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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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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

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Colonial Pipeline Company .....Respondent,

v.

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

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# FINAL BRIEF OF APPELLANTS ABBEVILLE COUNTY, ANDERSON COUNTY, GREENVILLE COUNTY, AND YORK 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 ("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. S.C. Code Ann. § 12-37-220(A)(8).

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 any business enterprise operating in the State could qualify as an "industrial plant." The ALC's decision to assign this broad, liberal construction to the meaning of terms in a tax exemption statute is a reversible error of law. Therefore, the ALC's findings that Colonial's pipeline infrastructure constitute as an "industrial plant" and that Colonial's property is exempt from taxation pursuant to the Exemption should 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) 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

("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 to reconsider, the ALC reversed itself. 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." (R. p. 111).

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 to only 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 is still no value of Colonial's property that is eligible for the Exemption.

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

[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. (R. pp. 76-78).

("DOR") was not required to ask DHEC to make this determination, once DOR made this request, section 12-37-220(A)(8) mandated that DHEC (1) investigate Colonial's property, (2) make a determination, and (3) provide DOR with a detailed listing of Colonial's property that was pollution control property. DHEC declined to issue the determination it is required by statute to render. As a result, a substantive statutory requirement was unmet, and Colonial could not receive the Exemption.

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 pollution control exemption; and (3) when it found that Colonial established that its property qualified as pollution control property when 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 is in error and should be reversed.

## STATEMENT OF ISSUE ON APPEAL

**I. DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT COLONIAL IS ELIGIBLE FOR THE POLLUTION CONTROL EXEMPTION FOR TAX YEARS 2017 AND 2018?**

## STATEMENT OF THE CASE

This matter arises from Colonial Pipeline Company's ("Colonial") challenging the South Carolina Department of Revenue's ("DOR") determination that Colonial is not entitled to a property tax exemption for its energy-transporting pipeline for the tax years 2017 and 2018. For the first time in 2017, Colonial sought a determination that its pipe coatings, cathodic protection, and automatic shut-off valves (collectively, "Pipeline Enhancements") are exempt from property tax under the pollution control exemption (S.C. Const. Art. X, § 3(h) and S.C. Code Ann. § 12-37-220(A)(8), collectively, "Exemption"). The constitutional provision exempts from property tax

"all facilities 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) exempts: ". . . all facilities or equipment of **industrial plants** which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by the state or federal government and used in the conduct of their business." S.C. Code Ann. § 12-37-220(A)(8) (emphasis added). Neither the constitutional provision nor the statute defines "industrial plant."

DOR submitted Colonial's 2018 exemption application to the South Carolina Department of Health and Environmental Control ("DHEC") for investigation into whether the Pipeline Enhancements qualified as pollution control equipment. DHEC replied to DOR on August 27, 2018, stating that the Pipeline Enhancements might qualify as pollution control equipment. However, DHEC specifically found that (a) it lacked the authority to make any actual determination over Colonial's operations; and (b) Colonial's pipeline system is governed by federal regulations and federal agencies governing all transportation systems.

On November 19, 2018, DOR determined that Colonial is not entitled to the Exemption for the years in dispute because the property claimed by Colonial is not "facilities or equipment of an industrial plant." Colonial subsequently claimed the same Pipeline Enhancements as pollution control property for 2019 and again requested the Exemption. DOR also denied this application.

On December 5, 2018, Colonial requested the Administrative Law Court ("ALC") hold a contested case hearing to challenge this determination by DOR. Colonial argued that its pipeline system is an "industrial plant," despite there being no plant facilities, no manufacturing output, and the pipeline's sole purpose being the transportation of finished petroleum products. On March 29, 2019, Appellants Abbeville County and Anderson County ("Abbeville County" and "Anderson

County") moved to intervene in the ALC case. Appellants Greenville County and York County ("Greenville County" and "York County," with Abbeville County and Anderson County, collectively "Counties") later moved to intervene in the case as well. Counties are collectively represented by the undersigned. Counties' motions to intervene were granted. Appellants Aiken County and Laurens County ("Aiken County" and "Laurens County") moved separately to intervene in the case on May 28. Aiken County and Laurens County motions to intervene were also granted.

All parties filed motions for summary judgment on the applicability of the Exemption in December. On March 6, 2020, the ALC denied all parties' summary judgment motions, finding that fact issues existed that precluded summary judgment for any party.

A hearing on the merits was held before the ALC on August 9-10. The ALC issued a Final Order on December 1. Subsequently, Colonial, Counties, Aiken County, and Laurens County timely filed Motions for Reconsideration. In response to the issues raised in the Motions for Reconsideration, the ALC rescinded its original Final Order on January 4, 2021, and issued an Amended Final Order on February 9. The ALC found in its Amended Final Order that: the pipeline components in dispute are (1) facilities and equipment of an industrial plant; (2) designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution; (3) required by state or federal government; and (4) used in the conduct of Colonial's business. Therefore, the ALC determined that the Pipeline Enhancements meet the qualifications to receive the pollution control equipment exemption.

In response to the Amended Final Order, Counties, DOR, Aiken County, and Laurens County timely filed notices of appeal.

## STANDARD OF REVIEW

Determining the proper interpretation of the Exemption's use of the term "industrial plant"

is a question of law that is reviewed *de novo*. *See Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008). "In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control,* 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014)." "Section 1-23-610 of the South Carolina Code (Supp. 2006) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). "The review of the [ALC's] order must be confined to the record." S.C. Code Ann. § 1-23-610(B) (Supp. 2006). "Th[is] court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact." *Id*.

"However, when the issue on review raises a question of law, this court may reverse the decision of the ALC where it is in violation of a statutory provision, or it is affected by an error of law." *Alltel Commc'ns, Inc. v. S. C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E. 2d 869, 870-71 (2012). "Statutory interpretation is a question of law." *Chapman S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017) (internal quotation omitted). "Unless there is a compelling reason to the contrary, appellate courts 'defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations.'" *Id*. at 188, 801 S.E.2d at 403 (*quoting Kiawah*, 411 S.C. at 34, 766 S.E.2d at 718); *see also Kiawah*, 411 S.C. at 34-35, 766 S.E.2d at 718 ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (*quoting Chevron U.S.A. Inc. v. Nat. Res. Def. Council*, 467 U.S. at 844 (1984))).

Moreover, this Court must review the entirety of this dispute in its appropriate context: Colonial is claiming an exemption from property taxes. In South Carolina, all property is subject

to taxation unless specifically exempted. *Long Cove Home Owners' Ass'n, Inc. v. Beaufort Cty. Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997). Property tax exemptions are strictly construed against the exemption claimant. *State v. City of Columbia*, 115 S.C. 108, 104 S.E. 337 (1920) Taxation is the rule and exemption is the exception. *Id.* Exemption statutes are narrowly construed, and taxpayers who claim exemptions under an exemption statute must prove they come clearly within such exemptions. *Henry P. Moses Co. v. S.C. Tax Comm'n*, 224 S.C. 193, 78 S.E.2d 187 (1953). Statutes granting property tax exemptions must not be strained or liberally construed in favor of the taxpayer and, to be entitled to an exemption, the taxpayer must clearly bring itself within the exemption upon which the taxpayer relies. *Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949).

## STATEMENT OF FACTS

### I. STIPULATED FACTS

The Parties stipulated to the following facts:[2]

**Assessment in Dispute**

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

1. Colonial[3] is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blendstocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product").

[2] (R. p. 2460-69, ¶¶ 1-32)
[3] The Stipulated Facts have been reproduced here verbatim, except "Taxpayer" has been replaced with "Colonial" for internal consistency.

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

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

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

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

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

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

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

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

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

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

12. Colonial does not own the Refined Petroleum Products it transports.

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

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

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

16. The Government Services Division evaluated the exemption application based on whether the property was designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution. On August 15, 2017, based on its evaluation, the Government Services Division issued a Property Assessment Notice granting the exemption application as to wastewater pollution control equipment, storm

water pollution control, secondary containment, and tank internal/external floating roofs for property tax year 2017 but denying Colonial's exemption application as to pipe coatings, cathodic protection, and automatic shut-off valves.

17. On September 7, 2017, Colonial protested the proposed assessment for 2017 and the Department's denial of the exemption for the pipe coatings, cathodic protection, and automatic shut-off valves.

18. On September 20, 2017, the Government Services Division notified the county auditors for Counties Involved of Colonial's appeal of the 2017 assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. ADDITIONAL RELEVANT, UNDISPUTED FACTS

Colonial is a pipeline company that transports refined petroleum products (*e.g.*, refined petroleum, jet fuel, gasoline, diesel, heating oil, and kerosene). As such, it is regulated as a "transportation company" by the United States Department of Transportation. (R. p. 182, l. 21 – p. 184, l. 18). Colonial considers itself to be primarily a "transportation company." (R. p. 1892; R. p. 1500, l. 18 – p. 1501, l. 14). On the company web site, Colonial states that its mission is to move energy where it is needed. (R. p. 1895; R. p. 1504, ll. 7-10). In various regulatory materials submitted by Colonial as part of USDOT requirements, Colonial represents itself to be a "transportation company." (R. p. 1899; R. p. 1504, l. 22 – p. 1506, l. 22. ) Colonial does not refer

to itself as either an "industrial company" or a "plant." (R. p. 1602, l. 22 – p. 1603, l. 16). Colonial has no plant managers and no facilities designated as "plants." (R. p. 1603, ll. 13-16). Colonial does not conduct any of its "blendstock" operations in South Carolina (R. p. 1603, l. 21 – p. 1604, l. 12). No customers pay Colonial to manufacture or otherwise modify any products in South Carolina. (R. p. 1486, ll. 4-9). Colonial sells no products in South Carolina. (R. p. 1486, ll. 7-9).

All of Colonial's activities in South Carolina, whether pushing products through the pipeline, injecting lubricant, or separating Transmix at "junction" areas, relate to Colonial's function of transporting fuel in its pipeline. (R. p. 1608, ll. 5-10; *see also*, *e.g.*, R. pp. 1501, 1504, 1508, 1603, 1608, and 1895.

Colonial has two tank farms: one in Belton, South Carolina, and one in Spartanburg, South Carolina. (R. p. 1540, ll. 10-12). These tank farms fall under USDOT jurisdiction and are related to the transport of Colonial's energy products. (R. p. 1507, ll. 9-22; R. p. 1900). Colonial itself, in regulatory documents, describes the tank farm at Belton as consisting of "20 USDOT regulated pipeline breakout and/or relief tanks." (R. p. 1509, ll. 22-25; R. p. 1900). Portable tanks at these facilities are described by Colonial as "transportation related and USDOT regulated." (*See generally* R. pp. 1509, 1656, 1658, and 1901-1902). Every part of the pipeline is regulated as a transportation company by USDOT. (R. p. 1660, ll. 19-21). Specifically, the items at issue in the present case (cathodic protection, pipe coatings, and automatic shutoff valves) are regulated by USDOT through the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). (R. p. 1623, l. 21 – p. 1625, l. 18).

There was substantial testimony at the hearing about the federal regulations under which Colonial operates. Colonial's regulatory scheme is overseen by PHMSA and the Office of Pipeline Safety, both of which are divisions of USDOT. (R. p. 1623, l. 21 – p. 1625, l. 18). PHMSA

regulates and establishes the standards for the transport of hazardous materials. (R. p. 1653, ll. 2-7). PHMSA also ensures the safety of the design, construction, maintenance, and spill response planning for all pipelines. (R. p. 1653, ll. 2- 7). Counties are not aware of anything in the Record establishing that PHMSA has regulatory authority over "industrial plants."

There was also substantial testimony and discussion in the Final Order about Transmix operations run by Colonial. Colonial receives one or more fluids from customers to transport. When received by Colonial for transport, these fluids are fully refined, finished petroleum products that do not require Colonial to do anything, but transport finished products from one place to another. (R. p. 1567, l. 1 – p. 1568, l. 22; p. 1576, l. 9 – p. 1577, l. 24). That is, before delivered to Colonial for transport, each product could be sold according to that separate product's specifications without further modification. (R. p. 1590, ll. 3-10).

Solely to keep its transportation system full (and, therefore, more profitable), Colonial pushes multiple fluids through its pipeline transportation system at the same time. (R. p. 1627, l. 2 – p.1628, l. 11). Colonial admitted that this decision was made by Colonial not as function of any legal or customer requirement or of any manufacturing process:

> Q. So pushing product through the pipe and having a separate type of product behind it or in it at the same time where those -- and I forget the word you used, but where there's an interaction between two products, that's really just a mechanism of trying to keep the pipes full.
>
> A. That is -- that is how to operate a pipeline, correct.
>
> * * *
>
> Q. Okay. So that kind of blending [Transmix] is basically just because of the way you operate a pipeline. Yeah, that's how to operate the facilities and ensure quality of the product in doing those things, correct.

(R. p. 1616, l. 24 – p. 1619 l. 7 and p. 1621, ll. 8-12; s*ee also*, R. p.1629, ll. 15-23). The same is

true of drag resistant agents that Colonial elects to inject into the pipes for no other reason than to transport the materials faster. (R. p. 1628, ll. 11-23). As a result of Colonial's decision to mix products for more profitable transport, Colonial must "fix" the Transmix problem Colonial creates by separating out the fluids after transport but before delivery to the purchaser. But, Colonial does not even process the Transmix itself. Rather, Colonial pays other parties to remove the Transmix from Colonial's property and reprocess the Transmix. (R. p. 1589, ll. 8-16) . Colonial has only one tank in South Carolina that stores Transmix prior to its removal for reprocessing by third parties. (R. p. 1607, l. 14 – p. 1608, l. 12).

Even if the Court were to accept that Colonial's self-induced creation of Transmix was somehow "manufacturing," the Pipeline Enhancements are not at all related to this process:

> Q. Okay. So the three types of assets [Pipeline Enhancements] that we've been talking about that are claimed exempt, the auto shut-off valves, the cathodic protection, and the pipe coatings, what do those have to do with transmixing?
>
> A. They -- those particular items do not.

(R. p. 1160, ll. 8-13).

Colonial's competitors include companies that run barges, trucks, and trains, none of which are industrial plants. (R. p. 1616, l. 21 – p. 1617, l. 6). Colonial's pipeline transportation system is essentially the same as a tanker truck or a tank on a rail car. (R. p. 1617, ll. 10-19).

Further, for property tax purposes, although manufacturers are assessed at a tax rate of 10.5%, transportation companies are assessed at a rate of 9.5%. Colonial is, and has always been, assessed at the 9.5% rate as a transportation company and never as a manufacturer. (R. p. 1492, ll. 7-23 and p. 1499, ll. 3-7). The North American Industry Classification System ("NAICS") is the standard used by federal statistical agencies in classifying business establishments. The NAICS Code assigned to Colonial is for a transportation company. (R. p. 1499, ll. 8-24).

In 2018, the DOR contacted DHEC to determine whether it considered Colonial's equipment to be "pollution control equipment." (R. pp. 1940-1941; R. p. 1512, l. 15 – p. 1513, l. 11; R. p. 1755, ll. 19-24). On August 27, 2018, DHEC responded with its determination that interstate petroleum pipeline operations were beyond DHEC's authority, as these operations are regulated ***exclusively*** by USDOT. (R. p. 1940). DHEC also indicated that it lacked authority to issue any opinion on whether Colonial's equipment was "pollution control equipment." (R. p. 1755; R. p. 1940). Rather, DHEC opined only on underground storage tanks, which are not present in any of Colonial's operations. (R. pp. 1940-1941).

## ARGUMENTS

### I. THE ADMINISTRATIVE LAW COURT ERRED IN FINDING THAT COLONIAL IS ELIGIBLE FOR THE POLLUTION CONTROL EXEMPTION.

#### *A. The ALC erred in finding that Colonial met all the substantive requirements of section 12-37-220(A)(8).*

South Carolina Code Annotated section 12-37-220(A)(8) provides an exemption from *ad valorem* taxation for:

> (8) all facilities or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by the state or federal government and used in the conduct of their business. **At the request of the Department of Revenue**, the Department of Health and Environmental Control **shall investigate** the property of any manufacturer or company, eligible for the exemption [for pollution control equipment] to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, the Department of Health and Environmental Control **shall furnish** the Department of Revenue with a detailed listing of the property that qualifies as pollution control property.

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

As permitted by section 12-37-220(A)(8), DOR requested that DHEC investigate Colonial's claimed property to determine if it qualified as "pollution control equipment." (R. pp.

1940-1941). DHEC provided the following response:

> As previously noted, there are no promulgated South Carolina laws or regulations regulating petroleum pipeline operations, and the South Carolina Department of health and Environmental Control (SCDHEC) lacks the authority to permit pipeline operations, or to inspect or enforce any operational aspect of the pipeline conveying petroleum products. Interstate petroleum pipeline operations are regulated exclusively by federal agencies, including the U.S. Department of Transportation, and the Department is unable to speak for those agencies with regard to the purpose of any specific requirements promulgated by those agencies.

(R. p. 1940).

Essentially, DHEC concluded it could not provide DOR with a determination. DHEC's summary response contains no reference to any determination or furnishing of a detailed listing of the property qualifying as "pollution control" property as required by section 21-37-220(A)(8). Rather, DHEC explained in its letter that pipeline equipment was beyond DHEC's purview, and this equipment is exclusively regulated by federal agencies. In addition, DHEC expressly limited the letter's contents to "the context of USTs [underground storage tanks]," which are neither present in any of Colonial's operations nor the subject matter of Colonial's exemption request. (R. p. 1940.

In their Motion for Summary Judgment, (R. pp. 228-231), and, again, at trial, Counties asserted that because DHEC never (a) investigated the Pipeline Enhancements, (b) determined which portion of the Pipeline Enhancements qualified as pollution control property, or (c) furnished DOR with a detailed listing of the pollution control property, then one of the statutorily mandated requirements for DOR to grant the Exemption had not been met. Thus, Colonial could not receive the Exemption.

The ALC incorrectly determined that this argument was one of "failure to exhaust administrative remedies." (R. p. 101). However, South Carolina case law is clear that "the doctrine

of exhaustion of administrative remedies only comes into play when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy." *Thomas Sand Co. v. Colonial Pipeline Co*., 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) ; s*ee also Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 707 S.E.2d 397 (2011) (holding that the circuit court and court of appeals erred by applying the doctrine of exhaustion of administrative remedies where there was no statutory violation for which the legislature has provided an administrative remedy).

In the present case, Counties are not contending that Colonial failed to exhaust administrative remedies. Section 12-37-220(A)(8) provides no independent remedy. Rather, section 12-37-220(A)(8) requires that once DOR requests that DHEC issue a determination as to whether property is "pollution control equipment," DHEC ***shall*** investigate, ***shall*** determine, and ***shall*** furnish. This is a statutory mandate and a condition precedent to receiving the Exemption. *See, e.g.*, *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186, 196, 847 S.E.2d 471, 476 (Ct. App. 2020) ("[U]se of words such as '***shall***' or 'must' indicates the legislature's intent to enact a ***mandatory*** requirement." (internal quotation omitted)). Accordingly, the DHEC investigation and determinations are substantive requirements of the statute, not an administrative process, the failure with which to comply is not a mere inconvenience to be ignored.

Because DHEC provided only a letter denying it had authority to determine anything regarding pipeline equipment and operations, the mandatory statutory condition was never met. Further, the ALC's Final Order finding that DHEC's letter constituted a "determination" on the matter is likewise error. The ALC held that DHEC "concluded" that the disputed property could be "fairly described as pollution control equipment." (R. p. 103). As described above, DHEC's comment on Colonial's equipment follows DHEC's specific determination that DHEC could not

render such an opinion on a federally regulated transportation company. DHEC's letter is further qualified by DHEC's being able to opine only on equipment in the context of UST's, which is equipment entirely irrelevant in the present case. (R. p. 1940) [Joint Exhibit 16]. 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.

Because there was no determination by DHEC after a request from DOR, a statutory condition precedent to the Exemption was not met. Accordingly, there could be no Exemption for Colonial in this case.

### B. The ALC erred in determining the Equipment constitutes an "industrial plant."

The record shows:

1. Colonial is a transportation company, which is regulated as a "transportation company" by USDOT, and which moves refined petroleum products (*e.g.*, jet fuel, gasoline, diesel, heating oil, and kerosene). (R. p. 1623, l. 21 – p. 1625, l. 18).
2. Colonial refers to itself as a "transportation company." (R. p. 1500, l. 18 – p. 1501, l. 14).

3. Colonial claims that its mission is to move energy where it is needed. (R. p. 1504, ll. 7-10).

4. In various regulatory materials submitted by Colonial, as part of USDOT requirements, Colonial represents itself to be a "transportation company." (R. p. 1504, l. 22 – p. 1506, l. 22).

5. Despite recounting the numerous employees that Colonial employs and Colonials numerous activities, Colonial admittedly has no plant managers and no facilities designated as "plants." (R. p. 1603, ll. 13-16).

6. Colonial does not conduct any of its blendstock operations in South Carolina. (R. p. 1603, l. 21 – p. 1604, l. 12).

7. No customers pay Colonial to manufacture, fabricate, or "create" any products in South Carolina. (R. p. 1486, ll. 4-9).

8. Colonial sells no products in South Carolina. (R. p. ___, ll. 7-9) [Tr. p. 45, ll. 7-9]. Rather, Colonial moves already manufactured, finished products from one location to another. (R. p.1623, l. 21 – p. 1625, l. 18).

Neither the Constitution nor section 12-37-220(A)(8) define "industrial plant." However, the South Carolina Code of Regulations provides guidance about what constitutes an "industrial plant." "A plant site shall consist of all land contiguous to a plant which is related to the overall ***manufacturing operation***. It shall include . . . all other lands directly ***related to manufacturing***. When possible, ***a plant site will be one contiguous parcel*** using legal and/or natural boundaries." S.C. Code Ann. Regs. § 117-1700.7 (emphasis added). According to section 117-17-007, the term "industrial plant" is similar to (if not synonymous with) the term "manufacturing."

The only federal statutory definition of "industrial plant" that Counties have found is

located in the Energy Policy and Conservation Act, 42 U.S.C. § 6326(5) (November 29, 2019). Section 6326(5) states: "[t]he term 'industrial plant' means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output."

Other courts and statutes also give guidance to what constitutes an "industrial plant." For example, a Massachusetts commercial sales tax statute exempts the sale of machinery used in industrial plants. In that statute, the term "industrial plant" is defined as "**a factory at a fixed location** primarily engaged in the manufacture, conversion, or processing of tangible personal property." Mass. G.L. c.64H, §6. (emphasis added). The statute does not mention transporting finished products.

In *United States v. Acquest Transit LLC*, No. 09CV55S, 2020 U.S. Dist. LEXIS 97979 (W.D.N.Y. June 4, 2020), the District Court discussed the definition of "industrial activity" in the context of pollution discharges under the Clean Water Act (33 U.S.C. § 1251, *et seq.*). The Clean Water Act, however, does not define "industrial activity." The *Acques* court noted the definition was left to the Environmental Protection Agency ("EPA"). The EPA, in turn, defined "storm water discharge associated with industrial activity" by referring to "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to **manufacturing, processing or raw materials storage areas at an industrial plant.**" 40 C.F.R. § 122.26(b)(14) (emphasis added). After noting exclusion of discharges from otherwise exempt facilities, the regulation then provides categories of some, "but . . . not limited to," industrial facilities (such as **industrial plant** yard, access roads, and refuse sites). *Id.* The regulation then concludes with eleven "categories of facilities [that] are considered to be engaging in 'industrial activity' for purposes" of this paragraph. *Id.* The District Court's emphasis in *Acques* was whether the "industrial facility" "engages in manufacturing processing," which Colonial's operations

admittedly do not. *U.S. v. Acquest Transit LLC*, No. 09CV55S, 2020 U.S. Dist. LEXIS 97979, at *81-82 (W.D.N.Y. June 4, 2020).

Likewise, the Supreme Court of Missouri addressed the contention that a commercial laundry facility intended to serve industries was not an "industrial plant." In *Keystone Laundry & Dry Cleaners, Inc. v. McDonnell,* 426 S.W.2d 11 (Mo. 1968), the court concluded that the laundry facility was not an "industrial plant," refusing to conflate the meaning of the term "industrial" with the term "industry," and noting that [industry] "is used as a classification of a total line of business endeavors which includes plants, offices, and all accessories of a major business works. Definitions from that point of view are of little value here." *Id*. at 15-17. "In other words, such generalized references do not make everything relating to a business endeavor into an "industrial plant." *Id.* The court concluded that "we do not construe the words 'plants for industrial development' to include laundries, which in essence, are ***service businesses***." *Id.* at 19 (emphasis added).

The Supreme Court of New York has also construed the meaning of "industrial plant." In *Oyster Bay v. Forte*, 219 N.Y.S.2d 456 (Sup. Ct. 1961). In *Oyster Bay*, the owner of a bowling alley sought to get its facility termed an "industrial plant." The court held that "according to ordinary understanding, an industrial plant is a manufacturing establishment." *Id.* at 460; *see also Dwyer v. Town of Oyster Bay*, 217 N.Y.S. 2d 392 (Sup. Ct. 1961) (holding similarly).

The Alabama Court of Civil Appeals ruled similarly in *State v. Wallis*, 267 So.2d 172 (Ala. Ct. App. 1972). In that case, an Air Force Base sought classification as an "industrial plant" for purposes of licensing a vending machine operation. The court noted that "industrial plant" was not defined in the subject licensing statute. As such, the court sought to interpret the term. In doing so, it cited Webster's Dictionary definition that included "engaged in a manufacturing activity." *Id.* at

173. The court went on to note that "the ordinary understanding of an 'industrial plant' is that of a manufacturing establishment." *Id*. at 173-174 (citations omitted).

Connecticut has similarly equated "industrial plants" with manufacturing. *See*, *e.g.*, *Sikorsky Aircraft Corp. v. Comm'r of Revenue Servs.*, 297 Conn. 540 (2010) (holding that "manufacturing is an activity which shall occur solely at an industrial plant").

By way of contrast, Colonial is a "transportation company," [which is] defined in the South Carolina Regulations to include, but not necessarily be limited to: (1) Railroad companies; (2) pipeline companies; and (3) Express companies." S.C. Code Ann. Regs. 117-1700.4 As noted above, there is ample, uncontradicted record evidence that Colonial classifies itself as a transportation company and assets are devoted to that purpose. Colonial, as a transportation company, is likewise a service business moving (not making) products from one place to another.

Further, the Amended Final Order applied a very broad interpretation when determining that Colonial's operations fit within the definition of "industrial plant." The ALC erred by applying a liberal construction to the meaning of the words used in a South Carolina tax exemption statute when more restrictive definitions were available, and their use would have been more consistent with our Supreme Court's mandate that exemption statutes be strictly construed against the exemption claimant.

In this instance, the ALC liberally construed the term "industrial plant" in Colonial's favor. South Carolina case law is clear that tax exemption statutes "will not be strained or liberally construed in the taxpayer's favor." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74-75, 716 S.E.2d 877, 881 (2011). 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*, 395 S.C. at 74, 716 S.E.2d at 881. When any words are unambiguous, the words' literal meaning must be applied. *Id.* Further, 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. Sch. 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 Rev.*, 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 provisions that grant exemptions . . . from taxation." (internal quotation omitted) (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.

As an initial matter, the ALC improperly concluded that "there is no need to strictly construe the tax exemption against Colonial." (R. p. 108) (*citing Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)[4]; *Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, 124 S.E. 761, 765 (1924)).[5] This conclusion was an error of law that contravenes well-established and long-

[4] The issue in *Hodges* was not 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.

[5] The *Crescent Manufacturing Company* case likewise did not involve 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. at 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.

standing precedent set forth 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. Sch. Dist.*, 383 S.C. at 345, 679 S.E.2d at 919 ("[T]he language of a tax exemption statutes must be given its 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[6] is that a **strict construction is required of constitutional and statutory provisions that grant exemptions or deductions from taxation**." (emphasis added)); *TNS Mills, Inc. v. S.C. Dep't of Rev.*, 311 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("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 Rev.*, 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**

*See Mead v. Beaufort Cty. Assessor*, 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." (internal quotation omitted)).

[6] 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 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.* (internal quotation omitted).

**of legislative grace**." (emphasis added)); *Hock RH, LLC*, 423 S.C. at 213, 813 S.E.2d at 542 ("The general rule[7] is that a **strict construction is required of constitutional and statutory provision that grant exemptions . . . from taxation**." (emphasis added)); *Hibernian Soc. v. Thomas*, 282 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 pollution control exemption must be rejected.

In the present case, the ALC based its order largely on certain more liberal dictionary definitions, while ignoring statutory and case law interpretations, and other more restrictive dictionary definitions. Even in looking at the dictionary definitions, the ALC overlooked crucial language that should have led the ALC to the opposite interpretation.

"Industrial" is defined as "of or relating to industry." [Industrial, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://.vww.merriam-webster.com/dictionary/industrial (last visited July 12, 2021)]. "Industry" is defined as:

> a: **manufacturing** activity as a whole (the nation's industry);
>
> b: a distinct group of productive or profit-making enterprises (the banking industry);
>
> c: a department or branch of a craft, art, business, or manufacture (especially one that employs a large personnel and capital especially in manufacturing);

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

> d: systematic labor especially for some useful purpose or the creation of something of value.

MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited July 12, 2021) (emphasis added). Without looking any further than the first definition, "industrial" means of industry and "industry" means manufacturing.

"Plant" is defined as:

> a: the land, buildings, machinery, apparatus, and fixtures employed in carrying on 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.

MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited July 12, 2021) (emphasis added). "Plant" relates to a trade (no one would argue a pipeline constitutes a "trade" like carpentry or masonry) or industry (*i.e.*, manufacturing).

Notably, rather than applying the primary definition of "industry," which means "manufacturing activity as a whole," the ALC focused primarily on only two of the four potential definitions. The two definitions focused on by the ALC could apply to almost any business activity, including, for example, commercial laundry facilities, bowling alleys, and air force bases, all of which have been rejected by courts. *See generally Keystone Laundry & Dry Cleaners, Inc.,* 426 S.W.2d at 11; *Oyster Bay*, 219 N.Y.S.2d at 456; *State v. Wallis*, 267 So.2d at 172.

If, however, the primary definition of "industry" is applied alongside the primary definition of the term it modifies ("plant"), then the definition of "industrial plant" means the land, buildings, machinery, apparatus, and fixtures employed in carrying on manufacturing activity as a whole.

Yet, the ALC overlooked this reasonable construction in favor of one that disregards all references to the terms "manufacture," "manufacturing," and "manufacture of a particular product" in favor of a definition that could apply to a fast-food restaurant.

Even if there is room for disagreement about the construction of section 12-37-220(A)(8), the ALC's ultimate construction of "industrial plant" is far too broad and liberally construed in favor of a taxpayer in a situation in which South Carolina law requires that the statute be "strictly construed against [Colonial]." *See, e.g.*, *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 at 881. The ALC's interpretation would lead to an absurd result. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 358, 782 S.E.2d 590, 593–94 (2016) ("It is axiomatic that a statute will not be construed to lead to absurd results. All rules of construction are subordinate to that obvious proposition.") (quoting *Am. Tel. & Tel. Co. v. Dir., Div. of Taxation*, 194 N.J.Super. 168, 172, 476 A.2d 800, 802 (Ct.App.Div.1984)).

Because at least one of the four statutory requirements is not met, *i.e.*, the presence of "facilities or equipment of an industrial plant," the ALC's finding that Colonial is entitled to the exemption is in error.

### *C. The ALC erred in finding that the 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.*

1. *Application of the Dual Purpose Provision to Colonial's Pipeline Enhancements Would Render No Amount of Colonial's Pipeline Enhancements Eligible for the Exemption.*

Assuming that Colonial's infrastructure is an "industrial plant" (which it is not), Colonial's property is still not eligible for the Exemption because the Record shows that there is no cost differential between Colonial's Pipeline Enhancements 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.*, R. p. 1115, ll. 1-22 (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 that Colonial uses pipeline coatings, cathodic protection equipment, and automatic shut-off valves primarily for business purposes. (R. p. 1049, ll. 7-13; R. p. 1115, ll. 1-22; R. p. 1116, ll. 2-9; R. p. 1163, ll. 3-11; R. p. 1250, ll. 7-9; R. p. 1275, ll. 6-17). In fact, Colonial has used all of these items since the pipeline was first constructed and before these items were required by law. (R. p. 1736, ll. 1-13). 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.

*2. 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* R. p. 111). 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 and absurd result. The ALC's interpretation should, therefore, be rejected. *See, e.g.*, *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 358, 782 S.E.2d 590, 593-94 (2016) ("It is axiomatic that a statute will not be construed to lead to absurd results. All rules of construction are subordinate to that obvious

proposition." (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.

(R. p. 111) [Final Amended Order p. 31].

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 to only 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.

## CONCLUSION

In applying these principles, the ALC should have found, and this Court should now find, in favor of Counties on all issues. Instead of strictly construing the Exemption, the ALC ignored

the classifications, regulations, and nomenclature used by Colonial itself, all of which clearly demonstrate that Colonial is, by all applicable standards, a "transportation company" and not an "industrial plant." The ALC should have found that a statutory determination of eligibility for the Exemption was not made by DHEC, which results in Colonial's not being eligible for the Exemption. The ALC should have strictly construed the term "industrial plant" against Colonial, as an exemption claimant, and determined section 12-37-220(A)(8) requires denying the Exemption. The ALC should have concluded the dual purpose doctrine applied to Colonial's Pipeline Enhancements and that the value differential was $0.00, thus, Colonial is not entitled to the Exemption.

For these reasons, Appellant Counties of Abbeville, Anderson, Greenville, and York respectfully ask this Court to reverse the decision of the ALC and find that Colonial's Pipeline Enhancements are not eligible for the Exemption set forth in section 12-37-220(A)(8).

Respectfully submitted,

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December 2, 2021
Greenville, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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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
Trial Court Case No. 18-ALJ-17-0443-CC

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Colonial Pipeline Company .....Respondent,

v.

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

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Appellants Abbeville County, Anderson County, Greenville County, and York County Final Brief and the Appellants Abbeville County, Anderson County, Greenville County, and York County Final Reply Brief comply with Rule 211(b), SCACR.

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