exactly the definition the ALC used when finding that an "industrial plant" "means the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business that uses systematic labor for some useful purpose." (Am. Order 24; R. 0104). Simply engaging "in systematic labor for a useful purpose" cannot constitute an "industrial plant" as intended by the pollution control exemption. Again, this definition is far too broad and would encompass almost every business enterprise operating in this State. For instance, a bank teller engages in systematic labor for a useful purpose when the bank teller processes a customer's withdrawal request, counts

"industrial plant" results in the conclusion that essentially every business enterprise operating within this State qualifies as an "industrial plant." Given that section 12-37-220(A)(8) is a tax exemption statute, the ALC's decision to assign such a broad, liberal meaning to the term "industrial plant" was an error of law. Therefore, the ALC's interpretation of "industrial plant" must be reversed.

Determining the proper interpretation of the pollution control exemption's use of the term "industrial plant" is a question of law that is reviewed de novo. *See Town of Summerville*, 378 S.C. at 110, 662 S.E.2d at 41. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). To do so, the statute's terms must be given "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). When any words are unambiguous, the words' literal meaning must be applied. *Id.* However, statutes must be read as a whole "and in a manner consonant and in harmony with its purpose." *Mead v. Beaufort Cty. Assessor*, 419 S.C. 124, 135, 796 S.E.2d 165, 170 (Ct. App. 2016)

In addition to these typical rules of statutory construction, because this case deals with the interpretation of a tax exemption statute, the language of the Exemption "must be given its plain, ordinary meaning and **must be strictly construed against the claimed exemption**." *Berkeley Cty. School Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009) (emphasis added); *Hock RH, LLC v. S.C. Dep't of Revenue*, 423 S.C. 208, 213, 813 S.E.2d 540, 542 (Ct. App. 2018) ("The general rule is that **a strict construction is required** of constitutional and statutory

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the money to be distributed, and provides those funds to the customer. This would fit squarely within the ALC's interpretation of what constitutes an "industrial plant." However, it would be entirely unreasonable to conclude that a bank's equipment and machines were part of an "industrial plant."

provisions that grant exemptions . . . from taxation.") (quoting *Charleston Cty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982) (emphasis added)). It is improper to strain or liberally construe the constitutional or statutory language creating the pollution control exemption in favor of the taxpayer claiming the exemption. *Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542.

A. The ALC's Method of Construing Tax Exemption Statutes Contravenes South Carolina Supreme Court Precedent.

As an initial matter, the ALC improperly concluded that "there is no need to strictly construe the tax exemption against Colonial." (Am. Order 28; R. 108) (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)[8]; *Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, 124 S.E. 761, 765 (1924)).[9] This conclusion was an error of law that contravenes well-established and long-standing precedent set by the South Carolina Supreme Court. *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[I]nterlaced with these standard canons of statutory construction[, including applying unambiguous words' literal meanings,] **is our policy of strictly construing tax exemption statutes against the taxpayer**.") (emphasis added); *Berkeley Cty. School Dist.*, 383 S.C. at 345, 679 S.E.2d at 919 ("[T]he language of a tax exemption statute must be given its

[8] The statute at issue in *Hodges* was not even a tax statute, let alone a tax exemption statute. Rather, as the *Hodges* Court stated, "[t]he sole issue before this Court is . . . whether the Governor of South Carolina has the authority to remove a member of the Board of Directors of Santee Cooper upon the issuance of an executive order pursuant to S.C. Code Ann. § 1-3-240 (Supp. 1998)[.]" 341 S.C. at 85, 533 S.E.2d at 581.

[9] The *Crescent Manufacturing Company* case likewise did not deal with a tax exemption statute. In that case, the statute at issue was one that imposed an income tax on a domestic corporation's net income in proportion to its total business operations, including those operations from outside of South Carolina. *See* 129 S.C. 480, 124 S.E. at 762. Importantly, the law on tax imposition statutes is opposite that of the law for strictly construing tax exemption statutes. *See Mead*, 419 S.C. at 139, 796 S.E.2d at 173 ("[I]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.") (quoting *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989)).

plain, ordinary meaning and **must be strictly construed against the claimed exemption**.") (emphasis added); *Charleston Cty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982) ("The general rule[10] is that a **strict construction is required of constitutional and statutory provisions that grant exemptions or deductions from taxation**.") (emphasis added); *TNS Mills, Inc.*, 311 S.C. at 620, 503 S.E.2d at 476 ("The language of a tax exemption statute must be given its plain, ordinary meaning and **must be strictly construed against the claimed exemption**.") (emphasis added); *John D. Hollingsworth on Wheels, Inc. v. Greenville Cty. Treasurer*, 276 S.C. 314, 317, 278 S.E.2d 340, 342 (1981) ("The language of a tax exemption statute must be given its plain, ordinary meaning and **must be strictly construed against the claimed exemption**.") (emphasis added); *see also Centex Intern., Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 140, 750 S.E.2d 65, 69 (2013) ("In conjunction with these rules of statutory construction, **we must also be cognizant of our policy to strictly construe a tax credit against the taxpayer** as it is a matter of legislative grace.") (emphasis added); *Mead*, 419 S.C. at 140, 796 S.E.2d at 173 ("In conjunction with these rules of statutory construction, **we must also be cognizant of our policy to strictly construe a tax credit against the taxpayer as it is a matter of legislative grace**.") (emphasis added); *Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542 ("The general rule[11] is that a **strict construction is required of constitutional and statutory provisions that grant exemptions** . . . **from taxation**.") (emphasis added); *Hibernian Soc. v. Thomas*, 282

[10] The *Charleston County Aviation Authority* Court went on to explain that the one exception to this rule is for municipal or publicly-owned property. 277 S.C. at 485, 289 S.E.2d 416 at 419. When comparing privately-owned property and publicly-owned property, the Court stated that "[t]he general rule is that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption the exception[.] . . ." *Id.* (quoting *Town of Myrtle Beach v. Holliday*, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943)).

[11] The *Hock RH, LLC* Court noted the same exception to this rule for municipal or publicly-owned property. *See* 423 S.C. at 213, 813 S.E.2d at 543.

S.C. 465, 470, 319 S.E.2d 338, 342 (Ct. App. 1984) ("As a general rule, **tax exemption statutes are strictly construed against the taxpayer**.") (emphasis added).

The ALC's decision that it was not bound by the established precedent of strictly construing tax exemption statutes *against the taxpayer* quite possibly shaped the ALC's entire flawed analysis of section 12-37-220(A)(8). South Carolina law is abundantly clear on this issue. Strictly construing tax exemption statutes against the claimed exemption is a mandatory method of statutory construction—it is not optional. Therefore, the ALC's interpretation of the Exemption must be rejected.

B. The Plain, Ordinary Meaning of "Industrial Plant" Necessarily Includes an Element of Manufacturing or Production.

The term "industrial plant" is not defined in the South Carolina Constitution or any statutes or regulations. Prior to this case, the Department has never attempted to define "industrial plant" for purposes of the Exemption, either formally or informally. Thus, the Court must determine the meaning of "industrial plant" without any directly applicable constitutional, statutory, regulatory, or administrative definitions. When statutory terms are undefined, South Carolina appellate courts "have looked to the usual dictionary meaning to supply its meaning." *Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542 (quoting *Lee v. Thermal Eng'g Corp.* 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002)).

Based on the primary dictionary definitions of "industrial" and "plant," the term "industrial plant" as used in the pollution control exemption must include an element of manufacturing or production output. The majority of the definitions for the relevant terms ("industry," "industrial," and "plant") include some aspect of manufacturing or production output. Thus, a strict construction of these terms, as is required by South Carolina law, must result in an interpretation of "industrial plant" that includes an element of manufacturing or production output.

The ALC erred in construing the term "industrial plant" in a manner that includes essentially every business enterprise operating within this State. However, a proper, strict construction of the term "industrial plant" can still be achieved through the use of the ALC's preferred dictionary source: Merriam-Webster's Dictionary. (*See* Am. Order 18–20; R. 0098–100). No definition for the term "industrial plant" is provided, so each word must be analyzed separately. Merriam-Webster defines "industrial" as "of or relating to industry." *Industrial*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industrial (last visited May 27, 2021). "Industry" is defined as follows:

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

Industry, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited May 26, 2021) (bold emphasis added). If the primary definition of "industry" is used, "industry" means "manufacturing activity as a whole." Additionally, three out of the four definitions of "industry" specifically reference manufacturing or the creation of something of value (i.e., production). Therefore, the most reasonable conclusion is that the plain, ordinary meaning of "industry"—when strictly construed against the claimed tax exemption as is required by South Carolina law—directly relates to an entity's manufacturing or production activities.

Next, the Court must determine the proper definition of "plant." Merriam-Webster defines "plant" as follows:

a : the land, building, machinery, apparatus, and fixtures employed in carrying on a trade or an **industrial business**

b : a factory or workshop for the **manufacture of a particular product**
also : POWER PLANT

c : the total facilities available for **production** or service

d : the buildings and other physical equipment of an institution.

Plant, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/plant (last visited May 26, 2020) (bold emphasis added)).[12] If the primary definition of "plant" is used, "plant" means "the land, building, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business." Additionally, two of the four provided definitions for "plant" specifically reference manufacturing or production. Thus, five out of the nine Merriam-Webster definitions for "industry" and "plant" explicitly reference manufacturing or production activities.

When the primary definitions of "industry" and "plant" are taken together, the plain, ordinary meaning of "industrial plant" means "the land, building, machinery, apparatus, and fixtures employed in carrying on manufacturing activity as a whole."[13] Yet, the ALC's assigned meaning to "industrial plant" disregards all references to the terms "manufacture, "manufacturing," "creation of something of value," "manufacture of a particular product," and

[12] The ALC relied heavily on the Merriam-Webster Dictionary's definitions to derive the meaning of "industrial plant." (*See* Am. Order 18–20; R. 0098–0100). Aside from noting that the 1993 edition of the American Heritage Dictionary contained similar definitions, it appears that the ALC did not consult any other dictionaries in its analysis.

[13] Although the ALC agreed with using the Counties' proposed definition of "plant," the ALC rejected using this definition of "industry" because the ALC concluded that "[i]t is unlikely that our legislature intended to adopt definition (a). Definition (a) refers to manufacturing 'as a whole' in the context of the 'nation's industry.' This definition is thus too broad to refer to an exemption for a specific industry in South Carolina." (Am. Order 20; R. 0100). However, the fundamental flaw with the ALC's reasoning is that it relies on the faulty premise that "the nation's industry" is part of "industry" definition (a). It is not. Rather, it is merely an example of how the term would be used if a modifier was applied to definition (a). For instance, if definition (a) was applied to Colonial it would mean "Colonial's manufacturing activity as a whole." Colonial admits that it has no manufacturing activity and that it is a transportation company. (Am. Order 21, n. 22; R. 0101).

"total facilities available for production" that are contained throughout the definitions of "industry" and "plant."[14]

If other dictionaries are consulted, the ALC's error in construing "industrial plant" becomes even clearer. For instance, the American Heritage Dictionary defines "industrial" as follows:

> 1. Of, relating to, or resulting from the **manufacturing industry**: *industrial development; industrial pollution*.
> 2. Having a highly developed **manufacturing industry**: *an industrial nation*.
> 3. Employed, required, or used in the **manufacturing industry**: *industrial workers; industrial diamonds*.

Industrial, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, https://www.ahdictionary.com/word/search.html?q=industrial (last visited May 27, 2021) (bold emphasis added). Additionally, the American Heritage Dictionary defines "plant" as follows:

> a. A building or group of buildings for the **manufacture of a product; a factory**; *works in an auto plant*.
> b. the buildings, fixtures, and equipment, including machinery, tools, and instruments, necessary for an industrial operation or an institution: *the university's mechanical plant*.

Plant, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, https://www.ahdictionary.com/word/search.html?q=plant (last visited May 27, 2021) (bold emphasis added). Thus, it is clear that the plain, ordinary meaning of "industrial plant" under this dictionary is "the buildings or group of buildings, fixtures, and equipment, including machinery, tools, and instruments, used in manufacturing or the manufacture of a product."

[14] The ALC's blatant disregard of the primary definitions of these terms in favor of isolated, specific definitions cannot be considered a strict construction *against* the claimed exemption. Indeed, it is clear from the ALC's 14-page analysis that the ALC searched for an interpretation that would encompass Colonial's operations. (*See* Am. Order 15–28; R. 0095–0108). Construing a tax exemption statute in this manner was improper. *See, e.g., Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542 (stating that it is improper for a court to strain or liberally construe the statutory language of a tax exemption statute in the taxpayer's favor).

Moreover, the Cambridge Dictionary defines "industrial" as "in or related to industry, or **having a lot of industry and factories**, etc." *Industrial*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/industrial (last visited May 27, 2021) (emphasis added). "Industry" is defined as "the companies and activities **involved in the process of producing goods for sale, especially in a factory** or a special area." *Industry*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/industry (last visited May 27, 2021) (emphasis added). Furthermore, the primary definitions for "plant" are "machines used in industry" and "**a factory in which a particular product is made or power is produced**." *Plant*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/plant (last visited May 27, 2021) (emphasis added). Therefore, the primary definition of "industrial plant" under these definitions is "a company's machines involved in the processing of producing goods for sale, especially in a factory."

What is made clear from all of the above dictionary definitions of "industry," "industrial," and "plant," is that the primary definition of each expressly refers to an element of manufacturing or production output. When all definitions are considered together, the conclusion must be that the plain, ordinary meaning of an "industrial plant" requires manufacturing or production activities. Although it is true that the court should not "search for an interpretation in [the Department's] favor," it is equally true "that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." *CFRE*, 395 S.C. at 74–75, 716 S.E.2d at 881.

The ALC's decision to ignore the primary definitions of the relevant terms in favor of definitions that would encompass almost every single business in this State was an improper liberal construction in Colonial's favor. This Court does not need to search for an interpretation in the Counties' or the Department's favor—the primary definitions of the relevant terms show that the plain, ordinary meaning of "industrial plant" necessarily encompasses some element of

manufacturing or production. Colonial admits that it is not a manufacturer and is not engaged in production. (*See* Am. Order 21, n.22; R. 0101; Am. Order 31; R. 0111). Accordingly, Colonial's pipeline infrastructure cannot qualify as an "industrial plant," and Colonial is, therefore, ineligible for the Exemption.

C. The Entirety of Section 12-37-220(A)(8) Shows that an "Industrial Plant" Includes an Element of Manufacturing or Production.

In addition to the myriad dictionary definitions showing that an "industrial plant" is commonly understood to encompass the building, facilities, equipment, etc. engaged in *manufacturing or production*, section 12-37-220(A)(8) provides further strong contextual clues regarding the General Assembly's intended meaning of "industrial plant." First, the statute indicates that a greige mill is an example of an "industrial plant" within the meaning of the pollution control exemption. *See* S.C. Code Ann. § 12-37-220(A)(8). Second, the dual purpose provision expressly references and, thus, contemplates that the equipment at issue will be involved in production activities. *See id.*

A greige mill is a type of textile mill where raw material is manufactured into an unfinished product. *See id.* ("'Greige mill' means all textile processes from opening through fabric formation before dyeing and finishing."). The inclusion of a greige mill as an example of an "industrial plant" is strong evidence that General Assembly intended for an "industrial plant" to engage in manufacturing or production activities. Under the doctrine of *noscitur a sociis*, the meaning of "industrial plant" may be ascertained by reference to associated words in the same statute, such as a greige mill in section 12-37-220(A)(8). *See Southern Mut. Church Ins. Co. v. S.C. Windstorm and Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) ("Clearly, words in a statute must be construed in context. According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in

the statute.") (internal citation omitted).[15] Furthermore, under the doctrine of *ejusdem generis*, when the General Assembly uses general words (i.e., industrial plant) along with words of particular and specific meaning (i.e., greige mill), "the general words are construed to embrace only persons or things of the same general kind or class of those enumerated." *Williams v. Quest Diagnostics, Inc.*, 423 S.C. 547, 550, 816 S.E.2d 564, 565 (2018); *see also Sheppard v. City of Orangeburg*, 314 S.C. 240, 243, 442 S.E.2d 601, 603 (1994);[16] *Swanigan v. American Nat. Red Cross*, 313 S.C. 416, 419, 438 S.E.2d 251, 252 (1993). Accordingly, under the doctrines of *noscitur a scociis* and *ejusdem generis*, a proper interpretation of "industrial plant" is limited to those operations that are similar in nature to a greige mill, such as manufacturers and producers.

Second, the dual purpose provision of the Exemption provides further context. Specifically, the Exemption states that for "equipment that serves a dual purpose of **production** and pollution

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

[16] For example, in *Sheppard*, the South Carolina Supreme Court was tasked with determining whether cable television constituted a "public utility" for purposes of a constitutional provision that permitted a municipality to acquire or purchase the utility. *See generall*y 314 S.C. 240, 442 S.E.2d 601. In that case, the constitutional provision at issue stated: "Any incorporated municipality may, . . . acquire by initial construction or purchase and may operate gas, water, sewer, electric, transportation, or *other public utility* systems and plants. . . ." *Id.* at 243, 442 S.E.2d at 603 (quoting S.C. CONST. art. VIII, § 16) (emphasis in original). When construing whether a cable television provider would be included within this provision, the Supreme Court concluded the following:

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

Id. at 243–44, 442 S.E.2d at 603. Application of this principle to the present case results in the conclusion that an "industrial plant" only embraces facilities similar in type to those referenced in section 12-37-220(A)(8) (i.e., a greige mill).

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

In rejecting the argument that an "industrial plant" must engage in some form of manufacturing or production under the plain, ordinary meaning of section 12-37-220(A)(8)'s terms, the ALC erred by seizing upon the isolated phrase "or company" in the portion of the pollution control exemption that states "[a]t the request of the Department of Revenue, the Department of Health and Environmental Control shall investigate the property of any manufacturer **or company**." S.C. Code Ann. § 12-37-220(A)(8) (emphasis added); *See, e.g., Centex Intern., Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 ("[W]e read the statute as a whole and should not concentrate on isolated phrases within a statute.") (internal quotations omitted).

The ALC specifically determined, based solely upon the words "or company," that "[i]t is reasonable to conclude the breadth of the word 'company' is meant to compensate as many companies as possible for adhering to pollution control laws, and perhaps encourage even greater efforts." (Am. Order 17, R. 0097). However, a more reasonable, strict construction of "or company" refers to a company that does not technically engage in "manufacturing," but is still engaged in some sort of substantive production output by means of turning raw goods into useable products, such as a mining company, a coal refinery, an oil refinery, etc. Or, another reasonable interpretation of "company" refers to a parent company of a manufacturer that has the right to claim the Exemption on behalf of a wholly owned subsidiary, even if the parent company itself

was not a manufacturing company. *See CFRE*, 395 S.C. at 78–79, 716 S.E.2d at 883–84. These interpretations of "company" would not expand the pollution control exemption's language beyond its intended meaning while giving all statutory terms full effect.

Section 12-37-220(A)(8)'s inclusion of a greige mill as an example of an "industrial plant," as well as the dual purpose provision, are further evidence that the General Assembly intended for an "industrial plant" to be limited to companies that engage in manufacturing or production activities. Given these statutory markers contained within the text of the Exemption, it is unreasonable to conclude that the mere inclusion of the words "or company" shows that the General Assembly intended the Exemption to apply to companies that were not involved in any manufacturing or production activities. *See Duke Energy Corp. v. S.C. Dept. of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("[T]he Court should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.").

D. The Department's Regulations Show that an "Industrial Plant" Includes an Element of Manufacturing or Production.

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

Additionally, Regulation 117-1700.7 defines the term "plant site." It states that "[a] plant site shall consist of all land contiguous to a plant which is related to the overall **manufacturing operation**." (emphasis added). Because the Department's duly promulgated regulation ties the existence of a plant to manufacturing operation, the pollution control exemption should be applicable only to property that is used in manufacturing or other production. Consequently, a

transportation company that is not engaged in either manufacturing or the production of any products is not eligible for a tax exemption clearly aimed at taxpayers engaged in manufacturing and production activities. As the agency charged with interpreting and administering tax laws, the Department's promulgated regulations are entitled to deference. *See Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). The Department's construction of "plant site," which is simply an analog for "plant," is consistent with the terms of the Exemption and is, therefore, entitled to deference. *See Kiawah Dev. Partners, II v. S.C. Dept. of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014) (holding that courts are to give "deference to an administrative agency's interpretation of an applicable statute or its own regulation," when the agency's interpretation is consistent with, and not contrary to, the plain language of the statute).

E. The Constitution Shows that an "Industrial Plant" Includes an Element of Manufacturing or Production.

Finally, as a transportation company, Colonial is not entitled for a property tax exemption that is meant for an entirely different class of taxpayers. The Constitutional taxation structure implies that transportation companies and companies that produce goods are, and should be, treated differently for property tax purposes. Although the Constitution does not expressly address the definition of "industrial plant," the categorical segregation between manufacturers and transportation companies for property tax assessment ratios shows that there is a clear delineation between the activities of a transportation company and that of a manufacturer or other company that produces products.

The Constitution sets forth the assessment ratios applicable to different classes of property. S.C. CONST. art. X, § 1. Many of these separate classifications are based on the activities of the property's owner. For instance, manufacturers are to be taxed on an assessment equal to 10.5% of

the fair market value of their property. *Id.* art. X, § 1(1). On the other hand, transportation companies are to be taxed on an assessment equal to 9.5% of the fair market value of their property. *Id.* art. X, § 1(2). The Record clearly shows that Colonial is a transportation company and is not engaged in any manufacturing. (Tr. 44:23–46:6; R. 1485–87).

F. Analysis of Colonial's Infrastructure and Operations.

If the term "industrial plant" is properly limited to only those companies that are engaged in manufacturing or production activities, the Record shows that Colonial's infrastructure does not constitute an "industrial plant." First, Colonial conceded that it is not a manufacturer. (Am. Order 21; R. 0101). Second, Colonial is not engaged in production. (Tr. 45:4–6; R. 1486; Am. Order 31; R. 0111 ("Here, the equipment at issue is not used to produce a product. In fact, all parties agree *Colonial is not engaged in production*.") (emphasis added)). Third, Colonial classifies itself purely as a transportation company. (Tr. 44:23–25; R. 1485). Therefore, on these established facts alone, Colonial's infrastructure cannot constitute an "industrial plant."

The ALC relied heavily (and improperly) on Colonial's handling and processing of Transmix and the "sting process" when determining that Colonial's infrastructure constitutes an "industrial plant." Colonial's witnesses provided a great deal of testimony about the handling of Transmix and the "sting" process. (Am. Order 26–27; R. 0106–07). The Transmix handling process is not at all production-related. Fungible refined petroleum products interface in the pipeline to create Transmix.[17] If Colonial only transported one product at a time in its pipeline, then it would not generate any Transmix. (Tr. 167:24–168:4; R. 1608–09).

[17] Conceptually, Colonial's handling and processing of Transmix is akin to a restaurant's handling and processing of bacon grease. The restaurant could either dispose of the grease or use it to fry its lunch-time french fries. However, no one would classify a restaurant as an "industrial plant" merely because the act of cooking bacon created a by-product that must either be disposed of or repurposed.

Once Transmix is created, Colonial can do one of three things. First, Colonial can sell some Transmix as-is. This is an option if a customer is willing to take a product that is better than the product it purchased, such as the customer who ordered regular gasoline but would accept more premium gasoline for the same price. (Tr. 149:4–10; R. 1590). Second, Colonial can inject the Transmix into other refined petroleum products, so long as the amount of Transmix injected into the product does not cause the other product to deviate from customer specifications. Third, Transmix can be injected in smaller quantities back into the line. (Tr. 149:11–13; R. 1590). This is, again, just reselling the products by recycling it into another product. Finally, certain Transmix cannot be sold as-is or injected into other products. For this finite class of Transmix, Colonial **outsources the Transmix processing to another company**. (Tr. 149:14–16; R. 1590). A company that actually turns Transmix into something useful physically takes the Transmix away from Colonial's facilities and processes it somewhere else. While Transmix is something that has to be dealt with, the process is really nothing more than disposing of a waste product—it is *not* a production activity.

The ALC further relied on the fact that "Colonial introduces DRA at its booster facilities, pump stations, tank farms, and stub lines to facilitate smoother and quicker transport" of refined petroleum products. (Am. Order 27; R. 0107). There is no evidence in the Record that DRA enhances the product itself or even changes the nature of what was in the pipeline. The only testimony about DRA was that it cuts down friction loss and allows Colonial to move product faster so that it can generate more revenue. (Tr. 152:3–5; 187:12–23; R. 1592 & 1628). DRA neither enhances nor alters the product itself in any manner whatsoever.

Finally, the ALC also relied on Colonial's maintenance and pipeline oversight activities to find that Colonial's infrastructure constitutes an "industrial plant." Colonial's South Carolina property is spread across eleven counties; yet, Colonial only has somewhere around 40 employees

based in South Carolina. (Tr. 114:22–116:1; R. 1555–57). The vast majority of Colonial's infrastructure is buried five feet underground. (Tr. 103:1–16; R. 1544). As a practical matter, and as admitted by Colonial's witnesses, the vast majority of the 515 miles worth of pipeline is unattended most of the time. (Tr. 179:23–180:12; R. 1620–21). While there may be periodic physical inspections of the right of way (which is the only thing that can practically be inspected because the pipeline is underground) and testing that occurs, this activity does not make a subterranean pipeline an "industrial plant." Every business has some maintenance and oversight activities that must be conducted. Every business, from the Waffle House to a legal office, maintains its equipment. Thus, the fact that Colonial oversee its pipeline to protect its assets does not mean that Colonial's infrastructure is an "industrial plant."

Based upon the plain, ordinary meaning of "industrial plant," the statutory scheme, the relevant regulations, and the South Carolina Constitution, it is clear that the Exemption is intended for those companies that are engaged in manufacturing or production output—not transportation companies. The ALC not only erred by liberally construing the term "industrial plant" in Colonial's favor but also by searching for an interpretation that would ultimately qualify Colonial's infrastructure as an "industrial plant." A proper, strict construction of "industrial plant" must be limited to only those companies that are engaged in manufacturing or production activities. The Record shows that Colonial is not engaged in either activity. Therefore, the ALC's finding that Colonial's infrastructure qualifies as an "industrial plant" must be reversed.

V. THE ALC ERRED IN FINDING THAT THE POLLUTION CONTROL EXEMPTION'S DUAL PURPOSE PROVISION APPLIES TO ONLY SOME COMPANIES THAT ARE ELIGIBLE TO RECEIVE THE EXEMPTION.

Even if Colonial's pipeline infrastructure qualifies as an "industrial plant" (which it does not), it still remains necessary to determine the value of the property that is eligible to receive the Exemption. To make this determination, section 12-37-220(A)(8) provides instructions for

calculating the exact value of dual purpose equipment that is eligible to receive the Exemption, and states:

> For equipment that serves a dual purpose of production and pollution control, the value eligible for the ad valorem exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution.

Id. Stated another way, if there is no difference in the cost between a piece of dual purpose equipment that is capable of controlling pollution and the cost of a similar piece of equipment that is not capable of controlling pollution, then no amount of the equipment is eligible to receive the Exemption. *See id.*

A. Application of the Dual Purpose Provision to Colonial's Property Would Render No Amount of Colonial's Property Eligible for the Exemption.

Assuming that Colonial's infrastructure is an "industrial plant," Colonial's property is still not eligible for the Exemption because the Record shows that there is no cost differential between Colonial's pipeline coatings, cathodic protection equipment, and automatic shut-off valve, and the same or similar equipment that is not able to control pollution. There is no such thing as a pipeline that does not use coatings, cathodic protection equipment, or automatic shut-off valves. Although these items have the ancillary benefit of preventing pollution, these items are also a *sine qua non* of any pipeline. Put another way, a pipeline practically cannot exist without these items. (*See, e.g.,* Colonial's 30(b)(6) Dep. 131:1–22; R. 1115 (Colonial's Director of Commercial Affairs and Special Projects stating that all of these assets are "part of a total package of things that we must do as an operator to - - to manage and perform our services . . ." and "they all have some involvement with any of our operations")).

The Record is replete with testimony from Colonial's witnesses showing that Colonial uses pipeline coatings, cathodic protection equipment, and automatic shut-off valves primarily for

business purposes. (Colonial's 30(b)(6) Dep. 65:7–13; 131:1–22; 132:2–9; 179:3–11; 266:7–9; 291:6–17; R. 1049, 1115, 1116, 1163, 1250, & 1275). In fact, Colonial has used all of these items since the pipeline was first constructed and before these items were required by law. (Tr. 295:1–13; R. 1736). Because there is no such thing as a pipeline without these items, the difference in value is essentially $0. If a pipeline can exist only if it is constructed with pipeline coatings, cathodic protection equipment, and automatic shut-off valves, then there does not exist "equipment of similar production capacity or capability without the ability to control pollution." If reduced to an equation, it would read: (Irreducible Pipeline Cost) – (Irreducible Pipeline Cost) = $0.

If the Exemption is intended to provide an incentive to eligible taxpayers to encourage them to protect against pollution, then Colonial needs no such incentive. To protect its asset and remain a viable business, Colonial has to have these items incorporated in its pipeline. Indeed, there can be no functional pipeline without them.

B. The ALC's Interpretation of When the Dual Purpose Provision Applies Creates an Absurd Result.

The ALC compounded its error in interpreting section 12-37-220(A)(8) after improperly concluding that Colonial's infrastructure constitutes an "industrial plant," when it determined that the Exemption's dual purpose provision applies only to some companies, rather than to every company that is eligible for the exemption. (*See* Am. Order 31; R. 0111). Under the ALC's interpretation, companies that are engaged in manufacturing or production activities and that necessarily have equipment that is both (1) engaged in production and (2) capable of controlling pollution are only entitled to receive a partial exemption on the value of any piece of property that has both a production purpose and a pollution control purpose. Yet, a company that does not engage in any type of production whatsoever would be entitled to receive the Exemption on the full value on any property that has the ability to control pollution. This interpretation lacks any

basis in the constitutional or statutory text of the Exemption and creates an absurd result. The ALC's interpretation should, therefore, be rejected. *See, e.g., Duke Energy Corp.*, 415 S.C. 351 at 782 S.E.2d at 593–94 ("It is axiomatic that a statute will not be construed to lead to absurd results. All rules of construction are subordinate to that obvious proposition.") (internal quotation omitted).

The ALC concluded that the dual purpose provision is applicable to only equipment that is actively engaged in production activities, while also simultaneously finding that a company that engages in no production whatsoever is eligible for the Exemption. Specifically, the ALC found the following:

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

(Am. Order 31; R. 0111).

The ALC's finding that the dual purpose provision applies to only property that is engaged in production is correct to the extent that conclusion results from the fact that only companies engaged in manufacturing and production activities are entitled to the Exemption at all. However, even if the Court were to assume that non-manufacturers or non-producers are entitled to the Exemption (which they are not), nothing in section 12-37-220(A)(8) states that the dual purpose provision is applicable to only *some* eligible companies, but not others. This is because the entire theme of the Exemption—when interpreted properly—reflects that the exemption is intended to apply only to companies that are engaged in manufacturing or production activities. Thus, the dual purpose provision must apply to *all* companies that are eligible to receive the Exemption.

Again, the dual purpose provision states the following: "For equipment that serves a dual purpose of production and pollution control, the value eligible for the ad valorem exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution." S.C. Code Ann. § 12-37-220(A)(8). It is clear from a plain reading of section 12-37-220(A)(8) that it must first be determined whether a company meets the initial threshold elements for eligibility (e.g., determining if the company is an "industrial plant"), then the dual purpose provision is applied to *all* of the eligible company's property to determine the portion of the property's total value that is entitled to receive the Exemption. It would be absurd to interpret the Exemption otherwise, and in a manner that applies to almost every single business in this State, but restricts the application of the dual purpose provision, specifically, to only companies who are engaged in manufacturing or production.

To illustrate the absurdity of this interpretation, consider that under the ALC's interpretation, a manufacturer's property that is used to turn raw materials into goods is subject to the dual purpose provision. But, for a company that neither manufactures nor produces anything whatsoever, each piece of property that has the ability to control pollution would be entitled to a 100% exemption, even if that property is used to further the business's operations. For example, under the ALC's interpretation, if a paper mill used a particular piece of equipment in manufacturing paper that had the ability to control air pollution and cost $200, but there existed a piece of equipment capable of manufacturing the same amount of paper that did *not* have the ability to control air pollution and cost only $100, then the paper mill only would be entitled to an exemption on the $100 cost differential. Yet, under the ALC's interpretation, a company that does not manufacture or produce any products is entitled to receive a 100% exemption on any property that is capable of controlling pollution because that equipment is not engaged in manufacturing or

production. This is an absurd result. Therefore, the ALC's interpretation must be reversed. *See, e.g., Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592.

VI. THE ALC ERRED IN FINDING THAT COLONIAL ESTABLISHED THAT ITS PROPERTY QUALIFIED AS POLLUTION CONTROL PROPERTY WHEN DHEC FAILED TO DETERMINE THE ISSUE.

Colonial failed to establish that its property is pollution control property when DHEC failed to make a determination on this issue. In pertinent part, section 12-37-220(A)(8) provides:

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

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

The Department invoked this portion of the pollution control exemption by submitting an inquiry to DHEC on October 19, 2017. (Stip. of Facts ¶ 19; R. 2464). On December 18, 2017, DHEC submitted a letter to the Department responding to the Department's request that DHEC investigate the applicable property, in which DHEC informed the Department that federal agencies—like the USDOT—regulate pipelines. (Stip. of Facts ¶ 20; R. 2464). DHEC also informed the Department it lacked any authority to permit, inspect, or enforce pipeline operations. (Stip. of Facts ¶ 20; R. 2464). Notwithstanding the fact that it had a *statutory mandate to make a decision*, DHEC never issued a determination regarding whether Colonial's property qualified as pollution control property. And, Colonial never challenged DHEC's failure to make a determination.

Although the Department typically has the sole authority to make exemption determinations, the language of the pollution control exemption short circuits this authority. The

statute says DHEC "**shall** investigate" and then DHEC "**shall** furnish the [Department] with a **detailed listing** of the property that qualifies as pollution control property." S.C. Code Ann. § 12-37-220(A)(8). By using the mandatory term "shall," the General Assembly signaled that once the Department posed the question, the power to make the determination with regard to one element of the analysis passed exclusively to DHEC. *See Collins v. Doe*, 352 S.C. 462, 470–71, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement.") (citing *In re Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001); *S.C. Police Officers Retirement Sys. v. Spartanburg*, 301 S.C. 188, 391 S.E.2d 239 (1990); *Starnes v. S.C. Dep't of Pub. Safety*, 342 S.C. 216, 535 S.E.2d 665 (Ct. App. 2000)).

This is further evidenced by the language regarding a detailed list of "property **that qualifies** as pollution control property." S.C. Code Ann. § 12-37-220(A)(8). The statute does not say "property that could possibly be pollution control property." It does not say "property that can fairly be considered pollution control property" or "property that might be pollution control property." That statute says that DHEC must provide a detailed list of the "**property that qualifies as pollution control property**." *Id.* (emphasis added). There is no conditional qualifier in the statute's language, nor is there any other language that implies DHEC's decision is a suggestion or simply an information point for the Department to consider. The fact that the statute requires a "detailed listing" implies (a) a meaningful and thorough investigation on the part of DHEC, and (b) the creation of a list that can actually be used to issue an assessment. None of that happened in this case.

Only one agency could determine whether Colonial's property was pollution control property, and that agency was DHEC. However, DHEC did not make this determination as required by section 12-37-220(A)(8), and Colonial never attempted to follow up with or demand

an answer from DHEC. Therefore, Colonial failed to establish that its property is pollution control property.[18]

CONCLUSION

For these reasons, Aiken County and Laurens County ask this Court to reverse the ALC's findings that (1) Colonial's pipeline operations qualify as an "industrial plant" under section 12-37-220(A)(8) of the South Carolina Code; (2) the dual purpose provision applies only to some eligible companies, but not all companies; and (3) Colonial established that its property qualifies as pollution control property when DHEC failed to determine the issue.

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[18] In addition to the arguments asserted herein, Aiken County and Laurens County incorporate by reference the arguments asserted by the Other Counties in their Brief regarding Colonial's failure to establish that its property is pollution control property.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Appellate Case No. 2021-000219
Administrative Law Court Case No. 18-ALJ-0443-CC

Colonial Pipeline Company ..... Respondent,

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief and Final Reply Brief of Appellants Aiken County and Laurens County** complies with Rule 211(b), SCACR.

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