BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 64774
Petitioner: **RENTECH, INC. DBA RENTECH ENERGY TECHNOLOGY CENTER,** v. Respondent: **ADAMS COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 29 and 30, 2015, Diane M. DeVries, James R. Meurer and Sondra W. Mercier presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Kerri A. Booth, Esq. Petitioner is protesting the 2014 actual value of the subject property.

The parties stipulated to the admittance of Petitioner's Exhibits 1 through 5, and 7 through 10. The parties also stipulated to a value of $74,206 for miscellaneous equipment; and that Respondent's list of personal property was representative of the subject property in place as of the date of value.

Subject property is described as follows:

Personal Property located at
4150 E. 60th Avenue, Commerce City
Adams County Schedule No. 01823-07-3-00-043 (account P0008002)

The subject includes all personal property associated with Rentech's Product Demonstration Unit (PDU) along with the assets of the ClearFuels Technology Demonstration Unit. The PDU was first placed into service in 2008 to demonstrate alternative energy technology in the use of synthetic gas ("syngas") to produce synthetic fuels. The intent of the ClearFuels technology was to convert biomass into syngas, which could then be converted into synthetic fuel. Neither unit was designed for commercial or economic viability autonomously, but was constructed to further Rentech's development and demonstration of technology.

By the date of value, January 1, 2014, the subject facility was already shut down and its sale was already under way. Memorandum of Understanding (MOU) and Term Sheet outlined the terms of the sale of the facility to Sunshine Kaidi New Energy Group ("Kaidi"), a Chinese corporation. Ultimately, the sale was finalized in November 2014 at a purchase price of $3,500,000. Kaidi paid an additional $11.8 million for intangible assets and intellectual property owned by Rentech (not part of this appeal).

Petitioner is requesting an actual value of $4,094,206 for the subject property for tax year 2014. Respondent assigned a value of $65,101,264 for the subject property for tax year 2014 but is recommending a reduction to $13,993,486.

Petitioner's witness, Mr. Harold A. Wright, Ph.D., President and Chief Executive Officer, RES KAIDI (formerly Sr. Vice President & Chief Technology Officer, Rentech, Inc.) recounted the history of Rentech as an alternative energy company and provided a detailed account of the development and purpose of the Commerce City site.

In 2009, Rentech expended financial resources and received significant funding from the United States Department of Energy (DOE) to further develop the fuel technology. The DOE grant required the plant to operate for 2,000 hours to demonstrate that the technology was viable. Although the plant was mechanically completed in 2011, the ClearFuels process produced unwanted tar requiring additional changes to the equipment and process. Ultimately, the entire process proved not to be economically viable, primarily due to changes in the U.S. and international energy market and the high cost associated with the production of alternative fuels.

In late 2012, Rentech's Board of Directors concluded that it was in the company's best financial interest to exit the alternative fuels industry internationally. Subsequent to this decision, a 200-hour demonstration run was performed at the PDU in late February of 2013 and the entire plant was afterwards systematically shut-down.

Mr. Wright reported that he was responsible for disposition of the Commerce City plant and equipment, which he accomplished via an agreement and ultimate sale to Kaidi.

Petitioner presented the following indicators of value:

Asset Categories	PDU	ClearFuels	Storage Tanks	Misc Assets *	Total
Cost	$0	$0	$270,000	$130,000	$400,000
Market	$3,500,000	$250,000	$270,000	$130,000	$4,150,000
Income	Not applied				

*Calculated prior to stipulation

Mr. Robert Svoboda, PE, ASA, Managing Direct, Integrity Valuation, testified on behalf of Petitioner. Mr. Svoboda presented a cost approach to derive a value for the subject property of $400,000. Historical cost was estimated at $84,300,266, which was adjusted for inflation to $90,574,399. Mr. Svoboda relied on the Colorado indices for inflation and physical depreciation when applicable. The PDU and ClearFuels assets were given a 5-year useful life based on

market data for other pilot and demonstration plants. After deducting physical deterioration, the resulting replacement cost new less depreciation (RCNLD) was concluded at $24,469,926. As the assets were shut down, Mr. Svoboda determined that they had "no future utility" at the Commerce City location and therefore subject to economic obsolescence. The witness presented information from Rentech's publically filed documents that indicated that the company had lost millions of dollars on the alternative energy segment during past nine straight years. A comparison of actual production to rated capability resulted in 100% economic obsolescence for the PDU and ClearFuels assets. Mr. Svoboda concluded that only the storage tanks (approximately $270,000) and miscellaneous assets (approximately $130,000) retained value, which was reflected in the cost approach.

Petitioner's witness presented seven sales of pilot plants and demonstration units ranging in sale price from $1,250,000 to $9,300,000. The sales included four demonstration units and three pilot plants. Reviewing the sales data, Mr. Svoboda determined that the market was stronger for pilot plants, as all three remained in operation after purchase. Further, the sales presented evidence of a limited market for demonstration plants such as the subject, as only one was sold in place for continued use, which eventually failed financially.

Mr. Svoboda discussed the offer by Kaidi to purchase the PDU assets in Commerce City for $3,500,000, concluding that the offer was representative of actual value of the PDU as of the date of value. Despite the 100% economic obsolescence concluded in the cost approach, Mr. Svoboda determined that the Kaidi offer indicated that the PDU and ClearFuels had some residual value.

As the subject property was no longer in use, "residual value" was expressed by Petitioner's witness as "orderly liquidation value." The Kaidi offer equated to 5.1% of the estimated replacement cost. Sales data and market information presented by Petitioner's witness bracketed the relevant range of liquidation value at 1.25% to 20% of replacement cost.

Petitioner concluded to a value of $4,094,206 for the subject. The ClearFuels assets, which never functioned, were valued at $250,000 equal to 1.25% of replacement costs. The storage tanks were valued at approximately $270,000 based on the cost approach. The remaining miscellaneous assets were added at the stipulated value of $74,206.

Respondent presented the following indicators of value:

Market:	Not applied
Cost:	$13,993,486
Income:	Not applied

Respondent's witness, Mr. Loren Morrow, Personal Property Appraiser with the Adams County Assessor's Office, applied the cost approach to derive a value of $13,993,486 for the subject personal property.

Mr. Morrow first classified the items on the property declaration to nine categories of equipment relying on the Assessor's Reference Library (ARL) Volume 5, Chapter 4.

Replacement cost new was calculated at $88,842,430, reduced to $65,718,988 after applying the ARL factors for physical deterioration. Respondent's witness recognized that because the facility had been shut down, further adjustment for economic obsolescence was required. Using the Percent Good Tables from the ARL, Mr. Morrow applied a factor of 15% "good" to the items he had categorized as petroleum, ClearFuels and refinery equipment.

Respondent contends that the actual value for personal property is "the value in use, as installed," and that the highest and best use of the subject is as a process demonstration plant, despite being shut down prior to the date of value. Respondent contends that economic obsolescence was considered and applied using a 15% "good" factor, and that a further reduction was not supported.

Respondent assigned an actual value of $65,101,264 to the subject property for tax year 2014, but is recommending a reduction in value to $13,993,486.

Both parties considered the MOU and subsequent sale of the property to Kaidi as relevant to the valuation. The parties did not dispute that the facility was constructed as a product demonstration unit; was never intended to produce income at that location; and was in fact shut down and determined to be un-economical as of the date of value. Both parties agreed that there was no market for the subject assets in its current form as a product demonstration unit.

The Board notes that Respondent was attempting to follow the guidelines of the Property Tax Administrator outlined in the ARL for purposes of valuing personal property for tax purposes. Unfortunately, the process appeared to be applied on selective basis, disregarding the requirement to apply appraiser judgement in the use of market indicators. For example, Mr. Morrow admitted in testimony that he had not gathered general information regarding economic trends, industry trends or other factors that would affect the value of the subject, as required by the ARL, Vol. 5, at Page 3.2.

The Board found the testimony of Mr. Morrow to be inconsistent as to his application of the ARL guidelines, as well as standard appraisal methodology. Petitioner's council uncovered discrepancies between Mr. Morrow's testimony and facts contained in the exhibits; most apparent in correspondence between Petitioner and the Assessor regarding the MOU and Rentech's impending sale of assets located in Commerce City.

Respondent's witness insisted that the $3.5 million that Kaidi paid for the assets needed to be increased to include the cost of transportation to China, installation costs, and any applicable taxes in the new location. Colorado statutes require that personal property be valued inclusive of all costs incurred in acquisition and installation of the property; those costs were in fact reflected in the cost approach prepared by both parties. Adding those costs to the value indicated in the market approach is not appropriate methodology.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2014 valuation of the subject property was incorrect.

After consideration of all three approaches to value, the Board agrees with the parties that the income approach is not relevant in the valuation of the subject.

Both parties considered the cost approach in their valuation of the subject. Respondent's cost approach contained insufficient analysis of economic obsolescence. The cost tables do not reflect depreciation due to extraordinary functional and/or any economic obsolescence which must be separately estimated. *See*, ARL, Vol. 5, Page 3.4. The minimum percent good shown in the tables is useful as a guide to residual value. It is not absolute and must be reconciled with value in use information at the retail "end user" trade level for similar types of property. If the market information shows that the actual value for personal property is lower than the value developed by using the minimum percent good, the use of the minimum percent good should be rejected in favor of the lower value. ARL, Vol. 5, Page 4.4.

Economic obsolescence is estimated by either capitalizing the loss of income due to whatever causes exist at the time of the appraisal or by estimating that loss using direct sales comparison in the market. Respondent attempted neither process. Petitioner's calculation of obsolescence based on actual production compared to capacity is found by the Board to be an acceptable appraisal methodology; however, a conclusion of 100% economic obsolescence ($0 value) is not supported by the actual sale.

Although finalized after the date of value, the most convincing evidence of market value presented in exhibits and testimony was the actual sale of the subject assets to Kaidi. "Property sales occurring within the base appraisal (data-collection) period, but not formally closed until after the end of the base period, cannot be excluded from consideration by the Board of Assessment Appeals or the assessor when determining the true and typical sales price of the property." (*Colorado Court of Appeals, in Platinum Properties Corporation, et al., v. Board of Assessment Appeals, et al.*, 738 P2d 34 (Colo. App. 1987) (noted in ARL, Vol. 3 on Page 3.5).

Respondent considered, but did not apply the market approach. The Board finds that the sales used by Petitioner were dated and that the information was incomplete due to non-disclosure agreements, therefore, the sales alone do not provide conclusive evidence as to the value of the subject. However, Petitioner's sales support a significant decline in value for pilot plants and demonstration units that are no longer in use. Petitioner's sales data indicated sales as low as 1.25% of replacement costs, compared to the subject's PDU sale at 5.1% of costs. The Board does however reject Mr. Svoboda's characterization of the subject's value as "orderly liquidation value" because Rentech was clearly motivated, yet not "compelled" to sell the assets. The Board finds that Petitioner's concluded value meets the definition of "actual value" per the ARL ,Vol. 5, Page 3.1.

The Board concludes that the 2014 actual value of the subject property should be reduced to $4,094,206.

ORDER:

Respondent is ordered to reduce the 2014 actual value of the subject property to $4,094,206.

The Adams County Assessor is directed to change her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 15th day of May, 2015.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

James R. Meurer

64774

Sondra W. Mercier

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Lishchuk