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STATE OF WISCONSIN
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
Drew Fox - Clerk

CALUMET SUSTAINABLE ENERGY, LLC,

DOCKET NO. 24-MC-005¹

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, COMMISSIONER:

This matter comes before the Commission based on cross-motions for summary judgment filed by Petitioner, Calumet Sustainable Energy, LLC ("CSE") and the Wisconsin Department of Revenue ("Department") regarding whether or not the Department was correct in denying CSE's classification and assessment as a manufacturer pursuant to Wis. Stat. § 70.995. CSE was represented by its attorneys Don M. Millis, Sara Stellpflug Rapkin, Shawn E. Lovell, and Joseph R. Rekrut of Reinhart Boerner Van Deuren s.c. The Department was represented by Attorney Nicole I. Pellerin. Both parties submitted briefs along with affidavits supported by exhibits in support of

¹ At a status conference on July 29, 2024, the parties and Commission determined that this matter had been erroneously classified initially as a matter for declaratory judgment and assigned TAC Docket No. 24-J-005. It is a manufacturing classification case and was reassigned TAC Docket No. 24-MC-005. Both docket numbers appear within the record; no other matter before the Commission has a docket number beginning 24- and ending -005.

their positions.

JURISDICTIONAL FACTS

1. Calumet Sustainable Energy, LLC (“CSE”) is a business corporation with its principal place of business at N6202 Elm Road, Hilbert, Wisconsin. Although the mailing address is in Hilbert, the parcel is actually located in the Town of Chilton. (Commission file.)

2. CSE submitted a timely request to the Wisconsin Department of Revenue (the “Department”) seeking assessment in 2023 as a manufacturer pursuant to Wis. Stat. § 70.995. This request was initially denied by letter on March 23, 2023. CSE timely appealed the 2023 denial by filing an objection to the classification with the Department. (Commission file.)

3. On November 29, 2023, the Department issued a Notice of Classification Determination to CSE. (Commission file.)

4. On January 26, 2024, CSE timely filed a Petition for Review of the Notice of Classification Determination with the Tax Appeals Commission. (Commission file.)

EVIDENTIARY FACTS

5. The CSE facility at issue is described both as located on two parcels totaling approximately 157 acres and as a single building housing the equipment used to produce Renewable Natural Gas. (Affidavit of Don M. Millis (“Millis Aff.”), Ex. 2, p. 2.)

6. The building in question is identified by aerial photograph as a single building located along the northern border of a parcel identified as “Holsum Inc

5055.” The CSE facility building is just south of several buildings located on an adjacent parcel identified as “Holsum Inc 5053” and appears accessible by way of a driveway located on Holsum Inc 5053. (Millis Aff., Ex. 2, p. 3.)

7. Holsum Inc 5053 appears to be a dairy farm and does not appear to include any part of the CSE facility, but the aerial photograph is not absolutely clear on that point. (Millis Aff., Ex. 2, p. 3.)

8. Renewable Natural Gas, sometimes called RNG, is a term used to describe substances that can be used in place of fossil fuel natural gas in a number of different applications. It does not have a precise scientific or legal definition. (Department Brief, filed Sept. 22, 2025, citing Landfill Methane Outreach Program, *Renewable Natural Gas*, U.S. Environmental Protection Agency, <https://www.epa.gov/lmop/renewable-natural-gas> (last visited Jan. 22, 2026)).

9. CSE’s business is to take “biogas” created by dairy cow manure on an adjacent dairy farm that is owned by a related entity, and to convert it into RNG which it subsequently offloads into a natural gas pipeline. (Millis Aff., Ex. 2, p. 14.)

10. The first step of the process which takes place at the CSE facility is that biogas enters the facility via pipe, directly from the adjacent agricultural operation’s “digesters.” (Millis Aff., Ex. 2, p. 8.)

11. After entering the CSE facility, the biogas is compressed by a feed gas compressor, which reduces its volume and increases the pressure under which the biogas travels throughout the facility. The compressor also includes activated carbon

filters that remove various particulates, some otherwise volatile compounds, and moisture. (Millis Aff., Ex. 2, p. 10 and Ex. 3, p. 1, §2.)

12. After leaving the feed gas compressor, the biogas enters the membrane skid, which performs two functions. First, it divides the biogas into methane (CH₄), carbon dioxide (CO₂), and hydrogen sulfide (H₂S), sending waste chemicals (such as CO₂ and H₂S) to a thermal oxidizer. Second, the methane resulting from the first step is processed and refined, removing final waste chemicals. (Millis Aff., Ex. 2, pp. 11-12.)

13. The second step of the membrane skid process is sometimes referred to as "methane polishing." Waste identified in that step is sent back to stage one to capture any CH₄ that was missed, and the rest of the compound is sent to the thermal oxidizer. When this step is completed, the resulting compound is nearly pure (98%) CH₄ that has nearly finished the conversion process into RNG. (Millis Aff. Ex. 3 p. 1, §3b.)

14. After leaving the membrane skid, the gas enters a gas drier, which scrubs harmful moisture from the gas. This prevents pipeline corrosion and optimizes the final product to be cleaner and more efficient. (Millis Aff., Ex. 2, p. 12 and Ex. 3 p. 1, §4.)

15. The gas drier reduces the volume of the gas from approximately 60 pounds per million cubic feet to approximately 4 or fewer pounds per million cubic feet. (Millis Aff. Ex. 3., p. 2, §4a.)

16. After leaving the gas drier, the gas passes through gas analyzers to confirm that it is made up of appropriate percentages of various chemical compounds

(including methane, CO₂, nitrogen, oxygen, and hydrogen sulfide). The “therm/BTUs” of the gas is also measured. Only after passing the tests run by the gas analyzers can the gas be considered RNG. (Millis Aff., Ex. 2, p. 13.)

17. After passing the gas analyzer tests, the gas is passed through a gas compressor to ensure that it can be effectively transported, stored, and offloaded into the pipeline that delivers CSE’s RNG to its customers. (Millis Aff., Ex. 2, p. 14.)

18. The final step before leaving the CSE facility is that the gas is run through a Coriolis meter. This is used for various final checks. (Millis Aff., Ex. 2, p. 16.)

19. At the end of this process, CSE inserts the RNG into a pipeline owned by an unrelated entity called ONEOK. (Millis Aff., Ex. 3, p. 3.)

20. CSE accepts RNG from four other local producers and enters that into the pipeline with less processing. (Millis Aff., Ex. 2, p. 8.)

21. At the time the RNG is entered into the pipeline, ownership is transferred to an entity called US Gain, which is CSE’s customer. US Gain sells the RNG for Low Carbon Fuel Credits in California. (Millis Aff., Ex. 3, p. 3.)

The record is not clear as to whether the CSE facility building where the biogas processing takes place is located entirely on the parcel identified by aerial photograph as Holsum Inc 5055 or if the building straddles the border of that parcel and the one identified as Holsum Inc 5053. This decision is limited to whether or not the building where the biogas processing takes place should be classified as a manufacturing facility.

APPLICABLE LAW

Formatting Note: Ordinarily the Commission's practice is to format quotations within this section of our decisions with traditional margins inset an additional inch from body of the text. These quotations are so lengthy that we are instead only adjusting the margins one half of an inch from the left margin and not at all on the right. We believe the extensive quotations, particularly from the Standard Industrial Classification Manual, as referenced in Wis. Stat. § 70.995(2), are necessary to the understanding and resolution of this matter.

Wis. Stat. § 70.995

State assessment of manufacturing property.

(1)

(a) In this section "manufacturing property" includes all real property, as defined in s. 70.03, in this state, used in manufacturing, assembling, processing, fabricating, making, or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities, and office structures in this state when the predominant use of the warehouses, storage facilities, or offices is in support of the manufacturing property. Establishments engaged in assembling component parts of manufactured products are considered manufacturing establishments if the new product is neither a structure nor other fixed improvement. Materials processed by a manufacturing establishment include products of agriculture, forestry, fishing, mining, and quarrying. For the purposes of this section, establishments which engage in mining metalliferous minerals are considered manufacturing establishments.

(b) Materials used by a manufacturing establishment may be purchased directly from producers, obtained through customary trade channels or secured without recourse to the market by transfer from one establishment to another under the same ownership. Manufacturing production is usually carried on for the wholesale market, for interplant transfer or to order for industrial users rather than for direct sale to a domestic consumer.

...

(d) Except for the activities under sub. (2), activities not classified as manufacturing in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget are not manufacturing for this section.

(2)

In addition to the criteria set forth in sub. (1), property shall be deemed prima facie manufacturing property and eligible for assessment under this section if it is included in one of the following major group classifications set forth in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget. For the purposes of this section, any other property described in this subsection shall also be deemed manufacturing property and eligible for assessment under this section:

...

(k) 28 – Chemicals and allied products.

(L) 29 – Petroleum refining and related industries.

...

(3)

For purposes of subs. (1) and (2) “manufacturing, assembling, processing, fabricating, making or milling” includes the entire productive process and includes such activities as the storage of raw materials, the movement thereof to the first operation thereon, and the packaging, bottling, crating or similar preparation of products for shipment.

Wisconsin Property Assessment Manual (2023)

Chapter 18: Manufacturing and Utility Assessment

Not Specifically Mentioned by Law or the SIC Manual

Sec. 70.995, Wis. Stats., and SIC Manual may not cover every type of business in existence. For those not mentioned in either place, the criteria and general definitions included in secs. 70.995(1)(a) and (b), Wis. Stats., shall be considered, which include: [quotes §§ 70.995(1)(a) and (b)] (WPAM 18-8)

Three questions that should be asked to apply these criteria are:

1. Is the activity more similar to those specifically classified manufacturing by law and the SIC Manual, or more similar to those specifically classified nonmanufacturing by law and the SIC Manual?

2. Is the activity more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials, or is it more aligned with the general activities involved with services as generally described in the SIC Manual, wholesale trade, retail trade, agriculture, or construction?

3. Does the activity produce products more for wholesalers, interplant transfer, to order for industrial users or more for direct sale to domestic consumers?

(WPAM 18-9)

Multiple Activities Are Not Separate and Distinct

The SIC Manual classifies establishments by their primary activity. Principal product produced or distributed, or services rendered determines primary activity. (WPAM 18-11)

Standard Industrial Classification Manual (1987)² ("SIC Manual")

Division D: Manufacturing

The manufacturing division includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products. These establishments are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement. Also included is the blending of materials, such as lubricating oils, plastics resins, or liquors.

The materials processed by manufacturing establishments include products of agriculture, forestry, fishing, mining, and quarrying as well as products of other manufacturing establishments. The new product of a manufacturing establishment may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become a raw material for an establishment engaged in further manufacturing. For example, the product of the copper smelter is the raw material used in electrolytic refineries; refined copper is the raw material used by copper wire mills; and copper wire is the raw material used by certain electrical equipment manufacturers.

The materials used by manufacturing establishments may be purchased directly from producers, obtained through customary trade channels, or secured without recourse to the market by transferring the product from one establishment to another which is under the same ownership. Manufacturing production is usually carried on for the wholesale market, for interplant transfer, or to order for industrial users, rather than for direct sale to the domestic consumer.

There are numerous borderline cases between manufacturing and other divisions of the classification system. Specific instances will be found in the descriptions of the individual industries. The following activities, although not always considered as manufacturing, are so classified:

- Milk bottling and pasteurizing;
- Fresh fish packaging (oyster shucking, fish filleting);
- Apparel jobbing (assigning of materials to contract factories or shops for

² The SIC Manual is organized taxonomically by Division, Major Code, and Industry Grouping. We have followed the SIC structure in organizing these excerpts. All quotations are from <https://www.osha.gov/data/sic-manual> which is explained in detail here <https://guides.loc.gov/industry-research/classification-sic> (Last visited Jan. 22, 2026).

fabrication or other contract operations) as well as contracting on materials owned by others;

- Publishing;
- Ready-mixed concrete production;
- Leather converting;
- Logging;
- Wood preserving;
- Various service industries to the manufacturing trade, such as typesetting, engraving, plate printing, and preparing electrotyping and stereotype plates, but not blueprinting or photocopying services;
- Electroplating, plating, metal heat treating, and polishing for the trade;
- Lapidary work for the trade;
- Fabricating of signs and advertising displays.

There are also some manufacturing-type activities performed by establishments which are primarily engaged in activities covered by other divisions, and are, thus, not classified as manufacturing. A few of the more important examples are:

Agriculture, Forestry, and Fishing. Processing on farms is not considered manufacturing if the raw materials are grown on the farm and if the manufacturing activities are on a small scale without the extensive use of paid labor. Other exclusions are threshing and cotton ginning.

Mining. The dressing and beneficiating of ores; the breaking, washing, and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel, and nonmetallic chemical and fertilizer minerals other than barite are classified in Mining.

Construction. Fabricating operations performed at the site of construction by contractors are not considered manufacturing, but the prefabrication of sheet metal, concrete, and terrazzo products and similar construction materials is included in the Manufacturing Division.

Wholesale and Retail Trade. Establishments engaged in the following types of operations are included in Wholesale or Retail Trade: cutting and selling purchased carcasses; preparing feed at grain elevators and farm supply stores; stemming leaf tobacco at wholesale establishments; and production of wiping rags. The breaking of bulk and redistribution in smaller lots, including packaging, repackaging, or bottling products, such as liquors or chemicals, is also classified as Wholesale or Retail Trade. Also included in Retail Trade are establishments primarily engaged in selling, to the general public, products produced on the same premises from which they are sold, such as bakeries, candy stores, ice cream parlors, and custom tailors.

Services. Tire retreading and rebuilding, sign painting and lettering shops, computer software production, and the production of motion picture films

(including video tapes) are classified in Services. Most repair activities are classified as Services. However, some repair activity such as shipbuilding and boatbuilding and repair, the rebuilding of machinery and equipment on a factory basis, and machine shop repair are classified as manufacturing.

Major Code 28, Chemicals and Allied Products

This major group includes establishments producing basic chemicals, and establishments manufacturing products by predominantly chemical processes. Establishments classified in this major group manufacture three general classes of products: (1) basic chemicals, such as acids, alkalies, salts, and organic chemicals; (2) chemical products to be used in further manufacture, such as synthetic fibers, plastics materials, dry colors, and pigments; and (3) finished chemical products to be used for ultimate consumption, such as drugs, cosmetics, and soaps; or to be used as materials or supplies in other industries, such as paints, fertilizers, and explosives. The mining of natural alkalies and other natural potassium, sodium, and boron compounds, of natural rock salt, and of other natural chemicals and fertilizers are classified in Mining, Industry Group 147. Establishments primarily engaged in manufacturing nonferrous metals and high-percentage ferroalloys are classified in Major Group 33; those manufacturing silicon carbide are classified in Major Group 32; those manufacturing baking powder, other leavening compounds, and starches are classified in Major Group 20; and those manufacturing artists' colors are classified in Major Group 39. Establishments primarily engaged in packaging, repackaging, and bottling of purchased chemical products, but not engaged in manufacturing chemicals and allied products, are classified in Wholesale or Retail Trade industries.

Industry Group 2813: Industrial Gases

Establishments primarily engaged in manufacturing industrial gases (including organic) for sale in compressed, liquid, and solid forms. Establishments primarily engaged in manufacturing fluorine and sulfur dioxide are classified in Industry 2819; those manufacturing household ammonia are classified in Industry 2842; those manufacturing other ammonia are classified in Industry 2873; those manufacturing chlorine are classified in Industry 2812; and those manufacturing fluorocarbon gases are classified in Industry 2869. Distributors of industrial gases and establishments primarily engaged in shipping liquid oxygen are classified in Wholesale Trade, Industry 5169.

- Acetylene
- Argon
- Carbon dioxide
- Dry ice (solid carbon dioxide)
- Gases, industrial: compressed, liquefied, or solid
- Helium

- Hydrogen
- Neon
- Nitrogen
- Nitrous oxide
- Oxygen, compressed and liquefied

Division E: Transportation, Communication, Electric, Gas, and Sanitary Services

This division includes establishments providing, to the general public or to other business enterprises, passenger and freight transportation, communications services, or electricity, gas, steam, water or sanitary services, and all establishments of the United States Postal Service.

...

Many of the industries are engaged in various related activities. For example, establishments of communications, pipeline, and utility enterprises include a variety of activities, such as power generation, pumping, transmission, and distribution. Establishments primarily engaged in such activities are all classified in this division. Establishments primarily engaged in new or replacement construction for establishments of these types of enterprises are classified as operating establishments in Division C, Construction. Locations engaged in activities such as sales of electric appliances to household consumers are classified in Division G, Retail Trade.

The establishments classified in this division furnish services to the general public or to other business enterprises; establishments which furnish similar services only to other establishments of the same enterprise are classified as auxiliary to the establishments or units of the enterprise which they serve. However, separate establishments primarily engaged in long-distance trucking, stevedoring, water transportation, or pipeline transportation are classified according to their activity and not as auxiliaries, even though they serve only establishments of the same enterprise.

Major Code 49: This major group includes establishments engaged in the generation, transmission, and/or distribution of electricity or gas or steam.

This major group includes establishments engaged in the generation, transmission, and/or distribution of electricity or gas or steam. Such establishments may be combinations of any of the above three services and also include other types of services, such as transportation, communications, and refrigeration. Water and irrigation systems, and sanitary systems engaged in the collection and disposal of garbage, sewage, and other wastes by means of destroying or processing materials, are also included. If one service of a combination system does not constitute 95 percent or more of revenues, the establishment should be classified as a combination in Industry Group 493, with the subgroup being determined by the major service supplied.

Industry Group 4925: Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Establishments engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas

Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Establishments engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas. Establishments distributing liquefied petroleum (LP) gas in steel containers are classified in Retail Trade, Industry 5984.

- Blue gas, carbureted: production and distribution
- Coke oven gas, production and distribution
- Coke ovens, by-product: operated for manufacture or distribution of
- Gas, mixed natural and manufactured: production and distribution
- Liquefied petroleum (LP) gas, distribution through mains
- Manufactured gas production and distribution
- Synthetic natural gas from naphtha, production and distribution

ANALYSIS

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

Assessments made by the Department are presumed to be correct, and the burden is on each petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

According to the Petition for Review, "Petitioner uses a step-by-step manufacturing process to convert dairy cow manure into clean and sustainable

renewable natural gas.” The Commission anticipated exploring this novel classification question, with intellectual interest in the underlying legal question.

We were surprised to discover that, while it *may* be accurate to say that a group of entities associated with CSE engage in a step-by-step process to convert dairy cow manure into clean and sustainable renewable natural gas, that is not the question before us.

The Millis Affidavit includes a description and photographs of *that* process. Careful reading of that Affidavit also makes clear that the initial process, including all of the steps in that process which involve converting dairy cow manure into a gas, takes place at a site which is not part of the real estate parcel whose classification is at issue pursuant to the petition before the Commission.

That other site is a dairy farm owned by a related entity, and the Commission can easily imagine a perspective from which the dairy and the building that is the subject of this petition function as a single operation spanning multiple parcels of land. That perspective, however valid, is not the perspective of property tax law in the State of Wisconsin. The physical and/or chemical processes taking place on the dairy farm are not properly before the Commission and cannot be part of this analysis.

The question before the Commission today is limited to whether or not the gas piped into the CSE building identified above, which becomes renewable natural gas through a process at Petitioner’s site, is processed in such a way that meets the definition of manufacturing under Wis. Stat. §§ 70.995(1) and (2).

CSE contends that the chemical changes that take place as a result of its processing of biogas produced by dairy cow manure into a renewable natural gas product that can be entered into a natural gas pipeline and used interchangeably with traditionally mined natural gas meets the definition of manufacturing under Wis. Stat. § 70.995(2)(k), which corresponds with SIC Manual Division D: Manufacturing, Major Code 28: Chemicals and Allied Products, Industry Group 2813: Industrial Gases, because, as its primary activity, it is “engaged in the manufacturing of industrial gases, including organic, for sale in compressed, liquid, and solid forms.”

The Department disagrees, arguing that instead this CSE facility is properly part of SIC Manual Division E: Transportation, Communication, Electric, Gas, and Sanitary Services, Major Code 49: Establishments engaged in the generation, transmission, and/or distribution of electricity or gas or steam, Industry Group 4925: Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Establishments engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas. The Department argues that CSE’s primary activity is as an “establishment engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas.”

Framework for Determination

This is not the first time the Commission has been asked to determine whether or not a commercial activity meets the definition of “manufacturing” under Wis. Stat. §§ 70.995(1) and (2), despite not being specifically listed therein nor being unambiguously part of an industry group listed in Manufacturing Division of the 1987

SIC Manual. Indeed, with industry classifications approaching 40 years of age, it would be surprising if we had not previously considered this question.

The Commission's leading cases in this area are *Zip Sort, Inc. v. Wis. Dept. of Revenue*, 634 N.W.2d 99, 247 Wis.2d 295 (2001) and *Wis. Dept. of Revenue v. A. Gagliano Co., Inc.*, 702 N.W.2d 834, 284 Wis.2d 741 (2005). Although Wis. Stat. § 70.995(1) has been amended since those decisions were issued, the amendment³ did not change the definition of manufacturing relative to those decisions nor to this analysis. Likewise, although the Wisconsin Property Assessment Manual is revised each year by the Department, the salient guidance, in the form of a series of questions, is exactly the same in the 2023 edition as it was when *Zip Sort* and *Gagliano* were decided. Therefore, we follow the Court of Appeals' framework for analysis as set forth in *Gagliano*:

The legal framework for analyzing whether property is "manufacturing property" for purposes of WIS. STAT. § 70.995 is set forth in *Zip Sort, Inc. v. DOR*. We first ask whether the activity in question fits "perfectly" into any of the categories specifically listed as manufacturing in the . . .SIC Manual or § 70.995(2). . . . If it does not, a second question is addressed: Does the activity nonetheless fit the general definition of manufacturing in § 70.995(1)? . . . Whether an activity is manufacturing under the general definition in § 70.995(1) may be resolved by reference to three questions set forth in the Wisconsin Property Assessment Manual (the assessment manual), a manual promulgated by the department.

Before the commission, the parties both argued that the commission should apply the three assessment manual

³ The primary change to the definition of manufacturing enacted by 2023 Wisc. Act 12 was to eliminate the taxation of personal property, although the definition of real property was also changed to align with Wis. Stat. § 70.03.

questions. Accordingly, the commission turned to the assessment manual questions:

1. Is the activity more similar to those specifically classified manufacturing by law and the SIC Manual, or more similar to those specifically classified nonmanufacturing by law and the SIC Manual?

2. Is the activity more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials, or is it more aligned with the general activities involved with services as generally described in the SIC Manual, wholesale trade, retail trade, agriculture, or construction?

3. Does the activity produce products more for wholesalers, interplant transfer, to order for industrial users or more for direct sale to domestic consumers?

(Internal citations and references omitted except as necessary for clarity.) 284 Wis.2d 741, 751-52 (2005), 2005 WI App 170, 702 N.W.2d 834.

While this appeal is before us on cross-motions for summary judgment and *Gagliano* was decided after an evidentiary hearing, here too both parties look to the three Assessment Manual questions to make their arguments, and that is where we will focus our analysis.

1. Is the activity more similar to those specifically classified manufacturing by law and the SIC Manual, or more similar to those specifically classified nonmanufacturing by law and the SIC Manual?

We will first review the Department's position, then CSE's, identifying strengths and weaknesses of both positions. We will also take a closer look at the SIC Manual's definitions of nonmanufacturing Division E and manufacturing Division D, beyond the specific industry groups that each party has argued for, to see if a less myopic

view could provide a clearer answer to the first question in the Wisconsin Property Assessment Manual.

The Department's Position

This nonmanufacturing classification, Division E: Communication, Electric, Gas, and Sanitary Service, is described as "establishments providing, to the general public or to other business enterprises, passenger and freight transportation, communications services, or electricity, gas, steam, water or sanitary services, and all establishments of the United States Postal Service." These are further noted as including activities "such as power generation, pumping, transmission, and distribution." Because CSE transmits and distributes the renewable natural gas into the pipeline, there is some similarity to this activity.

The Department identified the appropriate major group within Division E as 49: Electric, Gas, and Sanitary Services. The SIC Manual indicates that "[t]his major group includes establishments engaged in the generation, transmission, and/or distribution of electricity or gas or steam." This is further subdivided into a number of distinct industry groups. The Department's position is that the activity of filtering and compressing biogas into purified methane gas is most similar to the nonmanufacturing activity of Industry Group 4925, "Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Establishments engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas." The examples listed as activities of Industry Group 4925 are: Blue gas, carbureted: production and distribution, Coke oven gas, production and distribution, Coke ovens, by-product:

operated for manufacture or distribution of, Gas, mixed natural and manufactured: production and distribution, Liquefied petroleum (LP) gas, distribution through mains, Manufactured gas production and distribution, and Synthetic natural gas from naphtha, production and distribution.

The descriptive language of Major Group 49 the SIC Manual could be read to include the gas produced and distributed by CSE. CSE has stated that that it is engaged in the manufacture of gas for sale, and that the renewable natural gas it produces can be safely mixed with natural gas. Three of the bullet point examples modify the word gas with “manufactured” or “synthetic,” which might be appropriate to describe the methane renewable natural gas produced by CSE.

Liquefied petroleum gas distribution is obviously a quite different industry, but that is not necessarily disqualifying. The Assessment Manual asks us to determine to which category is CSE’s activity more similar. CSE’s activities may be more similar to other bulleted examples in the SIC Manual Industry Group 4925. They are all industries with products derived from mined crude oil, coal, or natural gas, but they have some elements in common with the activities of CSE.

Blue gas, carbureted, also known as carbureted water gas, is defined as “water gas enriched by mixing with hydrocarbon gases (as oil gas) of high fuel value.”⁴ The process by which it is created is described as “[t]he *carbureted water gas process* consists of enriching a form of coal gas, known as water gas (blue gas), to increase the heat

⁴ *Carbureted Water Gas*, Merriam-Webster, <https://merriamwebster.com/dictionary/carbureted%20water%20gas> (last visited Jan. 22, 2026).

content.”⁵ This process of enriching, or adding to, coal gas, seems to be almost the opposite of the process CSE uses. CSE removes the impurities and unwanted materials from the biogas in order to turn it into almost pure methane renewable natural gas.

The Merriam-Webster Collegiate Dictionary helpfully explains that coke is “the residue of coal left after destructive distillation and used as fuel, also a similar residue left by other materials (such as petroleum) distilled to dryness.”⁶ Coke oven gas, the other by-products of coke ovens, and the production and distribution of those things, are entirely produced through the burning of coal. The Code of Federal Regulations states, “*Coke oven gas* means the volatile constituents generated in the gaseous exhaust during the carbonization of bituminous coal to form coke.”⁷ This is further detailed as “The mixture of permanent gases produced by the carbonization of coal in a coke oven at temperatures in excess of 1,000 degrees Celsius,” by the online Glossary for the U.S. Energy Information Administration (“USEIA”).⁸ The more common by-products of coke ovens are “coal gas, tar, and a mixture of benzene, toluene, and xylenes (BTX).”⁹ Coal, coal residue, the superheated gases left behind by the carbonization of coal into coke, and the other coke oven byproducts are substantially different from both the biogas raw

⁵ *Gas Fuel Manufacture*, Science Direct, <https://sciencedirect.com/topics/engineering/gas-fuel-manufacture> (last visited Feb. 17, 2026).

⁶ *Coke*, Merriam-Webster's Collegiate Dictionary (12th ed. 2026).

⁷ 40 CFR § 60.41b (2007).

⁸ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=Coke> (last visited Jan. 27, 2026).

⁹ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=B> (last visited Jan. 27, 2026).

material used by CSE and the methane renewable natural gas left behind after the impurities have been removed.

As noted above, terms like “manufactured gas production and distribution” and “gas, mixed natural and manufactured: production and distribution” sound similar to what CSE says that it does. CSE says that it manufactures renewable natural gas, producing it and entering it into a distribution pipeline. In the pipeline the renewable natural gas mixes with natural gas. CSE also says that it sometimes takes renewable natural gas from other producers and mixes it into the pipeline. Upon closer examination, it becomes clear that “manufactured gas” is neither a synonym for, nor as imprecise as “renewable natural gas,” when used within the energy industry. Manufactured gas is defined by the USEIA as “A gas obtained by destructive distillation of coal or by the thermal decomposition of oil, or by the reaction of steam passing through a bed of heated coal or coke. Examples are coal gases, coke oven gases, producer gas, blast furnace gas, blue (water) gas, carbureted water gas.”¹⁰ This, like the other coal byproducts above, is very different from the process CSE uses to remove the impurities and unwanted materials from biogas in order to turn it into almost pure methane renewable natural gas.

The final industrial activity in this category is the production and distribution of synthetic natural gas from naphtha. Synthetic natural gas, also referred to as substitute natural gas, is similar to renewable natural gas as it is “[a] manufactured

¹⁰ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=M> (last visited Jan. 28, 2026).

product, chemically similar in most respects to natural gas, resulting from the conversion or reforming of hydrocarbons that may easily be substituted for or interchanged with pipeline-quality natural gas.”¹¹ However, both the phrases "resulting from the conversion or reforming of hydrocarbons" and the modifier "from naphtha" makes a difference in how similar the activities are. Naphtha is "[a] generic term applied to a refined or partially refined petroleum fraction with an approximate boiling range between 122 degrees and 400 degrees Fahrenheit.”¹² Not being chemists, these definitions left the Commission struggling to understand the contextual meanings of conversion, reform, and fraction. Merriam-Webster, unexpectedly, filled in where the USEIA left a gap, offering one definition of reform¹³ as “4a: to subject (hydrocarbons) to cracking b: to produce (gasoline, gas, etc.) by cracking.” The USEIA has no single definition of cracking, but defines catalytic cracking¹⁴, catalytic hydrocracking¹⁵, fluid catalytic cracking¹⁶, and thermal cracking¹⁷, all of which involve breaking down hydrocarbons in order to turn crude oil into gasoline or another lighter weight fuel, except thermal cracking which it defines as applying to both oil and coal-derived fuels.

¹¹ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=S> (last visited Jan. 28, 2026).

¹² U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=N> (last visited Jan. 28, 2026).

¹³ *Reform*, Merriam-Webster's Collegiate Dictionary (12th ed. 2026).

¹⁴ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=C> (last visited Jan. 28, 2026).

¹⁵ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=C> (last visited Jan. 28, 2026).

¹⁶ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=F> (last visited Jan. 28, 2026).

¹⁷ U.S. Energy Information Administration, *Glossary*, <https://www.eia.gov/tools/glossary/index.php?id=T> (last visited Jan. 28, 2026).

Although the end result products, synthetic natural gas and renewable natural gas, are chemically the same, or very similar, the process by which naphtha is converted to synthetic natural gas is substantially different from the process CSE uses to remove the impurities and unwanted materials from biogas in order to turn it into almost pure methane renewable natural gas.

CSE's Position

CSE argues that its activities are most like those of SIC Manual Manufacturing Division; Major Code 28: Chemicals and Allied Products; and Industry Group 2813, Industrial Gases. Manufacturers of Industrial Gases are described in the SIC Manual as "Establishments primarily engaged in manufacturing industrial gases (including organic) for sale in compressed, liquid, and solid forms." The list of eleven example products manufactured under this category are: acetylene; argon; carbon dioxide; dry ice (solid carbon dioxide); gases, industrial: compressed, liquefied, or solid; helium; hydrogen; neon; nitrogen; nitrous oxide; and oxygen, compressed and liquefied.

The language in the description of Industrial Gases is facially similar to what CSE says it does. CSE processes a raw gas into a purified RNG for sale in a compressed form. It is less clear whether or not that is an "industrial gas," but that industrial activity may be similar to CSE's activity. There is no evidence in the record describing the processes used by companies in the industrial gas industry to produce their gases. Those processes are not defined in a federal gas industry administration

glossary, and Merriam-Webster¹⁸ has no definition of “industrial gas” which could point us towards understanding. Therefore, we cannot focus on the process by which industrial gases are produced to find similarity.

And although there are not clear dictionary or federal government definitions of “industrial gases,” there are some commonly accepted industry meanings. The Federal Reserve Producer Price Index, for example, tracks the industry “Industrial Gas Manufacturing”¹⁹ as well as specific industry subcategories²⁰ argon and hydrogen; nitrogen; carbon dioxide; oxygen; other industrial gases including fluorocarbon and acetylene; and primary products. Fortune Business Insights, which describes industries and their anticipated global demand and challenges over the next five years, also specifically identifies oxygen, nitrogen, carbon dioxide, hydrogen, and argon in its report on the industrial gas industry.²¹ Its description of the market of the industrial gas

¹⁸ There was also no definition of industrial gas in the Oxford English Dictionary, at oed.com, or in Dictionary.com (last searched Feb. 9, 2026).

¹⁹ U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU325120325120> (last visited Jan. 14, 2026)

²⁰ U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing: Argon and Hydrogen*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU325120325120C> (last visited Jan. 14, 2026); U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing: Nitrogen*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU3251203251207> (last visited Jan. 14, 2026); U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing: Carbon Dioxide*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU3251203251204> (last visited Jan. 14, 2026); U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing: Oxygen*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU325120325120A> (last visited Jan. 14, 2026); U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing: Primary Products*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU325120325120P> (last visited Jan. 14, 2026); and U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Industrial Gas Manufacturing: Other Industrial Gases (Including Fluorocarbon and Acetylene)*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PCU325120325120T> (last visited Jan. 14, 2026).

²¹ Fortune Business Insights, *Industrial Gases Market Size, Share & Industry Analysis, By Gas Type (Oxygen, Nitrogen, Carbon Dioxide, Hydrogen, Argon, and Others), By Application (Packaging, Coolant, Carbonation, Cryogenic, Cutting & Welding, Laboratory, Air Separation, and Others), By End-User (Metallurgy, Healthcare,*

industry, based on gas type, application, and end user, looks quite different from CSE's gas type, applications, and market:

Based on gas type, the market is segmented into oxygen, nitrogen, carbon dioxide, hydrogen, argon, and others. In terms of application, the market is segmented into packaging, coolant, carbonation, cryogenic, cutting & welding, laboratory, and air separation, and others. In terms of end-users, the market is segmented into healthcare, food and beverage, oil & gas, chemical, power, metallurgy, electronics, mining, pulp and paper, water treatment, and others. . . . The chemical industry utilizes industrial gases as raw materials, process enablers, and for safety purposes.²²

The gases followed by Fortune Business Insights and the Federal Reserve Producer Price Index have substantial overlap with the SIC Manual Industry Group 2813. While the industry may have evolved since 1987 when the manual was published, it is identifiably the same industrial gas industry. The industrial gas industry is quite different from the renewable energy industry. CSE is part of an emerging segment of the renewable energy industry, and it is in the business of processing, filtering, and compressing biogas into methane in a form and degree of purity and density that allows it to be sold by way of a natural gas pipeline. The gas it processes and compresses bears no resemblance to the gases created and sold by the industrial gas industry. It is not used in packaging, as a

Chemical, Food and beverage, Oil & Gas, Power Pulp and Paper, Electronics, Water Treatment, Mining, and Others), and Regional Forecast, 2026-2034, <https://www.fortunebusinessinsights.com/industry-reports/industrial-gases-market-101728> (last visited Jan. 12, 2026).

²² Fortune Business Insights, *Industrial Gases Market Size, Share & Industry Analysis, By Gas Type (Oxygen, Nitrogen, Carbon Dioxide, Hydrogen, Argon, and Others), By Application (Packaging, Coolant, Carbonation, Cryogenic, Cutting & Welding, Laboratory, Air Separation, and Others), By End-User (Metallurgy, Healthcare, Chemical, Food and beverage, Oil & Gas, Power Pulp and Paper, Electronics, Water Treatment, Mining, and Others), and Regional Forecast, 2026-2034, <https://www.fortunebusinessinsights.com/industry-reports/industrial-gases-market-101728> (last visited Jan. 12, 2026).*

coolant, for cryogenic, cutting, welding, laboratory, carbonation, metallurgy, electronics, mining, pulp, paper, chemical, health care, or food and beverage purposes.

CSE's activities are not similar to those engaged in by Group 2813, Industrial Gases, as asserted by Petitioner. CSE's activities are also not similar to those engaged in by Industry Group 4925, "Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Establishments engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas," as claimed by the Department.

Just because the activities of the petitioner are not similar to a specific industry group within the SIC Manual is not the end of the inquiry into the Assessment Manual's first question. The language of the question asks if the activities are more similar to those "specifically classified manufacturing" or "specifically classified nonmanufacturing" by law and the SIC Manual. It does not ask to which industry group within the SIC Manual they are most similar.

To answer the question asked in the Assessment Manual, we must consider what CSE's activities are. CSE begins with a gaseous raw material containing both desirable content, methane, and undesirable waste content. Using a physical process, it removes the undesirable waste content, tests the material, and repeats this refinement process again until the final product is approximately 98% pure methane.

CSE then dries the gas and compresses it until those qualities are also compatible with the needs of the customer. When the gas is sufficiently pure, dry, and

compressed, it is transferred into a pipeline and eventually sold by a third party for Low Carbon Fuel Credits.

The SIC Manual Definition of "Manufacturing"

The SIC Manual Division D begins by defining Manufacturing such that it "includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products." It continues, noting that the "materials processed by manufacturing establishments include products of agriculture" and that the new product "may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become a raw material for an establishment engaged in further manufacturing."

With 20 Major Groups that include materials and goods from food, tobacco, textiles, apparel, furniture, chemicals, petroleum, rubber, plastic, leather, stone, clay, glass, metals, to optical, measuring, and computer equipment, it is clear that the Manufacturing Division of the SIC Manual takes a broad view of what it means to mechanically or chemically transform materials into new products. Indeed, the description notes that manufacturing includes refining a raw material such as smelting copper ore, using that refined copper as a raw material to manufacture copper wire, and even subsequently using the copper wire to manufacture electronics.

Division D: Manufacturing uses the terms "refineries" and "refined" only as an example within the definition; however, within Division D there are five industry groups substantially focused on the activity of refining. There are more than a dozen additional industry groups that explicitly include the activity of refining, including: 2911

Petroleum Refining; 2062: Cane Sugar Refining; 3341: Secondary Smelting and Refining of Nonferrous Metals; 3339: Primary Smelting and Refining of Nonferrous Metals Except Copper and Aluminum; 3341: Secondary Smelting and Refining of Nonferrous Metals; 2079: Shortening, Table Oils, Margarine, and Other Edible Fats and Oils Not Elsewhere Classified; 2046: Wet Corn Milling; 2819: Industrial Inorganic Chemicals Not Elsewhere Classified; 2869: Industrial Organic Chemicals Not Elsewhere Classified; 2899: Chemicals and Chemical Preparations Not Elsewhere Classified; 2833: Medicinal Chemicals and Botanical Products; 2841: Soap and Other Detergents, Except Specialty Cleaners; and 3295: Minerals and Earth, Ground or Otherwise Treated. It is clear from the combination of the example language in the Division D definition and the many specific industries listed above that the activity of refining is specifically classified as manufacturing by law and the SIC Manual.

Although only one portion of one step of CSE's activities is described using the word "refined," the process as a whole – beginning with biogas using activated carbon filters to remove particulates, otherwise volatile compounds, and moisture; filtering it through a membrane skid that divides the biogas into methane (CH₄), carbon dioxide (CO₂), and hydrogen sulfide (H₂S); and treating the methane resulting from the previous step again to remove more waste chemicals, resulting in a 98% pure methane gas – is similar to Merriam-Webster's definition of refine: "to free (as metal, sugar, or oil) from impurities or unwanted material."²³

²³ *Refine*, Merriam-Webster's Collegiate Dictionary, (12th ed. 2026). The USEIA does not include a definition of refine or refining, though it has many definitions related to refineries and refined products in the coal

CSE's activities of removing impurities and unwanted materials from biogas and otherwise compressing and treating it until it becomes a saleable product of nearly pure methane renewable natural gas are similar to these activities of refining specifically classified manufacturing by law and the SIC Manual and are similar to those activities of other manufacturing entities engaged in removing impurities and unwanted materials until they are saleable final products such as copper, petroleum, cane sugar, other metals, other edible oils, and the numerous others listed above.

The SIC Manual "Nonmanufacturing"

The Department focused on an industry group within SIC Manual Division E: Transportation, Communications, Electric, Gas, and Sanitary Services, so our inquiry into how similar CSE's activities are to nonmanufacturing activities begins there.

Division E includes "establishments providing, to the general public or to other business enterprises, passenger and freight transportation, communications services, or electricity, gas, steam, water or sanitary services, and all establishments of the United States Postal Service." Division E contains fewer major groups than Division D and is limited to groups such as rail transportation, air transportation, water transportation, freight transportation, local, suburban, and interurban transportation, transportation services, as well as the US Postal Service ("USPS"), pipelines other than for natural gas, communications, and electric, gas, and sanitation services.

and oil industries. (Last searched Feb. 16, 2026.)

The largest group of these are transportation industries. The USPS, while not technically a transportation industry, depends upon and works closely with many of those other transportation industries. So does the heading of sanitation services, which includes oil spill cleanup, the vacuuming of airport runways, the disposal of hazardous waste, and waste at sea. In 1987, when the SIC Manual was published, the communications, electric, gas, and oil industries were also still far more federally regulated and would not have seemed the strange bedfellows they initially appear in 2026. The industries listed within the communications group are radiotelephone, telephone, telegraph, radio, television, cable,²⁴ and other, including cab dispatch radios, satellites for tracking missiles, and radar station operations.

The activities specifically classified as Division E nonmanufacturing enterprise activities by the SIC Manual are not at all similar to CSE's activities. CSE's activities are more similar to the activities specifically classified by the SIC Manual as Division D manufacturing.

²⁴ It is worth noting that Division E is probably where the commercial internet would belong, which also did not yet exist in 1987. There is no obvious industry group where the internet fits; most likely cable or telephone. This is relevant only insofar as it shows both the difficulty of squeezing industries emerging in the 2020s into definitions written in the 1980s, and how far the activities of any of the Division E industries are from the work done by CSE.

2. Is the activity more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials, or is it more aligned with the general activities involved with services as generally described in the SIC Manual, wholesale trade, retail trade, agriculture, or construction?

The second question in the Assessment Manual focuses on the specific activities undertaken, and whether they are more like traditional manufacturing activities, or more like activities that may be similar to manufacturing but are not so classified under Wisconsin law.

The language of the first portion of question two, “producing, assembling, fabricating, making or milling,” closely tracks the language defining manufacturing under Wis. Stat. 70.995(1)(a), which includes “assembling, processing, fabricating, making, or milling.” The next section, “by machinery and equipment of a new article with a different form, use and name from existing materials,” is somewhat similar to the SIC Manual description of the Division of Manufacturing, which includes the phrase, “the mechanical or chemical transformation of materials or substances into new products” in its first paragraph.

The same section of the SIC Manual also clarifies what “manufacturing-type” activities are not classified as manufacturing, which tracks the language of this question in excluding some activities that are instead considered “wholesale trade, retail trade, agriculture, or construction.” The Assessment Manual adds the requirement that the new item be named something different from the raw materials.

CSE does not assemble, fabricate, or mill, but it does process an existing material, biogas, by machinery and equipment, making it into RNG, which can be safely transferred into a natural gas pipeline and sold as natural gas.

The activity conducted by CSE in this facility is not aligned at all with the SIC Manual exclusions for wholesale and retail trade or construction. However, the agricultural exclusion may be at issue here. That reads, "Processing on farms is not considered manufacturing if the raw materials are grown on the farm and if the manufacturing activities are on a small scale without the extensive use of paid labor." In this case, the processing does not precisely take place on a farm, although it is farm-adjacent. The raw materials are not "grown" on the farm, but that is where the biogas is produced. The scale of production and the question of paid labor are not clear from the record.

The other potentially ambiguous answer is whether or not the activity is aligned with producing a new article with a different form. On the one hand, the activity involves taking one form of gas and turning it into another form of gas. On the other hand, the raw material is biogas, a gaseous substance that has been only minimally processed prior to arrival at the facility. At the end of the process, what remains is a nearly pure methane gas that can safely be introduced into a natural gas pipeline. In addition to being filtered and tested, the gas is also dried and compressed into a much more dense gaseous substance than it was when it arrived. The original materials are of substantially

more limited utility than the renewable natural gas and have correspondingly less financial value.

On the whole, CSE's activities are much more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials, than they are with the activities of wholesale or retail trade, agriculture, or construction. CSE takes an existing material, minimally processed biogas, and using machinery and equipment makes it into a new article with a new name, refined, nearly pure, methane, also known as renewable natural gas, in a different form, compressed and dried such that it can be safely entered into a pipeline and used interchangeably with natural gas. CSE also satisfies the requirement that the new product have a new name by beginning its process with biogas and ending it with renewable natural gas, which it calls RNG.

3. Does the activity produce products more for wholesalers, interplant transfer, to order for industrial users or more for direct sale to domestic consumers?

The third and final question the Assessment Manual directs us to consider boils down to "who is the customer?" CSE does not make direct sales to domestic customers. CSE's customer is a company called US Gain, which resells the renewable natural gas in exchange for Low Carbon Fuel Standards Credits. This arrangement is more like selling a product to a wholesaler than to either an industrial user or directly to a domestic consumer. CSE meets this requirement as well.

CONCLUSION

CSE met its initial burden of showing that the Department's determination that CSE's business processes falls into the nonmanufacturing standard industrial code of Division E: Transportation, Communication, Electric, Gas, and Sanitary Services, SIC code 4925 Mixed, Manufactured, or Liquified Petroleum Gas Production was incorrect.

In analyzing the three questions set forth by the Court of Appeals in *Gagliano* and in the Assessment Manual, we conclude that CSE was correct. First, CSE's activities are more similar to those specifically classified manufacturing by law and the SIC Manual Division D than to those specifically classified nonmanufacturing by law and the SIC Manual, although CSE was not correct that its activities are similar to SIC code 2813 Industrial Gases. Second, CSE was correct that its activity is more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials than it is with the general activities involved with services as generally described in the SIC Manual, wholesale trade, retail trade, agriculture, or construction. CSE's activity, specifically, is closely aligned with the general description of "makes and produces, by machinery and equipment, a new article with a different form, use, and name, from existing materials." And third, CSE was correct that its activity produces products more for wholesalers than for direct sale to domestic consumers.

Following the framework set forth above and by the *Gagliano* court, we conclude that CSE's commercial activity meets the definition of manufacturing under Wis. Stat. §§ 70.995(1) and (2), despite not being specifically listed therein nor being

unambiguously part of an industry group listed under Division D: Manufacturing of the 1987 SIC Manual.

CONCLUSION OF LAW

1. Calumet Sustainable Energy’s activities of filtration, drying, compressing, testing, and treating biogas until it is refined into 98% pure methane gas, also known as renewable natural gas, are a manufacturing activity under Division D: Manufacturing of the 1987 SIC Manual and Wis. Stat. §§ 70.995(1) and (2).

ORDER

The Department’s Motion for Summary Judgment is denied.

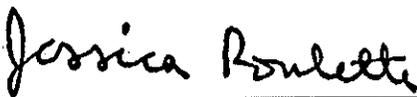
The Petitioner’s Motion for Summary Judgment is granted.

Dated at Madison, Wisconsin, this 18th day of February, 2026.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES
ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE
NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.