STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

STATEMENT OF THE CASE

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

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

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

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

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

STIPULATIONS OF FACTS

The parties stipulated to the following facts at the hearing:

Assessment in Dispute[2]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

Standard of Review

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

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

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

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

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

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

Construction of Tax Exemptions

South Carolina's tax exemption statutes are strictly construed against taxpayers. *See, e.g.*, *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that South Carolina courts have a long-standing policy of "strictly construing tax exemption statutes against the taxpayer"). In other words, the "statutory language will not be strained or liberally construed in the taxpayer's favor." *Southeastern Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). "The deduction and benefit is allowed as a matter of legislative

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

Failure to Exhaust Administrative Remedies

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

> (A) Pursuant to the provisions of Section 3, Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation: . . . (8) all facilities[4] or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by the state or federal government and used in the conduct of their business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pollution Control Equipment Exemption

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

Prior Department Determination

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

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

What is a Plant?

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

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

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

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

> There shall be exempt from ad valorem taxation . . . (h) **all facilities or equipment of industrial plants** which are designed for the elimination, mitigation, prevention, treatment, abatement or control of water, air or noise pollution.

S.C. Const. Art. X, § 3(h) (West) (2009) (emphasis added). Section 12-37-220(A)(8) governs ad valorem property tax exemptions and discusses the exemption in more detail. It provides, in part:

> (A) Pursuant to the provisions of Section 3, Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation: . . . (8) **all facilities**[11] **or equipment of industrial plants** which are

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

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

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

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

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

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

S.C. Code Ann. § 12-37-220. There are no statutes, regulations, or Department policy documents or rulings defining "industrial plant" under this statute.

Dictionary Definition

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

> a: the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business;
>
> b: a factory or workshop for the manufacture of a particular product also: POWER PLANT;
>
> c: the total facilities available for production or service;
>
> d: the buildings and other physical equipment of an institution.

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

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

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

industry);

c: a department or branch of a craft, art, business, or manufacture (especially one that employs a large personnel and capital especially in manufacturing);

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

Industry, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/industry (last visited February 19, 2020).[12]

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

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

State Statutory and Regulatory Scheme

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Department Rulings and Procedure

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

Federal Statutory and Regulatory Scheme

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

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

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

Conclusion

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

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

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

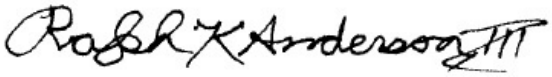
ORDER

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

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

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

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 6, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Michelle Perez
Judicial Law Clerk

March 6, 2020
Columbia, South Carolina