

Mountains & Marshes

South Carolina Environmental Law Project ~ P. O. Box 1380 ~ Pawleys Island, SC 29585 ~ 843-527-0078

Winter / Spring 2009-2010

Judge Overturns Landfill Permit

SCELP Making Progress in Fight Against Excess Landfill Capacity

For nearly four years, residents of Gray Court have fought to keep North Carolina-based MRR Highway 92 LLC from building a landfill

On October 23, 2009, EAGLE and SCELP won a significant court battle when Administrative Law Judge Ralph King Anderson issued his order reversing the DHEC permit decision, saying that the landfill violated the South Carolina Solid Waste Policy and Management Act because it is not needed.

The appeal went to trial on July 22, 2009. The case is one of a series of landfill cases undertaken over the past two years by SCELP. The decision of the Administrative Law Judge (ALJ) accepted SCELP's arguments that DHEC failed to properly follow state laws requiring a "demonstration of need" for all solid waste facility permits.

Although the SC Solid Waste Act expressly prohibits the issuance of permits without a "demonstration of need," DHEC has issued permits for more than double the landfill capacity that is actually needed in South Carolina as measured by current and projected waste generation rates.

DHEC has justified the permits by use of a formula that the agency admits does not really measure "need." DHEC regulations authorize the agency to go beyond the formula and consider "additional factors in determining need on a case by case basis," but DHEC has never made use of this "additional factors" provision.

The proposed landfill was designed to handle only construction and demolition debris, along with yard and land clearing waste (this type of landfill is commonly known as a "C&D landfill"). Although Laurens County generates only about 17,000 tons of such



An Aerial View of Lake Martin. The Proposed Landfill would have been built just above the upper waters of the lake, off the top left corner of this photograph.

near their homes in rural Laurens County. After forming a group called Engaging and Guarding Laurens County's Environment (EAGLE), the residents pursued a model strategy of gathering information and political support, and presenting their case against the landfill to the state landfill permitting agency, the South Carolina Department of Health and Environmental Control (DHEC). When DHEC ignored their arguments and granted the permit, the residents took their case to the SC Administrative Law Court, and asked SCELP to provide legal representation.

(Continued on page 3)

A Note from the Director

When SCEL P was formed in 1987, one of the motivating factors in creating the organization was the looming legal battle over the hazardous waste landfill on the shore of Lake Marion near Pinewood. At that time, South Carolina led the nation in imports of hazardous waste. In addition to the Pinewood landfill, there were commercial hazardous waste incinerators in Rock Hill and Roebuck. We knew we needed an organization like SCEL P to take on the legal challenges these facilities presented.

The Pinewood landfill had been permitted in the mid-1970s under state regulations that did not require any public notice. An opportunistic employee of the SC Department of Health and Environmental Control (DHEC), knowing that new statutes and regulations would make it difficult to open new hazardous waste landfills in the future, worked out a deal to take over the landfill and arranged to have the permit transferred to his new company the day after he resigned his position as an administrator of DHEC's hazardous waste permitting program. For years, he raked in millions of dollars as he brought some of the most toxic substances on earth for burial along the shoreline of SC's largest freshwater lake.

I got involved in the legal battle over this landfill in 1985, representing Energy Research Foundation and Sierra Club. We worked out an arrangement to obtain insurance coverage for the hazards of the landfill, and began laying the groundwork for the battle which would ensue. The final permit battle began in 1988 and did not end until 2001.

Fortunately, we won the permit battle and the landfill was closed in 2000. Unfortunately, by the time the landfill closed, over 5 million tons of toxic, ignitable, reactive or corrosive waste had been dumped at the site. The risks of that waste will continue forever, and the citizens of this state will face an enormous cleanup cost someday. Legal battles and market forces also resulted in the closure of the hazardous waste incinerators in Rock Hill and Roebuck, and by the early years of this century this state was out of the business of importing hazardous waste.

Today, however, we're still importing waste. We've been increasing the capacity of our municipal solid waste and

construction debris landfills at a pace that has far exceeded our own production of such waste. Right now, we have at least double the amount of landfill capacity that we need to take care of South Carolina waste. Yet DHEC continues to issue permits for new landfills and expansions of existing landfills and our state is now a major importer of garbage and construction debris.

Over the last two years, SCEL P has been heavily involved in leading the effort against the expansion of landfill capacity in South Carolina. We see no reason to burden our lands, our waters and our health with more landfills than we need. We believe that the permitting of more landfill capacity than we need is a violation of state waste policies, and that the regulations DHEC uses in determining need for landfills are seriously flawed.

So once again, SCEL P is in the midst of another key environmental law battle, and we're beginning to have some success. Our ability to continue this work depends on your support. We hope you'll stay behind us in this effort.

On a personal matter, I'm recovering from successful coronary bypass surgery that I underwent on October 16. Amy Armstrong and Jordan McDonald have done a terrific job for SCEL P while I've been home recuperating. As I write this, it's been one month since the operation, and I'm back at work, though not yet full time. I am looking forward to building back my stamina and shaking off the nagging health issues that have plagued me for the last year. I also hope to spend more time out on our beautiful waterways and natural areas, and a little less time in the office. Don't worry — I can still get a lot done for SCEL P even without the mad schedule I've kept for years.

Many thanks to everyone who has helped us during this process.

..... Jimmy Chandler



Jimmy Chandler and daughter Leigh on the front steps of their home.

South Carolina Environmental Law Project, Inc.

(a 501c3 non-profit corporation)

Mission Statement

*To protect the natural environment
of South Carolina
by providing legal services and advice
to environmental organizations
and concerned citizens and
by improving the state's system
of environmental regulation.*

Board of Directors

*Frances Close, Chair
James S. Chandler, Jr.
Kim Diana Connolly
Margaret D. Fabri
David J. Harmon
Daryl G. Hawkins
Gary Poliakoff
Wendy Zara*

Staff

*James S. Chandler, Jr., Director
Amy Armstrong, Staff Attorney
Jordan McDonald, Administrator*

Office address

430 Highmarket Street
Georgetown, SC 29440

Mailing address

P. O. Box 1380
Pawleys Island, SC 29585

Telephone: (843) 527-0078

FAX: (843) 527-0540

E-mail: Jordan@scelp.org

Website: www.scelp.org

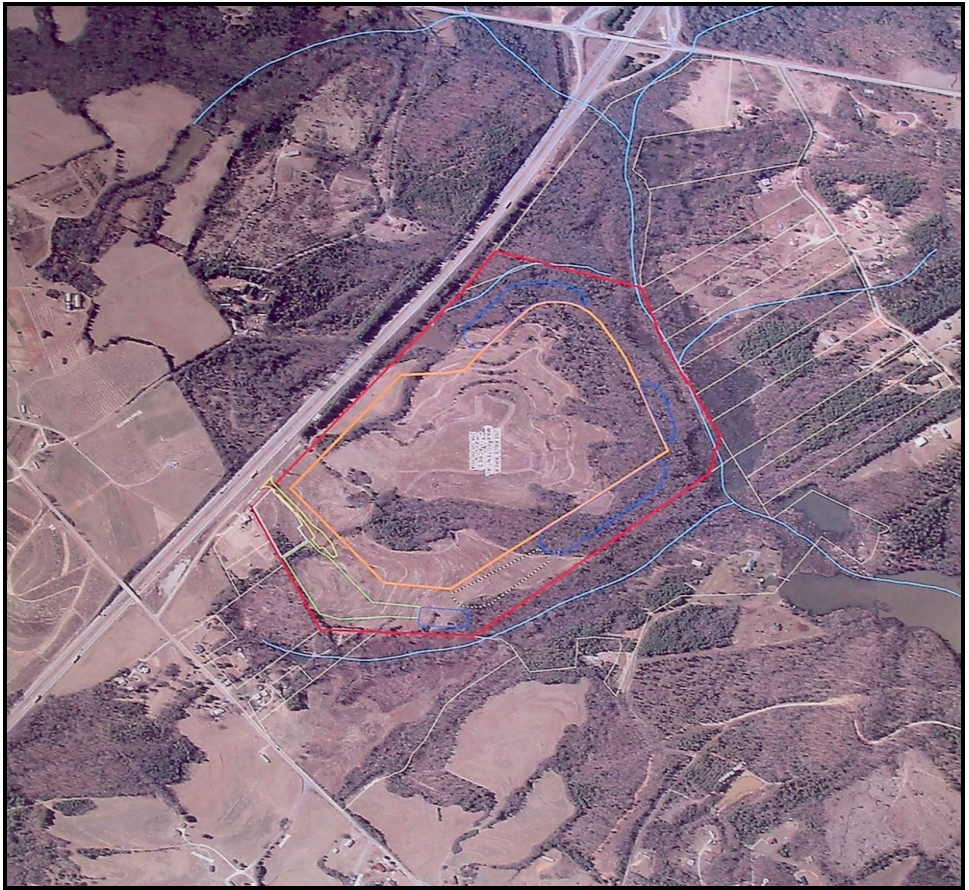
Story continued from page 1...

waste a year while already hosting existing landfills with an annual capacity of over 241,000 tons, MRR proposed to build another landfill with a capacity of 154,000 tons per year.

Using its formula, DHEC approved the proposed landfill at 154,000 tons per year, which represents the total amount of C&D waste generated each year in all of Laurens, Greenville, and Spartanburg Counties. The formula allows this result because there is only one existing commercial landfill within 10 miles of the site of the proposed MRR landfill. The formula also sets the landfill's annual capacity at the total amount of waste generated within any counties having any area within 10 miles of the landfill site, with no deductions for or consideration of existing landfills within those counties.

SCELP and EAGLE argued that because the three-county area has a total existing C&D landfill capacity of over 810,000 tons per year, while generating only about 250,000 tons of C&D waste, and because some of these other landfills were just outside the 10-mile radius from the proposed MRR landfill site, this additional existing landfill capacity was an "additional factor" that should have been considered by DHEC. The ALJ agreed.

The ALJ noted that the term "need" is commonly defined to mean "a condition requiring supply or relief." Since the SC Solid Waste Policy and Management Act requires a "demonstration of need," the ALJ said that "it is obvious that the General Assembly intended that a demonstration of 'need' must involve proof that the circumstances within the region of the landfill indicate additional landfill capacity is needed to meet the public's



The location of the proposed landfill is outlined in red; Lake Martin is to the east.

demands." Considering the evidence showing that the three-county area is using only about 32% of the existing C&D landfill capacity under the view of the evidence most favorable to MRR, the ALJ concluded: "I therefore find that the proposed facility is not needed." He reversed the DHEC decision and directed that the permit be denied.

MRR has filed notice of appeal in the South Carolina Court of Appeals. EAGLE has filed a counter-appeal to raise additional grounds supporting the ALJ's reversal of the DHEC permit. SCELP believes that the ALJ's decision is solidly supported by the evidence and law and thus will be upheld on appeal.

The decision in this case represents significant progress in the broad effort to stop, or at least slow, South Carolina's recent movement toward becoming a major dumping

ground for the entire nation. Other progress is described below.

Marlboro Landfill Denied Re-Zoning Request

The parent company of MRR Highway 92, LLC, MRR Southern, is also seeking to build a "mega-dump" garbage landfill in Marlboro County, right on the North Carolina line. But MRR has again run into solid opposition from Marlboro County residents, as well as from Marlboro County Council.

Citizens for Marlboro County has asked SCELP to assist their broad-based citizens group in opposing this landfill. So far, SCELP's job has been easy due to the energetic work of this grass roots organization.

Marlboro County generates only a small amount of garbage (Municipal Solid Waste is the jargon phrase, or MSW) and the

Story continued on page 8...

Our heartfelt thanks for the commitment of this year's supporters.

Foundations

Frances P. Bunnelle Foundation
Mary Flagler Cary Charitable Trust
Ceres Foundation
Joanna Foundation
Springs Close Foundation
Gaylord and Dorothy Donnelley Foundation
Foundation for the Carolinas
Hopsewee Preservation Foundation
Houghton Fund of the Coastal Community Foundation
Robert L. Huffines, Jr., Foundation
Tara Foundation

Groups / Organizations

Cary Lake Homeowners Association
Coastal Conservation League, Inc.
Fishing Creek Basin Committee
Meher Spiritual Center, Inc.
Pee Dee Land Trust
Rania's Catering
Sierra Club, National

Sierra Club, Robert Lunz Group
Sierra Club, William Bartram Group
Spartanburg Forest Products, Inc.
Springs Window Fashions
Upstate Forever
Yaupon Garden Club

Andrew L. & Karen K. Abrams	Carlyle T. Brandon	J. Howard & Kay M. Daniel	William Fryman
Kate Bullard Adams	Bernadette Brogan	Douglas C. Darran	Deborah Williamson & David Garr
Dennis & Wendy Allen	J. D. Brooks	Reggie Daves	Dr. Sidney A. Gauthreaux, Jr.
T. Eugene Allen, III	Ms. Mary P. Brown	Mr. & Mrs. M. L. Davis	George R. Geer, Jr., Esquire
A. Frederick & Rhoda V. Anderson	William & Michelle Brown	John Mark & Robin Dean	Steve & Joy Gibson
William D. Anderson, III	Bill & Mary Bryan	Susan J. Deandrade	Bingham Gilardi
Dr. & Mrs. William D. Anderson Jr.	C. D. Buckles	George M. Derrick, Jr.	Thomas E. & Sarah M. Gillespie
Stuart & Arlene Andrews	Frank & Mary Gale Budzisz	Arie & Wilma DeZanger	Craig & Sharon Gilman
Susan & Al Arentsen	R. Alan & Katherine B. Burrell	William & Abigail Byrd Dickinson	Charles & Shirlee Goff
Amy E. Armstrong	McBee & Anne C. Butcher	Stephen & Rosanne Dixon	S. Annette Goings
Reed Armstrong	Joseph J. Calandra	James & Rhonda Jean Douglas	Susan R. & C. Scott Graber
William R. & Gail G. Armstrong	Bryant & Frances Cantey	Robert F. Dozier	William G. & Mary Graves, II
Marguerite A. Assey	Dr. & Mrs. J. Robert Cantey	William E. Dufford	Guerry & Fran Green
Dr. Robert L. & Jane J. Avinger, Jr.	Cornelia Carrier	Josh & Melinda Eagle	Mrs. Jack K. Greer
Cheryl Lynn Bailey	Cheryl Carroll	Caroline M. Eastman	John M. & Rhonda C. Grego
Emily F. Bailey	Phillip J. & Courtney M. Cavatoni	Grace G. Eddison, M.D.	Robert Griffin
Chuck & Betsy Baker	Nancy K. Cave	H. C. Edens	Bill Griste
Carl Barr	Alicia & Will Chatham	Mr. & Mrs. James C. Edwards	Vann & Ann Gunter
Wrenn Barrett	Penny Christensen	Robert & Martha Ellendorf	Glen W. Hall
Wade & Pat Barrineau	Richard E. & Linda G. Clapp	Sandra J. Elliott	Mr. & Mrs. Robert L. Hanlin
Peter Baumann	Mr. & Mrs. Cermette J. Clardy, Jr.	Philip & Jo Ann England	Bill & Eleanor Hare
Dana & Virginia Beach	Malcolm L. Clay	John H. & Montez R. English	Roland T. Harper, Jr.
Robert J. & Janet Beattie	Ron & Margaret Claypool	Virginia Ennis	Ben P. & Isla C. Harrelson
Jerry Beck	Nicholas Clekis	Barbara & George Ermentrout	David T. & Mary K. Harris
Norman H. & Ledlie D. Bell	Frances Close	Carol Brittain Ervin	John E. Hart, Jr.
Colin Bentley	James C. Cochrane	Margaret Fabri	Janet & Bill Hassell
Carolyn & Dr. Dennis Bernard	Lawrence & Priscilla M. Coleman	Mary L. Fairbanks	Lewis Hay
Chris Billman	H. V. Coleman, M.D.	Renzo & Nancy M. Falcinelli	John & Erika Hayes
Margaret P. Blackmer	Mrs. Frances M. Cone	W. Kerk Farrell	Starr Hazard, III
Edith Blakeslee	Sallie J. Connah	Peter Muggleston & Dr. Paula Feldman	Richard F. Hendry
Peggy Blanton	Sidnah Jo Conner	Robert J. Feldman	W. J. Hennessy, Jr.
Marilyn Blizard	Shelia B. Cooke	Robert J. & Linda Feller	Fred B. Herrmann
Nancy Bloodgood	Michael Corley	Barney J. & Hildegard M. Finberg	Edwin C. Hettinger
Marie S. Blue-Houpt	Bruce & Judith M. Coull	Edmund J. & Patricia R. Fitzgerald	Mary Beth Hibbard
Tez & Kay Bonnoitt	Mary Craven	Thomas S. Fitzgerald	Robert & Carla Higgins
Jack & Carolyn Bowen	Richard L. & Barbara D. Cross	David & Patricia Flohr	Danny & Donna Hill
Frances S. Boyd	Margaret D. Cunningham	Dr. & Mrs. James Forrester	Jane Hinton-Smith
William C. Boyd	James H. & Marianne D. Currie	Robert L. & Linda W. Freeman	Brenda Hockensmith
John S. & Nancy J. Bracken	Daniel & Amanda D'Albarto	Kathleen A. Frye	Stephen & Susan Hoffius
Mr. & Mrs. James M. Brailsford III	Harry M. & Rebecca H. Dalton		James & Margaret Hoffman

Frank S. & Anne B. Holleman, III
J. W. F. Holliday
Mr. & Mrs. Beecher Hoogenboom
William E. Hopkins, Jr., Esquire
Norm Shea & Amy Horwitz
Alan & Billie Houghton II
Sherwood G. House
Brad R. Huber
Downing H. Hudson
Dr. Leroy J. & Mary R. Huffman
William H. & Evelyn B. Hulse
J.P. & Sue Bell Huskey
Colleen R. Hutchinson
Thomas D. W. Hutto
John & Paulette Hynes
Michael S. Hyrowski
Harford W. Igleheart, Esquire
David G. & Harriet D. Ike
Ricky C. & Nancy R. James
Mr. & Mrs. Edgar S. Jaycocks, Jr.
David B. Jennings
Jennifer L. Jerome
Dr. Gordon Johnson
Joy A. Johnson
W. Steven Johnson
James S. Johnson, Jr.
George & Kathy Johnston
Elizabeth G. Joiner
Edwin R. & Tracy Jones
Bowman Jordan
David & Nicola Jordan
Susan T. & John A. Joseph, Jr.
Don Kamb, Jr.
Paul & Gretchen B. Keller
Barry & Joan Kelly
James J. & Cordelia R. Kelly
Mary T. & Robert J. Kelly
Ronald Sobczak & Kathleen Kempe
Dennis & Denise Kendrick
Linda & Larry Ketron
Paul Keyserling
Diane C. Kickey
Randolph & Patricia Kirkland
Dr. & Mrs. Earl O. Kline
Mr. & Mrs. Harold A. Kline
John & Carol Kososki
Jane Kramer
Hobart W. & Carol B. Kraner
Anne B. Lake
Charles G. & Virginia Lane
Clarke Langrall, Jr.
Bobbie H. Lawson
Wood N. Lay

Richard Brice & Clara J. Leonard
Willem & Theodora M. Letsch
Susan Libes
Langdon D. & Jessie Long
Justin O'Toole Lucey, Esquire
Mr. & Mrs. Irving M. Lustig
Joseph S. Lyles
Valerie G. Marcil
P.D.C. & Janet Marks, Jr.
Fran Marscher
Alexander Marshall
Robert Mason
Eugene H. & Elizabeth W. Matthews
Bob Maxwell
Ronald A. Maxwell, Esquire
Peter Maybank
Gene & Lance Maye
Charlie & Jo Mayer
Mark J. & Julie T. Mayson
Sophia McAllister
William & Jerry McAninch
Lee McBride
Francis McCann
Claudia McCollough
Ralph C. & Elizabeth McCullough
Suzanne McIntyre
William McKeever
L. Henry McKellar, Esquire
Janet Swigler & Jim McMahan
Garland P. McWhirter
Gary W. Meader
George C. Meriwether
Mary O. Merrick
Colie M. & Joyce A. Metts
Terry B. Millar
Don Miller
Jay & Jennifer Mills
Courtenay B. Mims
David & Tina Mims
Sally H. Mitchell
Jean F. Moody
Alan A. & Joanne B. Moses
Thomas M. & Sally R. Murphy
Mary Murray
Jeanne W. Myers
Cynthia L. Mynatt
Everette W. Ness
Rhonwen L. Newton
Michael & Rebecca Niemiec
Jennifer Nolan
Elizabeth B. O'Connor
Rick & Ginger Ogburn-Matthews

Steven W. & Cynthia H. Ouzts
Jane Ovenden
E. Joseph & Christie Owens
Coleman C. Owens, Jr.
Hayes H. Patterson, Jr.
H. E. Pearce, Jr.
Cynthia Perry
Lloyd Peterson
Linda O. Pierce
Joe & Joy Pinson
Justine J. Pitzer
Debra D. Politano
P. Michael Politano
Patricia & Harry Polychron
Penelope H. Polychron
Paul & Suan Porter
Barbara & David Postles
Sara Lynn & Jan Postma
Michael & Virginia Prevost
Steve Price
Wyatt B. Pringle
William H. Prioleau
Ward & Karen Pritchett
Mr. & Mrs. Joey L. Rabon
Frank W. Rambo
John Ramsburgh
Lowell & Martha Dee Rausch
The Honorable Arthur Ravenel, Jr.
Theodore H. Reading, II
Harry S. Reece
Mr. & Mrs. J. Michael Reh
Wayne R. Richard
Pete Richards
Kevin Richbourg
Drs. William & Gayle Richmond
Frances J. & Arthur L. Rickenbaker
Terry Ann Rickson, Esq.
Drs. David & Emma Jane Riddle
Janice E. Rideout
Richard & Juliana Rieger
Mr. & Mrs. Henry F. Rivers, Jr.
Jeanne B. Robinson
Robert E. & Patricia M. Robinson
Douglas J. Robinson, Esquire
Ben & Kathy Rogers
George W. Rogers
Sue Rose
Samuel H. & Sara Beth Rosen
Peter & Gillian Roy
Hyman Rubin, Jr.
Nancy N. Rudy
Anne Sinclair & Julian Ruffin
David G. Russell, Esquire
E.M. Russell, Jr.
Dominic Saether
Duane E. Sams
Jimmy & Martha Sanders
Frank M. & Elizabeth O. Sawyer
Richard B. Saxon
Charles & Pat Schooler
Charlotte Caldwell & Jeffrey Schutz
J.C. & Evelyn P. Scott
Alice N. Seeburg
Carey M. & Jan H. Shackelford
John W. & Kathryn W. Sharp
Mary Elizabeth Sharp
Norm & Linda Sharp
Ed Shmunes

Janice S. & T. Grange Simons, V
Wilson & Ann M. Sims, Jr.
Lois Singleton
Dean L. & Rita G. Smith
Ike Smith
Karen Sundberg & Erik Smith
Harry F. Smithson
Mr. & Mrs. George W. Smyth
Betty Spence
Mr. & Mrs. Fred Stanback, Jr.
Ann & Walter Stanton
Elva Stinson
Robert Stoothoff
Steve & Sherri Strickland
Robert Struble, MD
Elsie Rast Stuart
Thomas E. Sweeny
Michael T. Swomley
Jody & Anne Tamsberg
Benjamin & Jane Ten Eyck
James D. & Phyllis S. Thacker
Elizabeth W. Thomae
Anne P. Thomas
Christine Thomas
Stephen C. Thomas
William Thomas
Clyde & Carlin Timmons
Walter Todd, Jr., Esquire
Russell P. & Lillian D. Truitt
Dan & Cindy Tufford
Dr. & Mrs. Jack M. Valpey
John F. Van Dalen
Eleanne Van Vliet
Greg A. & Laura S. Vanderwerker
F. John Vernberg
Jerry S. & Carolyn S. Voight
Rusty Waddell
Laurie Baker Walden
G. Trenholm Walker
Kristina Walle
Luther & Mary Jo Wannamaker
William L. Want, Esquire
Beekman & Cathy Webb
Richard & Amy D. Webb
Susan Webb
Margaret Webster
Jay K. Weidner
Robert M. & Anne H. Weir
Rob & Priscilla Wendt
Edward & Liesl Hughes Westbrook
Paul and Marlene Westphal
Janet Wedlock & Joe Whetstone
Susan & Tom White
Frank H. Wiles
Benjamin F. & Ann Williamson
Jennie Williamson
Jeff & Sarah Wilson
Zane Wilson
Dr. & Mrs. John W. Wilson, Jr.
Caitlin M. Winans
Virginia Winn
D. Reid Wiseman
Robert W. & Anne P. Withers
Randy & Amelia K. Wood
Wallace Wood
Linda Yarnell
Arthur Zackrisson
Dr. Barbara Zia
Anonymous Donors (3)

Honorary/Memorial Donations

In Memory of Virginia Davis

James B. & Alice L. Cromartie

In Honor of Wendy Zara

Frances T. Gates

In Memory of Will Dicus

Langdon D. & Jessie Long

In Memory of John Frank

Hardaway

Langdon D. & Jessie Long

In Memory of William M.

Lemmon, M.D.

Jane Lemmon Moore

In Memory of Tolly Jared Courson

Rowena C. Nylund

In Memory of Andrew Horan

Wendy Zara

In Memory of Brian Hunter Davis

Brad & Beth Davis

Fred & Joyce Michaeli

Mariam Noorai

Judy L. Roth

L. Carol Shealy

Melanie Thomas, M.D.

Christopher S. Zegers

Case Updates



Spectre-Challenge to the to the Coastal Management Program:

We argued the validity of the State's Coastal Management Program on October 21 in the S.C. Supreme Court. The Coastal Management Program ("CMP") gives protection to isolated wetlands in the eight coastal counties. The developer of a 63-acre tract in Murrells Inlet, SC, wants to fill in 32 acres of isolated wetlands for a commercial development. When the wetlands fill was denied using the CMP's rules, the developer challenged the validity of those rules. The arguments went very well and we are hopeful for a ruling upholding the CMP from the State's highest court.

Chem-Nuclear:

On October 6 we argued our Chem-Nuclear case in the S.C. Court of Appeals. At issue in this appeal is whether state law allows radioactive nuclear waste to be placed in concrete vaults with holes in the bottom. The holes allow water to come into contact with the radioactive waste and flow in and out of the vaults. The vaults are placed in trenches and left open to rainfall for months while they are filled with radioactive waste. The law requires the use of "engineered barriers" designed to protect the general population from releases of radioactivity. Those engineered barriers are supposed to be designed to minimize water coming into contact with the waste and the migration of waste and contaminated water out of the disposal units. But radioactive tritium in nearby surface waters indicates that practices utilized at the Chem-Nuclear facility have not met those requirements. The Judges asked insightful questions during arguments and we hope that the Court of Appeals will rule in our favor and require that radioactive waste be isolated from the environment.

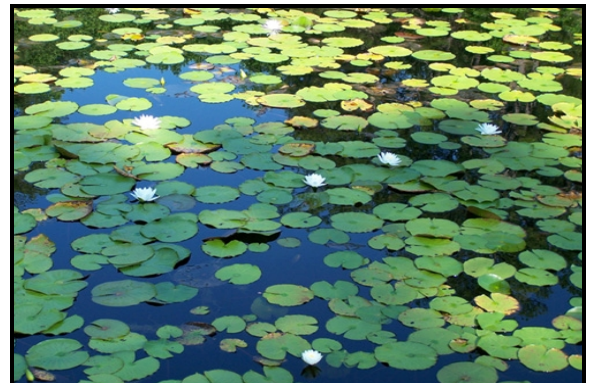


Kiawah Island/ Captain Sam's Spit:

We completed a week-long trial before Chief Administrative Law Judge Ralph King Anderson, III, August 24-28, 2009. The case involves a developer's request for a 2,783' long by 40' wide concrete block erosion control revetment and bulkhead along the banks of the Kiawah River. The structure would cover nearly 3 acres of the public's sandy beach in order to facilitate a residential development on Captain Sam's Spit. We submitted briefs to the ALC in November and are optimistically awaiting a decision.

Arcadia Lakes:

On September 3-4, we completed the trial of our Arcadia Lakes case before Administrative Law Judge John D. McLeod. In that case the developer wants to excavate a lily pad pond and convert this thriving wetland/pond system into a stormwater detention system. DHEC failed to evaluate whether the excavation and impacts to the pond comply with water quality regulations. We are fighting to force DHEC to apply the water quality regulations and protect the lily pad pond.





Risher Bridge:

We have submitted our briefs to the Court of Appeals in this case, in which we are seeking to uphold and enforce the regulatory prohibition on building bridges to small marsh island, also known as “hummocks.” Also at issue is DHEC’s jurisdiction over wetlands adjacent to and influenced by tidal waters. An ALJ overturned DHEC’s denial of a permit. We have strong grounds on appeal and are awaiting a date for oral arguments.

Congaree National Park:

Through our federal National Environmental Policy Act (NEPA) suit, we successfully forced the Federal Highway Administration and the S.C. Department of Transportation to conduct a new review of impacts resulting from the proposed new Highway 601 Bridges running through Congaree National Park. Judge Margaret Seymour ruled that the NEPA review was inadequate and ordered FHWA and DOT to take a “hard look” at the impacts that would result from the bridge construction. Unfortunately, the new NEPA review is again inadequate and will likely result in a second NEPA challenge in federal court.



Progress in Wetland Clean Water Act Suit



SCELP’s work in our Deerfield Plantation federal Clean Water Act (“CWA”) citizen’s suit is moving forward. In this case, the U.S. Army Corps of Engineers (“Corps”) declared in 2007 that there were no wetlands or “waters of the U.S.” requiring CWA permits on the old Deertrack South golf course, despite the presence of obvious interconnected wetlands and ponds that flow through a series of ditches and into the Atlantic Ocean. Based on this determination, a developer won approval of plans to fill in wetlands and ponds for construction of a large residential development on the old golf course.

On behalf of a Deerfield neighborhood association, SCELP challenged the Corps’ decision in federal court and presented evidence to the Corps that the wetlands and ponds had a direct surface connection and flowed into navigable waters. In light of the information we presented, the Corps and the developer agreed to send the CWA jurisdictional determination back to the Corps and allow it to reopen the administrative record and reconsider its jurisdictional determination. The Corps is in the process of determining whether to reconsider its jurisdictional determination.

We have submitted thorough documentation supporting our contention that the wetlands and ponds are adjacent to and have a direct connection with navigable waters and thus are jurisdictional wetlands that are regulated under the Clean Water Act.

We also have two parallel suits involving the wetlands and ponds adjacent to the Deerfield Plantation. Unfortunately, in one of those cases, our appeal of the stormwater permit in the Administrative Law Court, we received an adverse ruling. While the Judge recognized that the wetlands and ponds are waters of the State subject to regulation, he did not require DHEC to review impacts to those waters that would stem from development of the site. We have appealed that decision to the Court of Appeals. The other case remains pending in Horry County circuit court.





Photo Courtesy of Landfill-site.com

Story continued from page 3

counties surrounding it have all adopted plans for taking care of their garbage that do not involve this proposed MRR landfill. Yet in 2007, DHEC issued a letter approving MRR's "demonstration of need," once again basing "need" on the formula that does not measure need.

MRR does not own the land at the proposed landfill site, but has an option to purchase it. The property's zoning does not allow an MSW landfill, so MRR filed a request asking Marlboro County to re-zone the property to allow the landfill. MRR also filed an application for a special use permit for the landfill. Responding to overwhelming citizen opposition, the Marlboro County Planning Commission, Marlboro County Council and the county Board of Zoning Appeals denied the

re-zoning application and the special use permit. MRR has filed two lawsuits against the county to challenge these decisions. SCELPA will file motions to intervene in these cases to help defend the county's decisions.

Williamsburg County Landfill Permit Back in Appeal

In 2008, MRR worked out a deal with Williamsburg County to turn the county's small landfill operation into a "mega-dump" taking in more than 2,300,000 tons per year of garbage. Grass-roots opposition from the Coalition of Concerned Citizens of Williamsburg later led Williamsburg County Council to terminate the agreement with MRR. At that point, we thought a problem had gone away. In June, however, DHEC issued a new "demonstration of need" for an expansion of the county landfill to 400,000 tons per year. Yet the county currently generates less than one-eighth of this amount of garbage.

On behalf of the SC Coastal Conservation League and the SC Wildlife Federation, SCELPA has filed an appeal of this "demonstration of need" in the Administrative Law Court.

Challenge to Needs Regulation

It has become evident that a major problem with this state's landfill permitting program is the inconsistency between the statutory requirement of a "demonstration of need" and the DHEC regulation that substitutes a formula that appears to arbitrarily determine need, and which leads to demonstration of need approvals where there is no objective need. SCELPA has argued this inconsistency in the cases it has presented to the Administrative Law Court, but that Court has ruled that it lacks authority to strike down a DHEC regulation.

To get at this issue, SCELPA has filed suit against DHEC, MRR, and Williamsburg County, asking the state circuit court to declare that the DHEC "needs" regulation is invalid because it is improperly inconsistent with the statutory demonstration of need requirement. The case is pending in Marlboro County.



Lee County Landfill in SC. Photo Courtesy of SCDHEC

To allow us to continue our important work on the cases and issues listed, we ask for your financial support. Without you, none of our work would be possible, and now its easier than ever to donate online. Go to www.scelp.org and click on "How you can help."

<http://www.scelp.org>

