Appeal No. VA88/0/011 & 263

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Irish Oil Refining Plc **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Oil Refinery situated in the townland of Corkbeg and Electoral Division of Corkbeg of which the rated occupier is Irish Refining Plc, held in fee simple, Co. Cork

B E F O R E

Hugh J O'Flaherty	**S.C. Chairman**
Paul Butler	**Barrister**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF NOVEMBER, 1989

By notice of appeal dated 10th August, 1988, Barry M. O'Meara and Son Solicitors on behalf of Irish Oil Refining Plc appealed against the revised rateable valuation of £23,281.50 on the above described hereditaments on the following grounds:

1. That the rateable valuation of £23,821.50 is excessive and inequitable, and bad in law.

2. That the rateable valuation is bad in law in that it was arbitrarily fixed without reference to established law and practice and contrary to natural justice, inasmuch as that, in fixing the rateable valuation of £23,821.50 in question, the fundamental changes which had occurred were ignored, consideration of which changes were essential to the determination of a uniform valuation as statutorily defined and directed for the subject.

3. That, in fixing the said valuation, the Commissioner of Valuation erred in law in failing to have any or any proper regard to the following:

(a) that the subject was offered for sale on the open marked and purchased by the Irish Government as a going concern in an "arms-length" transaction for the sum of £6 million, in October 1982.

(b) that in or about the year of 1982, in the same district electoral division as the subject, the Trabolgan Holiday Centre, owned and occupied by Trabolgan Homes Limited, was extended and developed at a cost of £13.5 million in addition to the cost of purchase to that company of the existing holiday centre and lands, and that a revised valuation of £2,208.00 was affixed by the Commissioner of Valuation for the said Trabolgan Holiday Centre so extended as aforesaid.

4. That there were no changed circumstances which entitled the Commissioner of Valuation to alter, amend or revise the valuation of the subject fixed by the Circuit Court in 1984 and 1985 and adopted and affirmed by him in August, 1986.

5. That the said rateable valuation is bad in law in that rateable valuations have been allotted or attributed to items which are not rateable hereditaments or, alternatively, in

arriving at the net annual value, the Commissioner of Valuation has erred in law in including therein the value or values of items which are not rateable hereditaments.

6. That the Commissioner of Valuation erred in law in valuing or including in the rateable valuation or assigning an annual value or a rateable valuation to non- rateable plant and machinery, which must be excluded from the valuation, pursuant to Section 7 of the Rateable Property Ireland (Amendment) Act, 1860, as amended by Sect. 8 (1) of the Valuation Act, 1986.

7. That, without prejudice to the generality of the forgoing, the Commissioner of Valuation erred in law in valuing or assigning an annual value or a rateable valuation to hereditaments and/or tenements which are not within the subject, and including the same in the valuation.

By Notice of Appeal dated the 23rd August, 1988, the Secretary of Cork County Council appealed against the decision of the Commissioner of Valuation in respect of the above mentioned hereditaments and the grounds of appeal were stated to be:

> failure to adequately revise, increase and update to current levels the valuation of the oil refinery and grounds and to value commercially developed lands as such and to take account of the 1986 Act.

The hearing took place in two stages; there was an initial hearing in Dublin lasting 2 days and there was a resumed hearing in Cork. Prior to the first hearing, Donal O'Buachalla & Company Limited of 86 Merrion Square South, Dublin 2, Valuers, Rating and Property Consultants, had presented a written submission on the 5th July, 1989 and that had included, also, a precis of the evidence that would be given by Mr. P.J. Goggin, head of Engineering of

the Appellant Company and by Mr. John Byrne, Company Secretary; Mr. Frank O'Donnell of Frank O'Donnell and Company, Valuation, Rating and Property Consultants of 9 Upper Fitzwilliam Street, Dublin 2, on behalf of Cork County Council, handed in a precis of his evidence dated the 5th July, 1989 and Mr. P.J. Kyne, on behalf of the Commissioner had presented his written precis of evidence on the 19th June, 1989. All these precis formed part of the record of the proceedings.

Between the initial hearing and the resumed hearing, as a result of a suggestion made to the parties, there was a conference between the valuers and a measure of agreement was reached and what was not agreed was left for the determination of the Tribunal.

It is convenient, therefore, to set out at this stage the Tribunal's understanding of what was agreed (with the necessary qualifications) and what was left to be decided by the Tribunal. The following is the summary of the position. It should be stated that the reference to the various letters of the alphabet on the left hand side relate to P.20 of Mr. O'Donnell's initial precis which was thought by the Tribunal to have the most succinct summary prior to the first hearing:

Description			Valuation
A	-	Buildings	£ 1,330
B&C	-	Main process area (developed land) & roads - 40,000 s.m.	£ 1,200
D	-	Concrete staging	£ 260
E	-	Storage compound	£ 100
F	-	Skimming ponds & collecting basin	£ 400
G	-	Horse power	£ 370
J&L	-	Pipes, pipe racks and supports	£ 850

M - Jetty - it was agreed that the jetty was excluded from this valuation.

H&I - Boilers & furnaces/Process heaters £ 460

The boilers and furnaces were agreed between Donal O'Buachalla and Frank O'Donnell. Mr. Kyne felt it necessary to refer back to the Commissioner of Valuation before agreeing on this point.

K - Tanks £18,400

The tanks were agreed between Frank O'Donnell and P.J. Kyne. This figure was not agreed by Donal O'Buachalla.

The qualifications that have to be made are that, of course, Irish Refining Plc. did not agree that the tanks, the skimming ponds and the collecting basin were rateable at all; Mr. O'Buachalla stated, at the resumed hearing, that while he agreed the valuation of the buildings and the storage compound at the figures mentioned above, nonetheless, he felt that there should be a further " discount" on the basis of a concept which he described as "diminished utilisation". It should be explained, too, that what Mr. O'Donnell and Mr. Kyne referred to as "furnaces", Mr. O'Buachalla and his witnesses would refer to as "process heaters". It emerged at the resumed hearing that Mr. Kyne on behalf of the Commissioner was not able to agree the valuation of the furnaces/process heaters which had been agreed between Mr. O'Buachalla and Mr. O'Donnell.

It should be clear, therefore, that the matters left for resolution by the Tribunal can be stated as follows:-

(a) Are the furnaces/process heaters and all or any of the tanks (with the exception of 5 tanks which it is conceded are rateable) rateable?

(b) What rateable valuation is to be placed on the hereditament and, incidentally, is there a concept of a reduction for "diminished utilisation"? This latter relates to the use of the buildings and storage compound.

BACKGROUND

The Irish Refining Company was incorporated in 1957, and consisted of a consortium of oil companies, viz. ESSO, SHELL, TEXACO and B.P. and began refining oil and other oil feedstock for its shareholders in 1959. The cost in 1959 prices was in the region of £12,000,000. It is situated at Whitegate in Cork harbour, some 9 miles from Midleton and 25 miles from Cork city.

It is in a rural setting and it appears that the only service provided by the County Council is water with sewerage disposal and garbage collection being provided and maintained by the company.

It is held in fee simple.

During the construction 500,000 tons of earth and rock were moved, four miles of tarmac roads were built on refinery property, 75 miles of piping had been laid above ground and 10 miles of piping below ground.

The capacity throughput of the refinery in 1960 was 2 million tonnes per year, yielding 40,000 barrels per day of refined product. In 1966 the refinery was extended with additional tanks
and refining equipment, capacity was increased to 56,000 barrels per day.

The throughput figure dropped back to 2 million tonnes per year between 1970 and 1974, and has levelled out since. The 1985 throughput figure was 1.26 million tonnes and for 1987 was 1.437 million tonnes.

In 1981, the owners notified the Government of their intention to close the refinery. In April, 1982, the Government acquired the company which became a subsidiary of the Irish National Petroleum Corporation. The cost of the acquisition was about £6 million with valuable guarantees to the oil companies regarding oil storage.

VALUATION HISTORY

The refinery was rated at £24,000.00 R.V. in 1960.

Following an increase in refining and storage capacities in 1966/67, the R.V. was increased. It was increased by agreement to R.V. £27,500.00 in 1967.
In 1971 (first appeal) the rateable valuation was reduced by agreement to £26,500.00. In 1973 a further request for revision was made and at appeal it was agreed at £24,000.00 without prejudice to the company's entitlement to relief in the event of the rateability of the tankage being successfully challenged in the courts.

Further valuation appeals were made in 1978, 1980, 1981 and 1982 on behalf of the company by Messrs. O'Buachalla & Co.

Appeals in 1978 to 1982 were brought to the Circuit Court on the rateability of the oil and gas tanks, skimming ponds, site development (roadways, pipelines, and concrete staging) and on general level of valuation.

The Court rated the various buildings and the horse power (machinery used for the production of motor power) and struck out all other items making up the refinery.

The buildings valuation was reduced from £1,900.00 to £1,075.00 and the motor power machinery from £433 to £370.

ORAL HEARING

The initial oral hearing took place on the 10th and 11th July, 1989, in Dublin.

Mr. Marcus Daly, S.C. (instructed by Barry M. O'Meara & Son Solicitors) appeared on behalf of the appellant company.
Mr. Richard Cooke S.C. (instructed by the solicitor for Cork County Council) appeared for Cork County Council. Mr. Aindrias O'Caoimh (instructed by the Chief State Solicitor) appeared on behalf of the Respondent.
In his opening address Mr. Daly said that essentially his case was that the valuation was bad in law on the grounds that the valuation was assigned to non rateable plant and should have been excluded by virtue of Section 8, Ref. No. 1 of the Valuation Act, 1986.

He gave an outline of the valuation history of the hereditaments and the litigation that it had attracted over the years. He wished to keep alive his submission that the process heaters and tankage were machinery within Section 7 of the 1860 Act as substituted and re-enacted by the 1988 Act and as interpreted in a number of cases down the years, notably the Beamish and Crawford case and more recently by his Honour Judge Murphy in the Comhlucht Siuicre Eireann case in Cork. He gave an outline of the evidence that would be given by the various witnesses.

EVIDENCE

The first witness was Mr. Patrick J. Goggin who is a Bachelor of Engineering and is head of the Engineering Department in the Whitegate Refinery. Prior to the hearing Mr. Goggin had made available a very useful precis of evidence (together with illustrations) as well as plans and an album of photographs. These all constitute Appendix A to this judgment. It was agreed between the parties that this would be incorporated as part of the record in the case, but, of course, the Tribunal is not bound by any conclusions of law that might appear either in his precis of evidence or in his oral evidence as given. The same remark applies to all the other witnesses in the case.

In the first instance Mr. Goggin gave a description of the refinery. He said that crude oil was brought in by ship and it comes from various parts of the world. In the past 6 to 8 years the majority has been from the North Sea, from 8 wells in the North Sea. The refinery was originally designed for Middle East crude oil. There are a number of differences in these crudes from different parts of the world and there are slight differences in the way that they have to be dealt with when received at the refinery. The oil must first be prepared in tankage. There is no way of buying prepared crude because a great deal of water and contaminants are picked up in the process of shipping. It is not suitable for going into a processing plant. The oil is discharged in the first instance into 6 crude tanks and usually 5 of them are in service and 1 of them is out for wax removal, very often floor repairs and cleaning and maintenance.

It is convenient now to isolate the various tanks with which the Tribunal has to deal. They may be described as follows:-

6 crude oil tanks

19 product tanks

4 spheres

15 intermediate tanks

12 utility tanks.

The process heaters/furnaces will be dealt with in the same order as Mr. Goggin dealt with them.

CRUDE OIL TANKS

These represent about 50% of the tankage. They are situate on Corkbeg island which is an isthmus rather than an island of about 22 acres in extent. It is connected to the mainland by a causeway.

The crude oil is discharged from the ship using its own pumps which are powered from the vessels' electrical generator. The oil flows through flexible hoses to the marine terminal and on through a 24" diameter steel pipeline to the crude oil tanks in the refinery.
Five of the tanks have a capacity of 23,000 tonnes each and one of 46,900 tonnes. A typical cargo coming in is 65,000 tonnes. That is the size of the ship but at other times ships would be smaller. There are vessels in which the cargoes are bigger. Before a ship is offloaded there must be three tanks ready, empty, and at the least 2½ empty. One may be out for maintenance. That leaves only two tanks to keep the process going. All crude oil tanks are of the floating roof type. The steel roofs of these tanks float on the surface of the crude oil being supported by steel hollow boxes called pontoons. A rubber seal is fitted on the edge of the tank as the level rises and falls. This arrangement minimises vapour losses from the crude oil and reduces the risk from explosive vapours.

The tanks are constructed of mild steel. The ground under the tank is first prepared to the desired level by excavation and back filling with firm soil, thoroughly compacted. The ground slopes into the centre of the tank. Thus the tank floor will also slope inwards to allow water which settles from the crude oil to collect at the tank centre. A concrete ring is

constructed six feet wide, one foot high, where the tanks shell will stand. The interior is filled with crushed stone to a height of 10 inches and an oil and sand mixture placed on top. The tank is then constructed on top of this - the floor lies on the oil/sand mixture and the shell on the concrete ring. Stairways are fitted to the outside of the tanks to facilitate access to the roof for measurement and sampling of the contents. Tanks are usually surrounded by a low earthen mound called a bund wall. Bund walls are designed to hold the contents of one tank if it should overflow or spill. However, in the case of the crude oil tanks, a catchbasin is located at the lowest end of the Corkbeg Island to catch such a spill, thus preventing environmental pollution and permitting recovery of the oil and returning it to the plant for processing.

The crude coming into the tanks contains a number of extraneous materials especially water, (indeed quite a high proportion of water) as well as sand, sediment, shells and even items of clothing. It is vital that these extraneous materials are removed from the oil while in the tanks before going on to the boiler in the refinery process. If not removed they would endanger life and equipment when the crude oil is transferred to the plant for high temperature processing.

He explained that the crude oil tanks in the refinery provide a number of essential functions. The primary ones are :

1. Determination of temperature, volume and quality.
2. Water and sediment removal.
3. Suspension of wax and homogenisation of wax in crude oils.
4. Blending of crude oils and preparation of plant feed.

A brief elaboration on these functions is as follows:

1. Determination of Temperature, Volume and Quality

The Refinery operators go to the top of the tanks and using the access through special hatches in the roof they perform a number of operations to determine the temperature, volume and quality of the tank contents. The height of liquid in the tanks is gauged using special steel tapes. The temperature of the oil is measured by immersing thermometers into it. Samples, in one litre containers, are drawn from a number of locations and elevations in the liquid. The samples are analysed in the refinery laboratory. The results of all this operation are utilised to determine the commercial transaction in procurement of the oil. The results are also used to plan the processing of the oil in the tanks.

2. Water & Sediment Removal

As mentioned already, the crude oil contains water and solid materials. The amount of water can vary from a trace to as much as one per cent, which would represent more than two hundred tons of water in one tank of oil. The water must be removed before the oils is transferred to the crude distillation plant. If not removed, very serious accidents can occur when the oil and water mixture passes through the process heater and enters the crude distillation plant. The water would flash to steam and exert very large pressure and cause equipment failure and possibly casualties to personnel. As a matter of interest, this consideration of removing the water from the oil in the tanks is not of such importance in a transshipment facility such as that at Whiddy Island, as the crude oil there is being loaded to ships for onward transportation. Every operation in a refinery must be evaluated in order to prevent accidents in the process.

The tank contents are allowed to stand for a few days and the water and sediment settles out of the oil and accumulates in the bottom of the tank. Under pressure from the oil contents, the water and sediment are then drawn off and routed to a slop tank for further processing. Laboratory checks are made to confirm when the oil is ready for the next step of preparation.

3. Suspension of Wax & Homogenisation of Crude Oils

After the water and sediment have been removed, the tank contents are mixed using mechanical agitators fitted to the tank. These machines consist of propellers, driven by electric motors. This operation makes the contents homogeneous after a few days of mixing and also ensures that the wax in the crude oil is in suspension. Not all the wax is successfully suspended in each operation and special work with heat and emulsifying chemicals in the tank is often necessary to melt wax deposits. It is commercially very important to have the wax suspended in the crude oil as it can then go on to further processing and be sold in the refinery products.

4. Blending of Crude Oils & Preparation of Plant Feed

The tanks are fitted with remote control inlet valves to allow ship discharge and outlet valves for pump out to processing and blending of different tanks. Crude oil can be transferred from one tank to another to blend their contents. The crude oil from each tank is sampled and checked in the laboratory for density and water content.

A high water content crude oil will be given more settling time. A crude oil whose density indicates it may give different quantity or qualities than previously expected will be blended with another crude oil in the tank.

The crude oil, Mr. Goggin asserted, has now been induced to change from raw crude oil to prepared crude suitable for transferring by pumping to the process heater and crude distillation unit. Only at this stage is it suitable to be used in the refining processes.

It would appear clear from Mr. Goggin's evidence that the chief function of the tanks is to afford a receptacle in which the crude oil can be held while foreign matter, especially water, is allowed to settle and eventually drained off or otherwise removed. Also, of course, the wax has to be dealt with but the situation about the wax is that it is, if possible, kept mixed in with the oil and only that which attaches by way of sediment to the tanks has to be scraped off eventually.

PROCESS HEATERS/FURNACES

Mr. Goggin gave evidence that there are eight process heaters in the refinery. These are associated with the crude distillation, the gas oil desulphurisation and the powerformer units. He said that the process heater consists of a series of six inch diameter alloy steel tubes constructed within the refractory lining of the steel shell of the heater. In the floor of the heater are located a number of large gas and oil fired burners which heat the external surfaces of the tubes.

Following the processing of the raw crude oil in the tanks at Corkbeg, the prepared crude oil is pumped at high pressure to the process heater. It flows through the internals of the tubes and picks up heat as it travels. Throughout there is the application of force for the specified purpose of changing the composition of the prepared crude or feedstock into a mixture of vapour and liquid for the next stage of the process. At the exit of the heater the prepared crude has been changed to 60% vapour and 40% liquid at a temperature of 680 degrees fahrenheit and is pressured to flow to the distillation tower for further processing.

Mr. Goggin explained that the liquid is contained within the pipes and heated by the heat transferred from outside of the pipe to the material flowing through it inside the pipe and vaporising the oil in the pipe inside in those tubes.

The burners he said are complicated pieces of machinery and there are in the order of forty burners in each heater, each of which is capable of firing oil, or alternatively firing gas. He said that that is a complicated process with a continuous pilot burner attaching to it. He explained that each of those burners would certainly cost £3,000 to £4,000. He said that the design and purpose of the process heater was to vaporise as much as possible of the crude oil so that the various components could be separated out. The only way this could be done is to bring this application of heat, to heat it to a temperature and vaporise at least 60%. The mixture of vapour and liquid is then lead into the distillation column which is a steel tower approximately 100 ft. high.

Mr. Goggin went on to deal with the crude distillation unit: the powerformer unit and, in general, dealt with the refining process which is not subject to any particular controversy.

INTERMEDIATE TANKS

Mr. Goggin dealt, in summary, with the intermediate tanks by saying that following the processing of the prepared crude oil on the crude distillation unit and the powerformer unit, the following components for gasoline blending are pumped to various intermediate tanks. These components are light naphtha, heavy naphtha, powerformate and butane.

In the tanks the components are prepared, after laboratory testing, so that each individual component is suitable for the planned gasoline blend. This preparation is achieved by removal of water and by correcting the components, if necessary, by pumping other material into the tanks and mixing until homogenous.

Mr. Goggin said that the correction of the blendstocks is achieved by inducing a process of change in the intermediate components in the intermediate tankage.

PRODUCT TANKS

Mr. Goggin said that the refinery product tanks for gas oils and fuel oils perform a number of functions and bring about a process of change in the tankage contents. These product tanks are blending tanks. They receive materials from the crude distillation unit in the gas oil hydrofiner (desulphurisation) unit. They are used to blend materials manufactured from crude oils of varying origins and qualities in order to meet product specifications. He said that the crude oil type and origin determines the qualities such as sulphur content, viscosity etc. which are measured by laboratory tests on the gas oils and fuel oils. If these qualities and others are not in accordance with the product specification when they come to the process units, they have to be corrected in the product tankage. These correction operations are achieved by pumping other material into the tanks and in some cases adding a chemical additive and mixing the tank contents by pumping.

Another function of the product tanks is to achieve temperature control of the materials handled. Fuel oil must be maintained between strict maximum and minimum temperatures to allow it to be shipped safely. This control is achieved by use of steam heaters in the product tanks. The gas oils must be maintained below a maximum temperature which is set by the design of the pipelines to the marine terminal. This control is achieved by pumping material in or out of the tanks. These operations of pumping, mixing, heating, cooling and use of chemical additives are used to induce a process of change in the tank contents.

Mr. Goggin said that the primary purpose and design of the intermediate tanks and the product tanks is to blend gasoline from five components into premium gasoline and regular

gasoline and it is all done in the tanks. Five components are put in and one ends up with the premium product and regular gasoline. The material in the intermediate tanks could not be sold as gasoline. When the five components are brought together in the right proportions and thoroughly mixed and recirculated, one ends up with gasoline which meets the specifications and is suitable for motor car engines. When asked whether what he was trying to do was to effect by the process a change from the primary product or components into the final gasoline he said that the components were circulated until they were completely blended and mixed and met the gasoline specifications. There is also a process of recirculating. So there is a process of blending and recirculating. It is only from the completion of the blending until a ship arrives which is generally a short time, a day or two days, that the tanks are used to store the finished product. So making a distinction between blending and storing (simply) the proportion of time in which the finished gasoline would be standing in "storage" would 10-20% of time. The rest of the time they are either empty or blending is going on in them.

With regard to gas oil Mr. Goggin said that something similar applies to it. There are not too many components to gas oil. The gas oil, which is normally called diesel oil, has various grades. It gets the same treatment from the crude distillation unit. It normally comes out fairly heavy in the diesel oil so the diesel oil will have to go through this plant called the hydro-finer where there is a catalyst and there is high pressure and temperature. That oil goes into what are called the gas oil product tanks, but it will there be tested for sulphur and also for many other qualities. A similar process of mixing and blending goes on.

SPHERES

Mr. Goggin explained that there are four large spherical pressure vessels called spheres which contain the gases at pressures in order to keep as much as possible of them liquid, giving rise to the term liquid petroleum gas LPG. It appears that what is contained is a mixture of propane and butane from the crude light ends from the powerformer which are separated in

the powerformer light ends and sent to these spheres. The spheres stand on legs which elevate them well above the ground so that they can be discharged by pump. They are constructed of mild steel and have special equipment to measure the level of liquid in them. The spheres are also fitted with temperature indicators and special sampling connections. There is also provision to allow any water or caustic which might have been carried into the spheres to be drawn off. The spheres are integrated into the process and are part of the intermediate tankage, according to Mr. Goggin. They provide the following services:

- Blendstock for gasoline blending. 60% of all butane produced in the refinery is used for this purpose.
- Fuel gas to the refinery fuel gas system.
- Pilot gas to the refinery process heaters and to steam boilers to ensure safe operation.
- Butane and propane gases are shipped to third parties.

UTILITY TANKS

It was conceded on behalf of the appellant company that tanks U-5, 7, 8, 11 and 12 are rateable. That leave the ballast water tanks (U-10 and U-13) and the slop tanks (U-9 and U-1, U-2, U-3 and U-4). Mr. Goggin said that the water tanks are located on Corkbeg Island. The ballast water from ships that berth, especially in winter, carry quite a large quantity up to 7,000 or 8,000 gallons of ballast water for stability. On ship it gets contaminated with oil or some other contaminant. The task then is to remove all the contaminants from the ballast water which is done by a fairly long process of heating, settling and adding chemicals. There are heaters on the ballast water tanks and the task is to get rid of the contaminants and have the water in a fit condition to be released. The effluent treatment plant is near the two ballast water tanks and reference will be made to that later in this judgment.

With regard to the slop tank system, Mr. Goggin dealt with this as follows. The slop tankage system is used to receive intermediate streams or final products which do not meet specification due to plant problems or contamination. There are two slop systems, one located on Corkbeg and the other on the upper site. The Corkbeg slop system is used to drain off water from the crude tanks into tank U-9. Any oil contained in the water floats to the top of the tank and is pumped off via an adjustable pipe back into the crude tanks. The tank is fitted with a heating coil which is used to heat the contents to assist in breaking oil/water emulsions. The tank also received oil/water mixture from the ballast water effluent treatment plant.

The slop system on the upper site consists of four tanks, U-1, 2, 3 and 4. Streams which are not to specification from the processing units are pumped to any one of the tanks. The tanks also receive oil/water mixture from the upper site effluent treatment plant. Material is pumped from one tank to another and back into the crude distillation unit for re- processing. Tank U-3 is a floating roof tank and is used to hold high vapour pressure slops. The other tanks are fixed roof and are fitted with heating coils to assist in breaking oil and water emulsions. By a process of moving the contents of a tank between tanks and heating where necessary, the oil is separated from the water so that it is processed on the crude oil distillation unit.

EFFLUENT TREATMENT PLANT (SKIMMING PONDS & COLLECTING BASINS)

The effluent treatment plant for the ballast water and the water removed from the crude oil was installed in 1975. The plant was designed similar to an API oil/water separator and cost £100K. The plant consists of a series of concrete sections, 11 feet wide, 120 feet long and 5 feet deep. A weir is constructed on the end to smooth the flow of water and give even distribution across the plant. The residual oil in water rises to the surface as the water flows slowly towards the outlet. Adjustable weirs are fitted to retain the separated oil which is pumped back to tankage for further processing. Mr. Goggin explained that there is a fairly

complicated method of skimming the oil off with an adjustable skimmer which can be manually adjusted. If the oil is only a very slight slick on top of the water the skimmer can be set to a very fine level. After that the oil continues through jets in a wall which are designed in accordance with American Petroleum Standard. Having come through the jets there are various bits of oil and other contaminants. There are a number of pumps pumping the oil from the skimming arms. Eventually one is left with clean water flows and this is sampled in the laboratory and has to pass a specification for purity. Then it is discharged when it is of the right quality.

Mr. Donal O'Buachalla, B.E.,C.Eng.,M.I.E.I. of Donal O'Buachalla & Co. Ltd., 86 Merrion Square S., Dublin 2, said that he had been acting as a valuation expert for the oil refinery for quite a number of years. He said that initially when he prepared his precis of evidence that it was on the basis that all matters were at issue and that no agreement had been or could be achieved on anything. He said that he cooperated with the Tribunal's request to see what agreement could be achieved and that had been done and the result set out in the schedule previously referred to in this judgment. What then remained to be dealt with were the substantial matters, insofar as rateability was concerned, of the tanks, process heaters and skimming ponds. He said that he agreed that 5 utility tanks were rateable, but he was unable to agree a figure for those tanks. He said that quantum was agreed on the skimming ponds but not the issue of rateability. As regards the buildings he said that the compromise figure of £1,330 was on the basis that no allowance was made for diminished utilisation by either the County Council or the Commissioner. As regards tankage he said that official instructions were issued on the basis that the larger the tank is, the less the cost should be. He said a second approach would be by comparison with Whiddy Island where tanks are valued at 5.25p per thousand gallons which is almost a quarter of the 19p per thousand gallons being contended for in this case. He said that the 1988 Valuation Act now gave statutory authority to a particular method of valuation using the effective capital value and that that method

should be applied in relation to these tanks. He said that using this approach, a figure of £18.4 million would represent the present reinstatement cost of the tanks. Allowing depreciation at 75%, the effective capital value would be £4.6 million. Applying a percentage of 8% to get net annual value yielded a figure of £368,000, and using a fraction of 1/175 one came to a rateable valuation of £2,103 or say £2,100 as against the £18,500 at issue.

With regard to the boilers he said that applying the same technique, he had reached a figure of £110 and that was agreed with Mr. O'Donnell.
Mr. O'Buachalla referred to a Valuation Office instruction to valuers, numbered 2/75 and issued by D.F. Ryan, Chief Staff Valuer. A graph was appended to this instruction and Mr. O'Buachalla said that this clearly showed that the larger the tank, the lower the rate that should be applied. He said that if this was applied to the crude oil tanks, the rate would be 6p per 1 thousand gallons giving a figure of £2,556. This instruction is attached as Appendix B to this judgment.

Mr. John M. Byrne, Bachelor of Commerce, Company Secretary with Irish Refining Plc. said that he joined the Company in November 1957 and has been Company Secretary since October, 1976. He is a member of the accounting department of the Company. He is also the financial controller.

Mr. Byrne explained that the original owners were ESSO, TEXACO, SHELL and BP and that they ceased refining in May, 1981.

In April, 1982, the share capital of the company was acquired by the State for the sum of £5.9 million. The vehicle used by the state was the Irish National Petroleum Corporation which was established in 1979.

He explained that even after extensive reduction of refinery capacity in Europe, Ireland is still in the worst position within the European Community for refining capacity in relation to oil consumption. At full capacity Whitegate can only process 74% of the Irish market demand. Because no voluntary agreement on supplies from the refinery could be reached between INPC and the oil industry the Government eventually decided that a mandatory uplift of 35% of certain of their requirements from Whitegate would apply to all companies importing oil into the state. Legislative effect to this was given by the Fuels (Control of Supplies) Order 1982 which has been renewed since then at the same uplift of 35%.

Throughputs, therefore, in Whitegate refinery have over the period 1982-1987 been running at 50% of available capacity on the process units.

In order to provide a more efficient upgraded refinery studies have been in progress to upgrade the existing refinery facilities which are now 30 years old by the installation of conversion facilities and other process plant. The studies to date deal with a number of investment projects which are compatible with each other but would in all probability be constructed on a phased basis. The Government seems committed to a programme to modernise the refinery.

Mr. Byrne explained that with its present equipment it can only refine or break down 60% of the crude oil and is left with 40%. There used to be a demand for heavy fuel oil but since many of the generating stations have moved over to gas there is less demand for the heavy fuel oil. Other refineries have what is known as "cracking equipment" to further crack the heavy fuel oil but the Whitegate refinery does not so it has to be exported to other refineries who have this equipment. If a new refinery were to be commissioned today it would, obviously, have these facilities.

Mr. Byrne said that he would not like to use the word obsolete in relation to Whitegate but he did think that the facilities there were out-moded. Essentially the refinery is out-moded because it cannot upgrade the 40% crude and this is where the refinery itself has become out-moded by comparison with other European and American refineries.

Mr. Byrne then went on to explain about the book value of the refinery which was what the Irish Government paid for it in 1982, viz. £5.9 million and he then went on to deal with methods of depreciation and explained about the straight line method of depreciation as against the reducing balance. With the straight line method of depreciation each year a percentage of the original investment is written off with the reduced balance method one would take £10 off £100 and the next year it would be £9 and so forth. The straight line method is the method adopted. So with this method one would write off the refinery, if one did not have any additions or modifications, and the original investment would disappear in about 18 years. That is on the books. Of course there have been repairs, renewals and renovations over the years. There has been investment on the capital side as well as maintenance costs.

Obviously, of course, the refinery is insured for a greater sum -in fact £120 million - because that has to cover replacement costs.

In any event, further elaboration of these accountancy matters is set forth is Mr. Byrne's precis of evidence but it is sufficient for the Tribunal to glean that this is an out-moded refinery that probably has seen its best days and, without any doubt, it needs to have a great deal of money spent on it to modernise it and bring it in line with what a modern refinery should be.

Mr. Byrne then went on to deal with the use of the premises and, in particular, his evidence is germane to certain matters, viz. the open storage compound and the actual utilisation of the main buildings.

With regard to the open storage compound he said its original purpose was to receive the line pipe and valves and that they were all stored in the open compound pending the construction and placing of the piping as the construction went ahead in the years 1957 and 1958. After the refinery started up in 1959 there was a certain amount of surplus material, such as surplus line pipe, surplus gate barrels and so forth. Those materials that would not be required were sold off as surplus over a number of years. So eventually it ended up as a storage compound which was virtually unused. He says that it is an open compound and the grass is growing on it. There is one concrete stretch there and that part is being used to store the drums.

He then went on to deal with the utilisation of the buildings and said that in the early days the company had 320 employees. Over the years this was reduced down to about 150-153. That has been the number employed since about 1970. That meant that in certain areas such as the administration building which was designed to accommodate about 80 people there were offices there that could hold up to 6 people and other offices that would hold 3 people. That was the design of the offices. So that in a building that was originally designed for 80 people there are now 30 people. Some offices were closed but the heating had to be kept on. Mr. Byrne felt that the company could manage with half the space.

Mr. Byrne thought the under-utilisation is probably in the region of between 50% and 70% it would suggest an average of 60% under-utilisation.

He explained that in the early '80's an attempt was made to sub-let some of the buildings to the ESB or to An Bord Gais but these companies were not interested in taking up this offer.

Mr. Byrne then went on to deal with the berthing facilities at Whitegate and contrasted them with the Whiddy jetty which could accommodate tankers of 300,000 tonnes but the situation at Whitegate is that a vessel with a full cargo cannot move through the harbour at low tide or even at half tide. It can, admittedly, stay at the jetty but it was an additional inconvenience that it could not move through the harbour with a full cargo at full tide or at half tide.
Mr. F.M. O'Donnell, B.Agr.Sc., M.I.A.V.I., M.I.R.E.F., Principal of Frank O'Donnell and Company, Valuation and Rating Consultants said that there was an E.E.C. Directive that each country should hold a 90 day strategic supply of fuel. He said that Whitegate has the obligation, by guarantee, to hold 30% of this supply, in other words 27 days supply. Given a total consumption of 988 million gallons in 1987, 27 days supply works out at 72 million gallons. He said that Whitegate was not just a refinery but also a storage depot for in excess of 70 million gallons of fuel per year. He quoted from the Chairman's statement from the I.N.P.C. 1987 Annual Report where he said that the "operation of the Whitegate Refinery also enables a significant proportion of the national strategic reserve to be stored at Whitegate, providing an estimated saving to the community of over £5 million per year". Mr. O'Donnell said that this would increase the worth of Whitegate to a hypothetical tenant by £5 million per year. He said that the rateability of the boilers was not in dispute and was agreed at £110. He said that he had agreed a figure for the furnaces with Mr. O'Buachalla, subject to their being rateable. He said that the piping and pipe racks were agreed at £850 and that these were rateable.

Mr. O'Donnell said that if Whitegate was valued as an oil storage depot using the traditional approach the valuation would be £21,600. Using a rental basis, as an oil storage depot, the valuation would be £25,000. While he did not accept that the 1988 Act concerning global utilities would apply to Whitegate, he estimated that this approach would yield a valuation of £20,900. By comparison he said that tanks in Alexandra Road in Dublin were rated at 25p

per thousand gallons, Irish Bulk Liquid Storage at 18p and ESSO in Cork at 19.4p. He said that he had never come across a case where an allowance was made for under-utilisation.

Patrick J. Kyne gave evidence that he was a civil engineer and had been a District Valuer in the Valuation Office with over 33 years experience in rating.
As regards the buildings the figure that he had put forward was £1,330 and, indeed, this is, of course, an agreed figure subject to Mr. O'Buachalla's point about under-utilisation. However, Mr. Kyne's response to this was to say that since the numbers employed had dropped for some time this must have been taken into consideration in the past, and, indeed he approached the matter on this basis: he would look at the purchase price of the refinery; the under-utilisation of the refinery and so forth. He said one should not specifically value tanks and buildings and roads. The legislation requires that buildings should be valued and one deducts for machinery and so forth but one must always keep one's eye on the refinery as a whole. In any event, the point about the buildings was that all the relevant factors had been taken into account in fixing this value on the buildings and that it was a fair valuation.

CRUDE OIL TANKS

He gave a description of the tanks not different from Mr. Goggin and he concluded that they are containers of crude oil and that their principal function is to contain crude oil for the refinery. In his view they are oil storage tanks.

UTILITY TANKS

With regard to the utility tanks, Mr. Kyne thought that they were simply containers of either waste products or water tanks.

PRODUCT TANKS

He said the same applies in relation to the product tanks. All that is there is the floor, walls and a roof with the entry pipe and the pipe coming out and two of them have heaters and agitators. They are the heavy fuel oil tanks. These heavy fuel oil tanks must be kept heated and this oil has to be heated until it is sold and even after sold until it is finally burned in some factory or other.

INTERMEDIATE TANKS

He said that none of these tanks have agitators or heaters. They are containers of product between two processes. They allow delays in one process and also batch processing. Water settling at the bottom of these tanks can be drawn off.

SPHERES

There are four spheres, enclosed, pressure vessels, and they are used to store liquid gas from the plant. They are connected to the Calor Kosangas site nearby. Water may be drawn off as in the oil tanks.

SKIMMING PONDS

He said that these were concrete ponds where waste water, with oil mixed, is gathered. The oil is skimmed off the top while the water underneath is drawn off. He contended that these ponds are rateable.

STORAGE COMPOUND

Mr. Kyne said the valuation he had placed on the storage compound took account of the diminished use that was made of the area.

FURNACES/PROCESS HEATERS

Mr. Kyne went on to describe, in much the same detail as Mr. Goggin, what takes place in the process heaters. He understood them to be "boilers" but on previous visits to the refinery

he was told they were furnaces and now it appears that they are called process heaters but he would reach the conclusion that they were furnaces or boilers within the description set out in the Act.

Mr. Kyne then went on to deal with how he came to value the tanks at 19p per thousand gallons. He said that in 1977 when he first had to deal with the refinery that there was no proper record of how the valuation might have been arrived at. He looked at Cork Harbour and saw what advantages and disadvantages it had. He also had regard to the situation in Limerick and Dublin and he looked at Aughinish on the Shannon. Foynes was at 18p. He looked at Whiddy. When he dealt with Whiddy the refinery valuation had existed for some time and there was a total valuation of £24,000. He made a distinction between the Whiddy valuation and the tanks in the refinery because he made the point that the tanks serviced the refinery. He knew of the instructions that Mr. Ryan had issued when he was chief valuer but he did not agree with the results that reliance on the graph would throw up. He conceded, however, that the larger the tank the less the valuation should be; that there should be "economies of scale". He would not agree that there should be any allowance for depreciation because if the tanks were as efficient as they were 30 years ago then they should attract the same valuation. He made much the same point in relation to the furnaces and would not allow any depreciation for them and approached them on the same basis as he would "machinery". He said that if a boiler is producing the same amount of steam year in, year out, it retains its annual value. In the past the Commissioner did not reduce the valuation on machinery used for the production of motor power for age or anything else. It is taken at a flat rate and the Commissioner's view was that this should also hold for boilers or furnaces while they are in operation and while they are properly maintained and efficient.

He would, therefore, abide by his valuation of £3,000 in respect of boilers and furnaces.

As regards comparables in relation to tankage he said that Aughinish has a substantial amount of tankage and they work out at 20p per thousand gallons. Other comparables are the ESSO oil tanks at Tivoli which are valued at 20p per thousand gallons and which was fixed by the Circuit Court in 1976. Dublin Docks oil tanks were valued at 20p per thousand gallons. Whiddy Island terminal when in use carried a rateable valuation of £20,000.00. It devalued at 5.25 per thousand gallons in respect of the tanks.

He was cross examined fully on Whiddy and it appears that while there has been a drastic reduction in the rateable valuation the tanks are still valued at in or around this figure of 5p per thousand gallons.

FINAL SUBMISSIONS

Mr. Cooke dealt with three issues as follows:

(a) The concept of under-utilisation. He said that no such concept was known in valuation law. An occupier only using part of a hereditament as a matter of law is still the occupier of the entire. It is the hereditament itself that is valued and the valuation is measured by what a hypothetical tenant will pay. Where the scale of operations is reduced and part of a hereditament has become surplus to requirements and where the occupier remains the occupier then as a matter of valuation law he is liable to rates. The occupier may let part of it or, if he is unable to let it, he may apply to have it reapportioned.

The issue in the Rosses Point case was that circumstances of trade had changed to make the hotel of less potential benefit and, therefore, less valuable to a hypothetical tenant - it was not by reason of under-utilisation of premises. He concluded that there is no provision in rating or valuation law for giving a reduction in valuation because a tenant doesn't fully occupy a tenancy.

(b) Process Heaters. He submitted that these were furnaces/boilers. He said that they are furnaces in the sense that naked heat is applied, and, boilers in the sense that naked heat is used to vaporise the oil passing through the tubes. To that extent they are furnaces or boilers and therefore rateable hereditaments under the 1986 Valuation Act. They are not to be exempted as machinery or under any other guise.

(c) Tanks. He said that the crude oil tanks are rateable as their primary purpose is to receive and hold crude oil, piped ashore from ships. While held in these tanks, a natural process ensues whereby the lighter elements in the oil move to the top and the heavier settle on the bottom of the tanks in the form of sediment. The next heaviest element - apparently water - will superimpose on this and can be drawn off from the bottom when the time comes. The balance of the crude oil contains wax, and, the agitation in the first five tanks is to keep the wax floating in the oil so that it won't solidify as it is a vital constituent in the process that follows. What comes out of the tanks is crude oil with, as far as possible, wax in it and kept stirred up to come out in even quantity.

The primary purpose of the tanks is to hold the liquid for a sufficient time to enable that change to take place and to hold the oil until it is required for processing. Tankers arrive once every two weeks so that the tanks must hold a sufficient supply of oil to keep the place going for 13 to 14 days, otherwise continuity of production is lost. This is the reason for the extensive tankage. The primary purpose is to hold oil until its turn comes to be dealt with in the process plant.

(d) The distinction to be made between any of the various kinds of tanks. He said that all of the valuers were prepared to allot an overall rate on tanks and not to distinguish between them. He said that the remaining tanks fall under 3 headings:

1. Intermediate Tanks
2. Product Tanks and
3. Utility Tanks

With regard to the intermediate tanks, he said that the question was whether they take an active part whereby they could be said to be part of the process or whether they are a lay-by for material going through, held temporarily and tested to see that what is going through is what is required. He submitted that these tanks are sampling devices to hold the substance while deciding what to have in the mixture going through.

With regard to the product tanks, he submitted that what was involved was basically storage. The principal function of these tanks is to remain as the ultimate receptacle and holder of the fuel oil until it is disposed of.

Mr. Cooke submitted that the utility tanks hold the other materials used in the manufactory. He referred to the Tribunals judgment in Appeal No. 88/205 North Kerry Milk Products. He said that utility tanks hold material of an ancillary nature that have heretofore not been part of the process and that these materials are held there until they are introduced into the process.

He submitted as a general principle that utility tanks are not part of the process and are not machinery in any way. He said that similar tanks were dealt with by Mr. Justice Costello in the Pfizer Judgment at p.11. He said that the same applies to these utility tanks. He also said that the correct method of valuation was to value the entirety and deduct non-rateable items.

With regard to the point raised by Mr. O'Buachalla regarding global valuations, he said that this hereditament was not a public undertaking within the meaning of the 1988 Valuation Act.

Mr. O Caoimh adopted the submissions of Mr. Cooke because of the similarity of the case made by the Commissioner and Cork County Council. He made the following points. With regard to the question of diminished utilisation he said that plant loses efficiency over a period of time. However, a tenancy is from year to year and there is no question of granting any reduction on the basis of age - there cannot be as a matter of valuation law. He said that the fact that there are less people in the building is a management decision. The building is capable of utilisation and is utilised. There was no evidence to demonstrate that it was incapable of being let.

He said that Mr. Cooke was correct in saying that the boilers/furnaces were rateable. The fact that they may be used in the processing is irrelevant to the fact that the 1986 Act says that they are rateable and that one can't undo the law by changing the name of the item concerned. With regard to the crude oil tanks, he said that the evidence was that five tanks were in use. Two of these held prepared or largely prepared crude. That left only three tanks available and as evidence was given that a shipload would fill two and a half tanks, there was no real blending going on. Even if one was to accept that blending occurs, the Pfizer judgment would indicate that the mixing or blending was not such as to take it out of rateability. Clearly the change is a natural one of settlement, but even accepting that there is an element of change the essential and predominant aspect of these tanks is one of containment and therefore they should be rated. He said that the same applied to the product tanks and the intermediate tanks and therefore all tanks are rateable.

He said that ballast water must be held because it cannot be released into the sea. Settlement is a natural process. The essence of the slop tanks is to hold streams that do not meet specification pending further processing elsewhere. These are clearly rateable. He said that the effluent treatment system consists essentially of ponds where settlement takes place with the oil going to the top. If water containing oil cannot be released into the sea, it must be held to allow the oil to be drawn off.

As regards quantum he said that the document now set out in Appendix B to this judgment was merely a guideline to valuers and was not a legal document. The graph would indicate that it was never intended for use in valuing this type of plant. He said that there was ongoing maintenance and that there was no evidence of a fall off in efficiency, in fact, the reverse was true as the present capacity is greater than that in 1958.

Mr. Daly said that the major points to be determined were (a) rateability of tanks and (b) where these are rated the rate which should apply.

With regard to the tanks, he submitted that in the first place they are machinery and are exempt on that ground. Generally he said that the crude oil tanks, the intermediate tanks and the product tanks are all part of an integral process of manufacture and would have to be considered together. Taken sequentially and collectively they were all designed to induce a process of change in the product, and, that is the use to which they have been put. The global view taken by the Tribunal in the Premier Molasses case (VA88/123) should be followed in this case also. This view was also taken in the Beamish and Crawford case. If this line was not followed and if the tanks were broken down into their various parts, then one would have to have regard to the fact that one cannot have a refinery without a facility for preparing the crude oil for the manufacturing process. Given that, it follows that these tanks are there to induce a process of change from raw crude with its imperfections from the well and from

transport. There are different qualities of crude even from the same oilfield and this must be processed to meet the specification required. Different constituents in crude have to be standardised for a particular run involving blending the crude of one quality with another to achieve a particular specification. Again this involves a process of change. Even to allow settlement, the contents of the tanks must be heated thus inducing a process of change, otherwise wax would clog the outlets. He said that the product tanks are much like those the Tribunal held not to be rateable in the Irish Bulk Liquid Storage (VA88/215) case where ingredients are mixed together and agitated until the desired product is reached. But, he said, the evidence was that it took from twelve to twenty-four hours of continuous pumping to adequately mix the ingredients before getting the desired product and that this was then offloaded as soon as possible. This applied to the gasoline, gas oil and jet fuel tanks. Even in the heavy fuel tanks, which contain the residue which the refinery cannot refine further and for which there is no market in Ireland, blending takes place and as the heavy fuel oil is highly viscous it must be heated. He submitted that the combination of processes bear out that the purpose is not containment or storage but to induce change.

He said that the intermediate tanks were so linked to the process and so involved in it that it would be wrong to separate them merely because, at a particular time, they were not inducing change. They are an indispensable link in the whole change process, almost like pipes between the process units and the blending headers and are continuously involved in a process of change, blending and recycling to ensure that the final product is as desired. He said that they should all be taken together and construed as not being rateable.

Mr. Daly said that there was a case for including the ballast and slop tanks with the argument on the effluent treatment system. Active treatment by means of the addition of chemicals, heating and agitation occurs and then they are put through the effluent tank and there is no

doubt about what its purpose, design and use is. These do not fall within the description of lagoons or ponds but do fall within the description indicated under the section.

With regard to the rate that should apply where any item is found to be rateable he said that it seemed that, while the Commissioner acknowledged that an allowance should be given for quantum, it appeared that he applied a rate which would bring the total to £24,000 r.v. He said that uneconomic maintenance costs and repairs were a deductible expense against valuation as they reduced the letting value of the hereditament. He said that brand new tanks at a cost of £18.4 million would produce a total valuation for these tanks of £8,400 and that it was untenable that this hereditament should be rated at 300% more than a similar hereditament on Whiddy Island. He said that the legislators had outlined a principle in relation to global valuations in the 1988 Act and that the Tribunal should apply this principle in relation to this hereditament.
He said that there was no rebuttal of the evidence of Mr. Goggin or Mr. Byrne.

Process heaters, he said, were an integral part of the process. Oil was heated to get a certain final product; it is not boiled. Process heaters are machinery but in addition are not furnaces. The approach, if they are to be rated, as agreed by Mr. O'Buachalla and Mr. O'Donnell should not be departed from.

As regards diminished utilisation Judge Fawsitt has accepted this concept, the Commissioner has accepted it as regards Whiddy and it has been accepted in the Courts in the Rosses Point case. He submitted that it equally applied in this case where the amount contended for was not large.

THE LAW

(a) As to what is rateable:

What are rateable hereditaments are described in section 12 of the Valuation (Ireland) Act, 1852, as extended by section 2 of the Valuation Act, 1986 and, therefore, the categories of rateable valuation are those set out therein.

The original section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 was as follows:

> In making the Valuation of any Mill or Manufactory, or Building erected or used for any such Purpose, the Commissioner of Valuation shall in each Case value the Water or other Motive Power thereof, but shall not take into account the Value of any Machinery therein, save only such as shall be erected and used for the Production of Motive Power.

The amendments made to that section by section 7 & 8 of the Valuation Act, 1986, are as follows:-

7. The following section is hereby substituted for section 7 of the Act of 1860:

"7. (1) (a) In making the valuation of any mill or manufactory, or building erected or used for any such purpose, the Commissioner of Valuation shall in each case value the water or other motive power thereof, but shall not take into account the value of any machinery therein, save only such as shall be erected and used for the production of motive power.

(b) For the purposes of this subsection, machinery erected and used for the production of motive power includes electrical power connections.

(2) The Commissioner of Valuation shall value plant falling within any of the categories of plant specified in the Schedule to this Act (inserted by the Valuation Act, 1986).

(3) In valuing plant referred to in subsection (2) of this section, the Commissioner of Valuation shall not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container."

8. (1) The Act of 1860 is hereby amended by the insertion after section 15 of the following Schedule:

"SCHEDULE

Reference Number	(1) Categories of Plant
1.	All constructions affixed to the premises comprising a mill, manufactory or building (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.
2.	All fixed furnaces, boilers, ovens and kilns.
3.	All ponds and reservoirs. "

Prior to the enactment of the 1986 Act there were a number of cases which set out to define what was meant by "machinery". These culminated in the judgment of Finlay P. (as he then was) in the Beamish and Crawford case (8th May, 1978; unreported) and approved by the Supreme Court and reported in 1980 ILRM 149. Since then there was a further judgment that of Mr. Justice Costello in Pfizer Chemical Corporation - V -Commissioner of Valuation (9th May, 1989; unreported).

(b) As to the method of arriving at the correct valuation.

The Tribunal relies on the Supreme Court decision in Roadstone Limited V Commissioner of Valuation [1961] I.R. 239 and, in particular, on Mr. Justice Kingsmill-Moores judgment at p.260:-

> "it has been repeatedly decided that in arriving at his estimate of the hypothetical rent a judge is not bound to use any particular method but may arrive at his determination in whatever way is most suitable to produce the required result..... The ascertainment of the net annual value as directed by the section is a question of fact and not a question of law..... and common sense and economic considerations must be the guides."

The Tribunal also relies on the decision of the High Court (Mr. Justice Barron) in Rosses Point Hotel V Commissioner of Valuation [1987] I.R. p.143 and, in particular, the learned judges dictum: "Profit earning ability is the basic element in determining the net annual value. It is based not on actual profit but on what the prospective tenant would anticipate would be his profits."

FINDINGS AND DETERMINATION

The Tribunal will first find what is rateable. The Tribunal would wish to put on record that it accepts in total the evidence given so ably by Mr. Patrick Goggin on behalf of the appellant company in so far as his evidence was concerned with a description of the installations in question. However, in so far as there is a skein running through his evidence that there was involved the inducing of a process of change in certain of the tanks; in so far as there was a suggestion that there was a continuous process involved which led to the conclusion that the whole was one continuous process, starting from crude selection and running through reception, crude blending, processing, sulphur removal and final laboratory clearance to shipping the finished product and that therefore the whole should be considered as non rateable plant, the Tribunal rejects that conclusion. In other words, it is only the opinion of a witness and, the Tribunal must, in fairness, put at the forefront of its findings that it rejects that conclusion wherever it is stated either in Mr. Goggin's precis of evidence or in the course of his oral testimony.

The Tribunal is in no doubt that the purpose of the amendment brought about the Valuation Act, 1986, was to provide that certain industrial plant should be deemed rateable while, at the same time, preserving the age old exemption for machinery (save such as shall be erected and used for production of motive power) and it was made clear that the Commissioner should not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container.

To deal then with the main item which are the tanks. In the first instance, the Tribunal has come to the conclusion that it must reject the submission that these tanks can be regarded as "machinery". As Mr. Justice Costello said in the course of his judgment in the Pfizer case (p.14) which was also in reference to tanks:-

> "I think so to hold would do violence at once to the English language and common sense. These receptacles are tanks - not machines. The fact that items of equipment are installed in them to allow the molasses to be agitated, to permit it to be heated, to permit the molasses to be moved from one tank to another and subsequently to the manufacturing plant does not have the effect of altering their character."

The Tribunal had come to a similar conclusion in the course of its own decisions (cf. Mitchelstown Creameries Appeals Nos. 88/94, 95, 96, 97, 98 and 99; judgment delivered 6th December, 1988; and North Kerry Milk Products Ltd. (Appeal No. 88/205; judgment delivered 20th January, 1989; Premier Molasses - V -Commissioner of Valuation 88/123; judgment delivered 13th March, 1989).

Now to deal with the various tankage, the Tribunal has reached the conclusion that there is not a great distinction to be drawn between any of the tanks but, nonetheless, in consideration to the efforts displayed by the parties to elucidate the matters in issue it will deal with the various tanks seriatim.

CRUDE OIL TANKS

The essential point about these tanks is that they are holding tanks or settling tanks. Time is given for the water to be drained away and other extraneous matters to be removed. They are, therefore, classic "plant" within the meaning of the 1986 legislation. These tanks are essentially used for the containment of a substance and while it is true that a change takes place it is a natural change, namely, the separation of the oil and water and other contaminants. Even if the Tribunal is wrong in this it would be stretching language to say that the tanks play any part in "inducing" a process of change. To induce is to bring about or cause a change in the substance contained or transmitted. Here the tanks have the passive role of providing containment while a change comes about.

INTERMEDIATE TANKS

With regard to the intermediate tanks it seems clear that these are basically tanks which are holding tanks of blending stock or they are holding stocks ready for blending but that once again, they are purely "containment" tanks and that they are plant purely and simply and that there is no question that they are constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.

PRODUCT TANKS

With regard to the product tanks, once again, all that goes on in these tanks is a process of blending which would appear to be a natural process of adding one thing to another and then they are used as holding containers.

SPHERES

With regard to the spheres these are clearly holding vessels for gas.

UTILITY TANKS

With regard to the remaining utility tanks, to deal with the ballast water tanks first of all it is clear that the process here involved is to separate the oil from the water and this, once more, involves a natural process of settlement. The same remark applies in relation to the slop tanks.

The Tribunal would emphasise that prima facia all constructions used for containment of a substance or for transmission of a substance are rateable and that the dichotomy between storage and inducing a process of change only comes about at the next stage in attempting to resolve whether the construction is exempt or not. The Tribunal has reached the conclusion in this case that stage is not reached because the constructions are used purely for containment of a substance and that there is no question in respect of any of these tanks of "inducing a process of change".

EFFLUENT TREATMENT PLANT

It is convenient at this stage to deal with the effluent treatment plant and, once again, it appears that what is involved here is a natural process of separating oil from water or other contaminants. The Tribunal has, before now, said that it would be desirable that anything that improves the environment should be declared non rateable but that is a decision for the legislature not for a tribunal such as this. The Tribunal has reached the conclusion that this effluent treatment plant consists of ponds which are expressly mentioned at reference no. 3 to the Schedule attached to the Act of 1860 by virtue of Section 8 of the Valuation Act, of 1986. But if it is wrong in that then it reaches the conclusion that these are constructions used for the containment of a substance within the meaning of reference no. 1 of the same Schedule.

With regard to the process heaters, it would appear that in previous hearings before the Circuit Court these may have been referred to as "furnaces". The Tribunal would not be

influenced by the appellation that the parties attach to any particular installation. It must decide whether the "process heater" is a furnace or a boiler within the meaning of those words set out at reference no.2 to the same Schedule.

"Furnace" is defined in its primary meaning in the Oxford English Dictionary (Second Edition, 1989) as: -

> "an apparatus consisting essentially of a chamber to contain combustibles for the purpose of subjecting minerals, metals etc. to the continuous action of intense heat."

The Tribunal is in no doubt that this is a modern "furnace" but essentially a furnace is what it is. The Tribunal is mindful of the fact that Mr. Goggin, in the course of his evidence, referred to the burners as complicated pieces of machinery but it must reject this description because it reaches the conclusion that it is essentially a furnace and not machinery. If it is not a furnace it is a boiler and if it is not a boiler it is a plant within the wider meaning of plant contained at reference no.1 to the same Schedule which embrace "all constructions" which are "used for the containment of a substance or for the transmission of a substance".

The Tribunal now deals with quantum.

It seems to the Tribunal that it has to determine this matter under three headings:-

(1) Is there a concept of underutilisation and does it apply to the buildings and storage compound here?

(2) Should the Tribunal accept Mr. O'Buachalla's and Mr. O'Donnell' valuation of the furnaces or that of Mr. Kyne?

(3) What rate per thousand gallons should apply to the tanks?

The Tribunal, in the first instance, rejects the idea of relying on "global" valuations, appropriate for certain undertakings under the 1988 Act, for the simple reason that the Act does not apply to an undertaking such as this. It also rejects the "guidelines" laid down by Mr. Ryan in the document now forming Appendix B to this judgment on the grounds that if it was ever relevant it has ceased, over the years, to be relevant having regard to the rate applicable to comparable tanks.

The Tribunal takes the point that, in a sense, this Refinery has a "captive" market by reason of the mandatory regime. On the other hand, the Tribunal is in no doubt that this is a refinery that has, perhaps, seen better days and there is no doubt that it will require to have a great deal of money spent on it to bring it into line with what a modern refinery should be like.

As regards the concept of underutilisation, the Tribunal is satisfied that there is no such principle in valuation law but the Tribunal is equally satisfied that over the years consideration has been given to the use that was made of the buildings and the utilisation that exists today is much the same as the utilisation that existed in the 1970's and, of course, this was taken into account in the various valuations that were arrived at in the intervening time. In a word, there is nothing new under this heading that was not present in the minds of the parties for nearly 20 years.

As regards the furnaces, the Tribunal has come to the conclusion that it should prefer the valuation agreed between Mr. O'Buachalla and Mr. O'Donnell and reject Mr. Kyne's valuation. Mr. Kyne has placed the valuation that he has done on the furnaces on the basis that they are akin to machinery and he has applied the same principle to them as he would to machinery. However, Mr. O'Donnell's essential point was that he thought that more modern furnaces might become available and that it was only fair and just to allow the deduction that

he did in respect of them. The Tribunal, on the balance of probabilities, therefore decides that the correct valuation is that reached by Mr. O'Buachalla and Mr. O'Donnell.

That leaves the tanks. The Tribunal is satisfied from a consideration of the comparables referred to by Mr. O'Donnell and Mr. Kyne that the correct valuation for tanks such as these is in or around 19-20p per thousand gallons. However, it is struck by the fact that there was, even when it was active, a very low valuation attached to the Whiddy oil tanks at about 5p. This cannot wholly be reconciled with the fact that they were purely storage tanks and not an essential part of a refinery such as is the case here - though this distinction does undoubtedly exist. The Tribunal will not ignore, either, that these tanks are comparatively old and some allowance must be made on that score though the Tribunal accepts, too, that whether tanks are old or new they perform much the same function.

Applying the principles set forth in the decisions previously referred to and, in particular, applying as much common sense as possible as well as having regard to the economic factors, the Tribunal has reached the conclusion that the correct valuation in respect of the tanks should be 15p per thousand gallons. The Tribunal in reaching this conclusion has had regard to the fact that it must view the refinery as a whole and while that is a correct principle, at the end of the day, having resolved the question of underutilisation and having resolved the question of the correct valuation that should attach to the furnaces the Tribunal was left essentially with a determination to be made in respect of the tanks.

Accordingly, subject to any submissions that may be made by the parties, the Tribunal will fix the rateable valuation of this hereditament at £19,500 the breakdown of which is:

Description	Valuation

Buildings	£ 1,330	
Main process area (developed land) & roads	£ 1,200	
Concrete staging	£ 260	
Storage compound	£ 100	
Skimming ponds & collecting basin	£ 400	
Horse power	£ 370	
Pipes, pipe racks and supports		£ 850
Boilers & furnaces/Process heaters	£ 460	
Tanks	£14,560	
£19,530		
	say £19,500	

ADDENDUM

The Tribunal has considered an application for costs made on behalf of Cork County Council and thinks there is no basis for awarding costs to the County Council either against the Commissioner or the appellant company.

The Commissioner has sought costs against the appellant company. The appellant company has been successful as regards quantum. In the ordinary way the Tribunal does not award costs in purely quantum cases but this, in the first instance, is not solely a quantum case and in so far as quantum was concerned it was an unusually complicated one. The Commissioner has been successful in relation to the rateability issue but the Tribunal must recognise the huge contribution made by the appellant companies's witnesses. Having regard to these two factors, the justice of the case would indicate that there should be no order for costs in relation to the appellant companies's appeal. Neither will it make any order in favour of the appellant company against the County Council in the case in which the County Council is the appellant and the company is the Notice Party.