

# **S.C. Environmental Law Project**

A photograph of a forest stream. The water is dark and reflects the surrounding trees and foliage. Sunlight is breaking through the canopy, creating a bright, shimmering reflection on the water's surface. The trees are mostly dark, with some green leaves visible. The overall scene is serene and natural.

*Celebrating 25 Years of Environmental Protection*

*25th Anniversary Edition*

*2012*

## Message from the Director:

This year SCELPA reaches a milestone in turning twenty-five. Back in 1987, it is doubtful that anyone, including our founder Jimmy Chandler, would have imagined that we would still be here all these years later or that we would have registered so many successes along the way. Making it to this point has not been easy. These twenty-five years have been filled with times of great disappointment as well as times of great celebration. The fact that we are still here and are still fighting is attributable to the one constant throughout these many years: the unflinching support of those who care for the natural resources and places that make our State unique.

I truly believe that these first twenty-five years are only the beginning. While environmental consciousness among the public may be at an all-time high, this awareness is often not reflected in the decisions of our agencies and other governing bodies. Particularly in light of the shrinking budgets allotted to environmental regulatory agencies, the demand and need for SCELPA's services has never been greater. From a positive perspective, there are still many areas of natural beauty and diversity in this State worth protecting. That is why I, and the rest of the SCELPA staff, maintain an unusual enthusiasm for a job that can at times be completely taxing. As long as these special places continue to face threat from greed and shortsightedness, I expect SCELPA will be there to intervene.

It is my desire that this special newsletter can serve as a placeholder of sorts. I have now been at SCELPA for ten years. Though that is not even half of SCELPA's existence, the changes I have witnessed in both SCELPA and our State's environmental community have been startling. I sincerely hope to be here when another ten years has passed, to look back fondly on where we were on our twenty-fifth anniversary and to marvel at how SCELPA and those who support SCELPA have risen to meet the yet-unforeseen challenges of the future.

~Amy Armstrong



SCELPA's founder & long-time President, Jimmy Chandler

### Jimmy Chandler (1950-2010)

In many ways this entire newsletter is a tribute to Jimmy Chandler. Jimmy's foray into environmental law began in the early 1980s with a fight over a proposed oil refinery in Georgetown County. The refinery would have discharged numerous pollutants into the air and the water. Of additional concern was that the pipeline would run precariously across wetlands and the Sampit River. Despite the clear problems with the project, DHEC refused to take action and assented to the project. Recognizing that citizens could not rely on State and Federal agencies to protect us fueled Jimmy's desire to commit the rest of his life to environmental law.

The oil refinery was defeated, and Jimmy founded SCELPA in 1987. He then served as SCELPA's director for 23 years, until his passing in 2010. Though he would have never sought recognition as such during his lifetime, Jimmy is undisputedly one of the preeminent figures in the history of South Carolina environmental law. This fact was never more evident than upon his passing, when the outpouring of love and admiration from all varieties of groups and individuals was truly staggering.

Jimmy was known and respected for his tenacious courtroom advocacy. Perhaps this zealous advocacy is attributable to the fact that Jimmy never took a case he did not feel strongly about. Despite SCELPA's small size, Jimmy never settled for less than the highest quality work product and results. We are proud to carry forward his lessons and legacy.

# Lawyers for the Wild Side of South Carolina:

This Anniversary Edition of SCELP's newsletter is a reflection on the environmental battles that SCELP has shaped, and that have shaped SCELP, over the last 25 years. This newsletter is a look back, but also a call to action — a documentation of our hard-earned successes, but also a recognition of tough tests to come. While our work is complex, the goal of SCELP has remained simple: to protect our State's creeks, rivers, beaches, forests, and natural places of beauty and tranquility — those places that inspire such wonder as to remind us that we are stewards for future generations, as much as masters of the here-and-now. This goal has remained unchanged for 25 years, free of special interests, monetary allegiances, and political expediency. Through you, our faithful supporters, SCELP has had the luxury of remaining financially viable but not financially beholden. It is a luxury we do not take for granted. We hope that this special edition newsletter confirms that your support of SCELP has been well-earned.

## South Carolina Environmental Law Project

*(a 501c3 tax-exempt 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

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## WHO WE ARE

SCELP was created in 1987 in response to growing demand for legal mechanisms to curb the failures of compliance and enforcement plaguing our state and federal environmental laws. Since 1987, SCELP has represented a great variety of local, state and national groups in all types of environmental controversies. Our cases have established some of the key environmental law precedents in this State.

SCELP allows the State's environmental groups, as well as ad hoc groups of concerned citizens, to fully participate in all phases of the environmental regulatory process. Quite often, environmental permitting controversies end up in legal proceedings before the South Carolina Administrative Law Court or other state and federal courts. Grassroots organizations usually lack the resources to participate in these proceedings and rely on our expertise and assistance to navigate difficult environmental legal matters in which they would otherwise not have a voice.



SCELP Staff & Board of Directors. Seated from left, Amy Armstrong, Frances Close, Phyllis Nisoff. Standing from left, David Harmon, John Mark Dean, Margaret Fabri, Michael Corley, Leon Rice, Nancy Vinson, Gary Poliakoff. (Not pictured: Wendy Zara)

# WATER

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*South Carolina's water resources are vital to our health, well-being and economy. From the Catawba, Broad and Saluda Rivers in the west to the Little and Great Pee Dee, Waccamaw, Black, Santee and Edisto in the east, we have diverse water resources in this State. Many of us fish, boat and swim in these waters, while others are dependent on our waters for commercial enterprises. SCELPA has led the legal efforts to protect these valuable and significant water resources.*

## *SCELPA's Key Victories in Protecting Water Quality:*

When SCELPA first started bringing legal challenges to environmental permitting decisions in the late 1980s, the Clean Water Act required the State to review water quality impacts of proposed projects, but the State did not have any water quality regulations to utilize in that review. SCELPA stepped in and advocated for the adoption of state-wide regulations necessary to protect water quality. We prodded DHEC to adopt more stringent regulations governing its water quality certification program, placing South Carolina at the forefront of the State-level implementation of the Clean Water Act. Our efforts led to the General Assembly's 1990 passage of South Carolina's Water Quality Certification Regulations, providing key legal tools to protect water resources. SCELPA has used those Water Quality Regulations to establish lasting precedents for water quality protection.

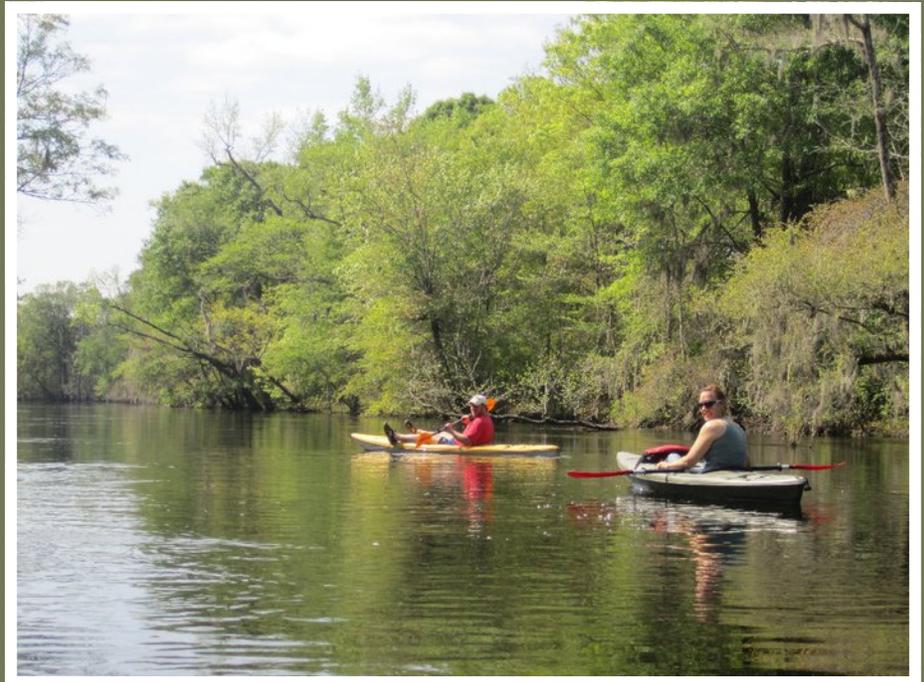


## These Water Quality Victories Include the Following:

- Working with the League of Women Voters to prod International Paper to eliminate discharges of dioxin into Winyah Bay.
- Achieving water quality and recreational use protections for the North Saluda River in connection with an appeal of a water quality approval for a major development in Greenville County.
- Fighting to enforce the Clean Water Act when DHEC failed to prosecute companies for violating waste water discharge requirements.
- Challenging a violation of the Clean Water Act and forcing DHEC and York County to find an alternative to increasing sewage discharges to Fishing Creek in York County.
- Protecting shellfish habitat by appealing permits for several proposed coastal marinas in sensitive shellfish harvesting waters and by forcing a developer on DeWees Island to modify its sewage disposal plans.
- Preventing a marina from being constructed in the Outstanding Resource Waters (the highest classification bestowed by our State) of Bohicket Creek in Charleston County.
- Challenging a dredging permit that authorized the dredging of salt marsh and oyster beds in Debidue Colony in Georgetown County. That case resulted in elimination of dredging salt marsh and oyster beds, and a requirement that all dredging stay at least 10 feet from salt marsh, a precedent that is still in place and followed by DHEC.
- Challenging a turkey farm permit and securing limitations on that permit to prevent fecal coliform bacteria from polluting the tributary that feeds a boy scout camp's lake in Chesterfield County.
- Ensuring an opportunity for public review of "General Permits" impacting water quality throughout the State.

South Carolina Sierra Club and the people of S.C. rely on SCELP to be the front line of defense for our state's precious natural resources. Without them we would all be living in a much diminished environment. Their dedication, passion, and expertise are absolutely vital, especially in these times, in saving us from special interests who would further pollute and destroy our natural heritage.

~Susan Corbett, Chair,  
S.C. Chapter of the Sierra Club



QUALITY

# Coastal

Throughout SCELPA's history, we have been at the forefront of efforts to protect South Carolina's coastal resources from degradation by way of ill-advised and unwise development projects. Representing a variety of groups, including the Coastal Conservation League, the Sierra Club and the League of Women Voters, we have brought dozens of cases seeking to protect our creeks, rivers, marshes, beaches, dunes and other resources. Many of these cases have established landmark legal precedents and have helped ensure continued protection for these resources.

## SCELPA's Key Coastal Management Cases:

### Charleston County



- Prevented degradation of Charleston County's Bohicket Creek, designated as an Outstanding Resource Water, by overturning the permit for the Andell Harbor Marina.
- Protected Goat Island from being opened to vehicular traffic, which would have drastically changed the rural, pristine nature of the island; and prevented construction of a "mega-dock" that would have allowed unloading of vehicles and heavy construction equipment on the island and opened the island to large-scale development.

### **Captain Sam's Spit**

(pictured) - SCELPA remains embroiled in a battle to prevent development of a fragile formation known as Captain Sam's Spit. The Spit is widely recognized for its value to important wildlife species and is federally designated for a number of conservation purposes.

SCELPA won a crucial judgment in the South Carolina Supreme Court rejecting the lower court's decision to permit a 2,783' long by 40' wide concrete block mat on the sandy beaches of the Spit, proposed for the purpose of facilitating residential development.

- Defeated plan for Laurel Hill Plantation marina on the Coosaw River in a shellfish harvesting area.



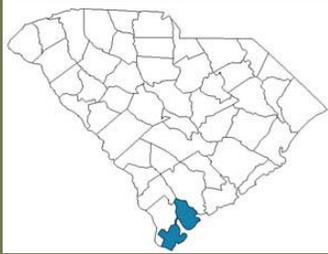
### Georgetown County



- Stopped a major proposed wetlands dredging project at Willbrook Plantation, whereby the developer planned to create waterfront lots by dredging two miles of canals through wetlands. This case established landmark legal precedent precluding economic benefits as a justification for wholesale environmental destruction.
- Defeated plan by Debordieu Colony to construct a series of three groins on Debidue beach adjacent to the Winyah Bay-North Inlet Estuarine Research Reserve. Groins are steel and rock structures constructed perpendicular to the beach and are known to deprive downdrift beaches of sand and exacerbate erosion downdrift.

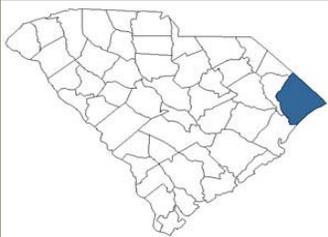
- Brought challenge to wetland fill on Pawleys Island golf course that ended in settlement reducing quantity of wetlands filled and protecting remaining wetlands on the course through a conservation easement.
- Successfully challenged permit to fill wetlands for residential development in Ricefields Plantation.
- Opposed after-the-fact permit requests for substantial wetland modifications on Sandy Island. The permit requests were denied and the denial was upheld at every level.

### Beaufort County



- Challenged developer’s plan to build bridges to two small marsh islands in St. Helena Sound, leading to Beaufort County’s purchase and preservation of the islands.
- Successfully opposed challenge to Beaufort County’s dock ordinances, which are more stringent than the State’s rules for docks.
- Brought challenge to Daufuskie Island marina that resulted in significant limitations on the size and environmental impact of the marina.
- Challenged septic tank permits for Bull Point development and reached settlement whereby developer agreed to install a special treatment system to protect shellfish and other aquatic resources.

### Horry County



- Protected unique Carolina Bays from excavation by helping defeat a proposal to begin commercially mining peat from the bays.
- **Cherry Grove** (pictured) - Over the years, SCELPA has been involved in a number of cases in the Cherry Grove area. Between the late 1940s and 1972, the natural creeks and marshes of Cherry Grove were erased from the

landscape, and in their place dead-end manmade canals and residential lots were constructed. In 1998, SCELPA successfully overturned permits authorizing development of a section of Cherry Grove that had largely reverted to its original dune/marsh condition. The property was instead set aside as a public park.

SCELPA later successfully challenged a proposal to dredge the old manmade canals, which would have destroyed the marsh vegetation and shellfish beds that had been allowed to grow over decades.

Finally, a Cherry Grove property owner constructed a wall as much as 31 feet into one of the canals and backfilled the marsh in an attempt to increase the size of his lot. SCELPA was involved in the enforcement action that resulted in an order to remove the bulkhead and a fine.



Management

# Coastal Management, continued

**Results With Coast-wide Implications:** More than protecting particular areas or defeating particular projects, SCEL P prides itself in establishing important environmental law precedent with coast-wide applicability. Those precedents include:

- Our challenges to permits for "groins" (structures on public beaches designed to trap sand) led to tighter rules for these structures which are crucial to protecting adjacent beaches and the public's interest in beach access. As a result of our challenges, the regulations now require an applicant to demonstrate that a new groin will not cause any downdrift impacts. This requirement is critical because the overwhelming scientific opinion is that groins, by their very nature, cause detrimental impacts to downdrift beaches by trapping sand that would otherwise naturally migrate down and replenish those beaches.
- We have beat back numerous challenges to the validity of our State's Coastal Management Program. The Coastal Management Program is used to protect not only wetland and water resources (discussed further in the wetlands section), but also barrier islands, the beach/dune system, public open spaces, endangered wildlife and marine species, as well as cultural, archeological and historic resources. The S.C. Supreme Court's 2009 ruling in our *Spectre v. DHEC* case affirmed that the Coastal Management Program is valid and enforceable, and the protections afforded to all coastal resources under the CMP must be implemented.
- We challenged several permits authorizing bridges to small marsh islands and were able to defeat some of these structures. Later, Jimmy Chandler, along with other environmental leaders, served on a committee that developed regulations to ensure appropriate protections for thousands of the State's small, pristine marsh islands.
- The Beachfront Management Act prohibits seawalls on the active beach because they contribute to the loss of public beaches, see photo at right. Seawalls are constructed shore-parallel, and can be seen along 27% of S.C.'s developed coast. Seawalls allow waves to scour away the sand and prevent beaches from naturally migrating inland. The Act's prohibition on seawalls was threatened by homeowners on Daufuskie Island who were denied permission to build a seawall. The landowners brought a challenge to the seawall prohibition asserting that it resulted in a "taking" of private property. SCEL P stepped in to successfully defend the Act's prohibition and ensure that our public beaches are protected.



The future holds more threats to the Beachfront Management Act. In particular, the Act contains a "policy of retreat" designed to move development away from the beach, protecting people, structures and the beach itself. The policy of retreat consists of both a ban on seawalls and a requirement that landowners remove a house if it becomes located on the active beach.

As sea levels rise, structures built too close to the beach become more and more threatened. With these increased threats will come increased pressure to protect houses built in high risk areas at the cost of the public beaches. In 2010 the DHEC Board appointed a Blue Ribbon Committee on Shoreline Management in part to address these future threats to our shoreline and to develop management recommendations. SCEL P remains vigilant through this process to ensure that the integrity of the Act is upheld and that our beaches are maintained for tourists and residents alike.

SCELP has spent many years working to ensure that radioactive materials are disposed of in a manner that protects the environment and human health. Two major efforts include challenges to disposal of radioactive materials at the Savannah River Site and Chem Nuclear's Barnwell Facility.

**Savannah River Site:** We challenged a Savannah River Site (SRS) disposal permit along with the Natural Resources Defense Council. SRS stored thousands of gallons of high-level radioactive waste in 49 underground tanks, which hold approximately 33.8 million gallons of salt waste. This salt waste contains approximately 47 percent of the radioactivity (nearly 223 million curies) in the tanks. DOE proposed various disposal methods for the salt waste, including placing the salt waste in saltstone grout and disposing of the waste in vaults at the Saltstone Disposal Facility (SDF). We challenged the sufficiency of the disposal methods because of the potential risks. As a result of our permit appeal, we achieved improved disposal practices at the Saltstone Disposal Facility, which include limiting the amount of waste disposed in the SDF and features designed to ensure that waste does not come into contact with water. See photo at right for an aerial of a facility at SRS.



**Interstate Nuclear Services:** SCELP fought off a challenge to more stringent conditions placed on a company in the Rosewood neighborhood of Columbia that laundered clothing contaminated with radiation. The more stringent conditions were upheld, and the company eventually moved. Even the company's closest neighbors in Rosewood were unaware that radioactive materials were being transported into this dense residential area.

**Chem Nuclear:** We have been fighting Chem Nuclear's disposal practices at the Barnwell disposal facility for the past seven years. Chem Nuclear disposes of radioactive waste in a manner that promotes migration of the waste into the surrounding groundwater and environment. First the waste is placed in large concrete vaults that are unsealed and have holes in the bottom. Then the vaults are placed in large, uncovered trenches that periodically fill with rainwater and groundwater, see photo at left. The contact with water and the holes in the vaults allow waste to come into contact with water and flow out of the units and into the groundwater. Radioactive tritium has been detected in the surface waters of nearby Mary's Branch Creek, which flows into the Saluda River.



On behalf of the Sierra Club we were successful in getting the Court of Appeals to agree that the disposal practices present "monumental hazardous conditions that can result from tritium and other radioactive materials leaching into the soils, and, in turn, into the groundwater" which "cannot be ignored."

Though this battle continues, we are pushing for practices that would prevent the contact of water with waste, and are pursuing a ruling on whether more stringent practices will be required.

# Radioactive Nuclear Waste

# HAZARDOUS WASTE

*When SCELPA was founded in 1987, South Carolina was home to a hazardous waste landfill and two hazardous waste incinerators. South Carolina had become the national dumping ground for hazardous waste. Over the course of 15 years, SCELPA worked with a coalition of citizens and attorneys to challenge permits and bring citizens suits under the Clean Water Act. Thanks to SCELPA's work, by 2001 all three of these poorly-run facilities were closed.*

## **Laidlaw's Pinewood Facility** (pictured at right)

In litigation that spanned 15 years, SCELPA managed to close this hazardous waste landfill in Pinewood, located only 1200 feet from Lake Marion. The landfill was widely recognized as one of the worst-located in the entire nation from a health and environmental standpoint. The permit for this landfill had been issued without any public notice or any type of hearing.

As is probably apparent from the incredible duration of this project, it was no easy task bringing accountability to the operation of this landfill. The landfill company used its political clout to be grandfathered out of new hazardous waste standards. The requirement to establish a cleanup fund in excess of \$100M was imposed on Laidlaw several times, only to later be inexplicably removed. Finally, SCELPA secured a judgment in the Court of Appeals that put an end to one of the worst stories in South Carolina's modern environmental history.

## **ThermalKEM Incinerator**

SCELPA was involved in six years of litigation challenging this hazardous waste incinerator in Rock Hill. ThermalKEM had burned toxic waste in Rock Hill for years, and wanted to expand its operation with a second incinerator. When ThermalKEM sought a new permit, SCELPA got involved. After nearly 50 days of DHEC hearings and another dozen or so days in court, including hearings in the South Carolina Supreme Court, Federal District Court, and the U.S. Fourth Circuit Court of Appeals, ThermalKEM finally gave up efforts to permit its expansion and closed its operation.



## **Tyger River Incinerator** (Tyger River pictured at left)

For over seven years SCELPA pursued a citizen suit seeking penalties and correction of more than one thousand violations of the Clean Water Act involving excess discharges of mercury and other toxic substances into the North Tyger River from this hazardous waste incinerator in Spartanburg County. The battle went all the way to the United States Supreme Court before we eventually prevailed, and the incinerator shut its doors. The case resulted in the imposition of a substantial fine and also in important precedent supporting citizens' standing to bring this type of action.

*For most of its history SCELP has been working to prevent South Carolina from becoming a mass dumping ground for other states' waste. At no time has this risk been more real than in the last seven years, when lax regulations have led to a spike in landfill applications and to DHEC permitting landfill capacity more than double what is generated in our State. During this period, we have precluded the construction of a landfill in Williamsburg County; prevented a landfill in Marlboro County; and are in the midst of challenges to two other proposed new landfills. The fight, however, most certainly continues.*

**The Problem:** Though the South Carolina Legislature has charged DHEC with making a “determination of need” before permitting a new landfill, DHEC’s regulations completely fail to do so. DHEC’s decisions in two of SCELP’s landfill cases, as shown below, illustrate this point. Instead of making a reasoned determination of need based on the specific facts of a given case, DHEC’s analysis consists entirely of drawing a point on the map where a new landfill is proposed, drawing a circle around the landfill, and counting the number of landfills within the circle.

Laurens County Generation:	15,000 tons/year
Existing Capacity in County :	160,000 tons/year
DHEC Decision:	new landfill “needed”
New Landfill Capacity:	154,000 tons/year
New Laurens County Capacity:	21x generation rate

Williamsburg County Generation:	45,000 tons/year
Capacity of Proposed Landfill:	2,375,000 tons/year
DHEC Decision:	new landfill “needed”
New Williamsburg County Capacity	53x generation rate

The radius of the circle varies depending on the type of landfill, but the analysis remains the same: if there are fewer than two existing landfills within the circle, the new landfill is “needed,” regardless of the capacity of the existing landfills or of the demand in the area. If the landfill is “needed,” DHEC then determines the permitted capacity of the new landfill by totaling the generation rate of any county that the circle touches, regardless of the number or capacity of landfills in those counties. This approach has led to the permitting of 4.4 million tons of construction and demolition waste capacity in a state that only generates 2 million tons.

**The Solution:** Our State regulators have stacked the deck in favor of landfill companies. Nevertheless, especially when teamed with energized community opposition, SCELP has had successes in staving off unneeded landfills. SCELP’s work has prevented five new landfills from being constructed in the past ten years, including a 1.5 million tons per year mega-dump in Marlboro County and landfills in Williamsburg and Laurens Counties. But these fights are not over, and SCELP remains vigilant in our efforts to prevent these landfills from coming to pass.

SCELP also worked with a committee to develop new landfill regulations that are more restrictive. Those new regulations were enacted in 2009, and significantly decrease the potential for new landfills.

At right is a photograph of pristine Lake Martin, the site of the proposed Laurens County landfill.



**LANDFILLS**

# CITIZENS

## *SCELP Has Led the Way in Ensuring Citizens' Abilities to Participate in All Phases of the Environmental Decision-Making Process*

### **Due Process Rights:**

SCELP's early work was instrumental in securing the right to public notice of a proposed environmental decision, a hearing to determine whether that decision complies with environmental protection laws, and judicial review of that decision. In *League of Women Voters v. Litchfield-By-The-Sea*. SCELP represented the League of Women Voters in challenging a coastal zone consistency certification of a sewer system permit. The challenge was initially rejected by the lower courts on the basis that it was not a reviewable decision. The S.C. Supreme Court denounced the limitation on citizens rights to notice, hearing and judicial review of coastal consistency certification decisions, clearing the way for citizens to utilize important coastal protection laws.

Our challenge to the practice of issuing coastal zone consistency certifications without public notice or public comments led to new rules and regulations giving citizens notice and an important voice in this critical decision-making process.

### **Standing:**

In order to obtain a hearing and judicial review of an environmental permitting decision, a group or individual must have what is called "standing." The test for standing ensures that a party has a personal stake in the outcome of the controversy. In other words, a party bringing suit must show that the action injures him or her in a personal way.

While this requirement may seem fairly straight forward in environmental cases, the question of standing has been very controversial throughout much of SCELP's history. SCELP observed a trend in the S.C. Administrative Law Court of decisions holding that even persons who use a resource lack standing when that resource is threatened. SCELP vigorously pursued appeals in two of those cases, hoping to get favorable rulings from the Supreme Court correcting the erroneous interpretation of the standing requirements.

In the seminal case, *Jim Smiley v. DHEC*, Jim, who daily walked the beach at the Isle of Palms, challenged a permit that allowed sand to be scraped from the public beach and placed to protect private structures. Despite Smiley's use of the beach and the damage to his use that the project would cause, his appeal was dismissed for lack of standing.



*Jim Smiley on the Isle of Palms beach. DHEC issued a permit authorizing moving sand from this publicly-accessible beach to*

It's frightening to think about how much different and worse South Carolina would be today if there had been no SCELPL.

Thank goodness they've been here for the last 25 years, doing extraordinary work in defending and protecting what really makes our State special--its environment and natural resources.

~Brad Wyche, Executive Director,  
Upstate Forever

SCELP stepped in to defend the rights of Mr. Smiley and all citizens to challenge an environmental permitting decision that would result in a loss of their use of public resources. We made it to the S. C. Supreme Court, who agreed to hear two standing cases because of the significant public interest involved.

The Supreme Court unanimously ruled that Jim Smiley, as a person who uses the beach at Isle of Palms and whose use of that area would be adversely affected, had standing.

This was a precedent-setting judgment. The Supreme Court ruled that anyone who uses a resource that is affected by a project has standing to appeal permits related to that project. Yet despite the Court's clarity in ensuring that citizens have a

say when it comes to decisions that will impact our natural resources, both the administrative and legislative bodies of this State continue to threaten these important rights.

SCELP has remained vigilant and will continue to fight for citizens rights to fully participate in the environmental decision-making process.

## Enforcement Actions:

In *S.C. Coastal Conservation League v. Dewey Wise*, we established the important right for a citizen to bring an enforcement action under the S.C. Coastal Zone Management Act. Mr. Wise removed an old bridge crossing a tributary of Fishing Creek on Fenwick Island in the ACE Basin. Then he placed fill dirt in salt marsh to create a causeway where the bridge had been removed, as pictured below. Wise did not have a state permit, which is required to alter critical area salt waters or marsh.

On behalf of the Coastal Conservation League, we filed an action in circuit court asking the court to order the causeway to be removed and the area restored. The court agreed with us, ruling that Wise had illegally filled the salt marsh. SCELP won the first citizens' enforcement suit under the S.C. Coastal Zone Management Act., establishing that citizens may bring enforcement actions under the Act when the State fails to protect our salt water marshes, creeks and beaches.

SCELP also recently established that citizens similarly have the right to bring enforcement actions under the S.C. Pollution Control Act when a person discharges pollutants, in particular fill material, into wetlands and waters of the State. Unfortunately, the legislature took away those rights in the 2012 legislative session.

SCELP is committed to studying alternative methods to ensure that citizens can protect themselves from pollution, and prevent degradation of our precious waters and wetlands.



# RIGHTS

# WETLANDS

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As buildable highground, particularly in the coastal zone, underwent rampant development in the 1990s, developers began looking for new building sites. Over SCELPA's history, we have seen continued and increasing pressures to develop in sensitive wetland areas. The development pressure has been so strong that we have had to consistently fight off legal challenges brought by those seeking to deregulate wetlands, particularly "isolated" wetlands.

## History of Wetland Regulation

Historically, Clean Water Act jurisdiction extended to protect isolated wetlands. While legally complex to define, isolated wetlands are generally considered those that are not adjacent or connected to a navigable water. But in

2001 the U.S. Supreme Court drastically altered wetland regulation in the case of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* or "SWANCC." In that case, the Supreme Court eliminated federal jurisdiction over isolated freshwater wetlands. Though this case did not speak to state authority, since that time the state's ability to regulate these wetlands has faced legal challenges.

SCELPA and other environmental advocacy groups looked for ways to fill the gaping hole in wetland regulation left by the SWANCC decision through state level protections. We have worked to develop a state-wide regulatory program to ensure that wetlands like the Carolina Bay shown above are protected since the 2001 ruling. These efforts were thwarted by the General Assembly at every turn. Recognizing that the legislature was resistant to protecting isolated wetlands, SCELPA developed a strategy to ensure statewide isolated wetlands protection.

## Coastal Isolated Wetlands Protection

Fortunately, in the coastal zone the Coastal Management Program ("CMP") requires state review for impacts to isolated wetlands whenever a state or federal permit is required. The CMP has been applied since adopted by the General Assembly in 1979. But development interests were relentless in their attempts to invalidate the CMP. The first challenges to the CMP came in 2002 when the validity of the program was attacked in connection with a proposal to fill wetlands and develop a 94 acre tract in Beaufort County. The case was resolved, but it wasn't long before several other challenges were brought. The final challenge, brought in 2006 in the case of *Spectre v. DHEC*, was a challenge to DHEC's denial of a permit to fill 32 acres of wetlands in Georgetown County and an attack on the Coastal Management Program's directives to protect isolated wetlands.

SCELPA won a landmark decision in the 2009 *Spectre* case in which the Supreme Court declared that the CMP is valid and enforceable, and can be used to regulate isolated wetlands in the coastal zone.

## The Strategy for Statewide Isolated Wetlands Protection

Protections for isolated wetlands outside of the coastal zone have been more tenuous, with a DHEC acknowledgement that the Pollution Control Act extends to cover isolated wetlands, but with no regulatory mechanism to protect those wetlands after the SWANCC case. But when part of a Carolina Bay in Georgetown County was filled without any state approvals, SCELPA found the perfect opportunity to bring an enforcement action under the Pollution Control Act to establish protections for isolated wetlands statewide and work toward developing a

regulatory program. SCELCP's case established the precedent that the PCA requires permits to fill all "waters of the State," including isolated wetlands. The legislature took action to undo this victory, but has established a Wetlands Study Committee which SCELCP is serving on to propose a regulatory program for isolated wetlands.

### Other Major Wetland Successes:

- SCELCP challenged a residential development project that involved dredging a canal through freshwater wetlands adjacent to the Waccamaw River in order to create waterfront residential lots. The Supreme Court ruled that "evidence of purely economic benefit is insufficient as a matter of law to establish an overriding public interest" necessary to secure approval for the dredging. The Court denied the dredging project based on its ruling that economic benefit alone cannot provide the justification for the dredging.
- SCELCP has had the opportunity over the years to work with our state's environmental groups to resolve disputes through securing conservation easements on multiple valuable undeveloped tracts.
- SCELCP was able to prod Wal-Mart in Lexington County to protect a stream and wetlands system and to provide buffers and trees for protection of water quality through an appeal of a water quality certification.



*The South Carolina Environmental Law Project, guided by its founder Jimmy Chandler, was one of the first and most influential forces for environmental protection in the state. SCELCP proved that environmental loss is not inevitable, that there is no such thing as a "done deal."*



*Skillfully using the tools provided by federal and state law, SCELCP has established precedent after precedent for wetland protection and clean water. One of the many victories that insured a better future for South Carolina was the defeat of the gargantuan Andell Harbor marina on Bohicket Creek, just upstream from the historic village of Rockville.*

*SCELCP continues to distinguish itself in its third decade with key state Supreme Court victories for coastal wetlands by director Amy Armstrong, Jimmy's immanently worthy successor. Those of us who love living in the Lowcountry owe a profound debt of gratitude to SCELCP for the critical role they've played in conserving our unique environment and exceptional quality of life.*

*~Dana Beach, Executive Director  
S.C. Coastal Conservation League*

- We had input into a major mixed use development in Bluffton, which resulted in decreased wetland impacts along the May River.
- We succeeded in protecting wetlands that flow into the Murrells Inlet estuary in connection with a residential development.
- We have negotiated conservation easements over acres of wetlands in cases in Georgetown, Horry, Beaufort and Charleston Counties.

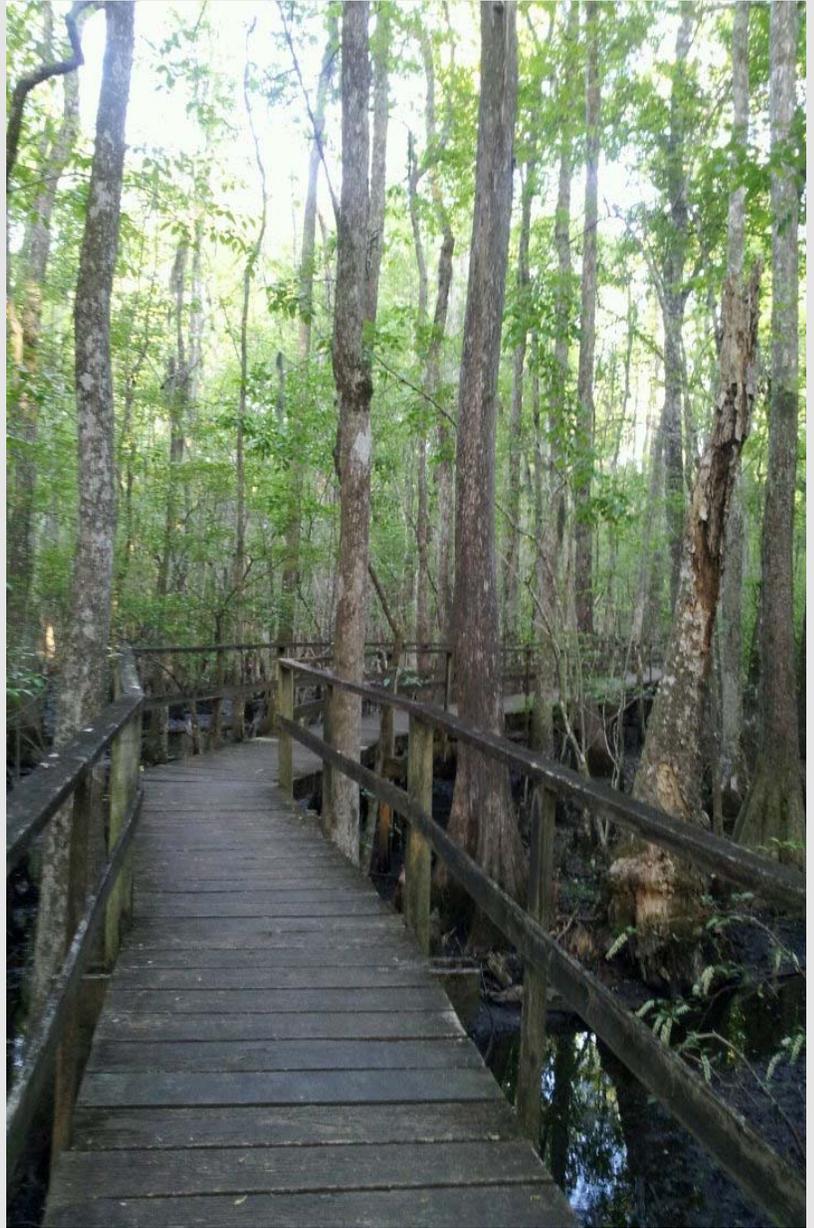
# PROTECTION

## ***SCELP's Goal:***

Participation in the public debate over environmental protection cannot be effective if citizens lack the resources to defend themselves in the legal arena. While grassroots efforts can be effective, there are times when legal muscle is needed to enforce our environmental laws. Concerned citizens, grassroots groups and environmental groups increasingly need expert legal advice and assistance in order to ensure that these environmental laws are properly implemented and enforced. SCELP's goal is to provide this legal advice and assistance whenever needed.

## ***SCELP's Measure of Success:***

Our success can be evaluated and measured in several ways. The most obvious measure is our win-loss rate in court, and we have achieved significant successes in our State's highest courts. However, many of our most important achievements have been outside of the courtroom. Our litigation work has been instrumental in protecting our State's resources, but we work hard to resolve issues before they reach that point. Namely, we review permit applications to determine their compliance with environmental laws. We advise groups and citizens of projects that violate these laws, and we help these groups and citizens provide meaningful input into the permitting process. Our objective is to lead permitting agencies to deny bad permits or to issue permits with conditions that eliminate or limit environmental impacts.



*The boardwalk at Audubon's Beidler Forest*



We consider favorably settling issues before they reach litigation as an important success. We also measure success when a project is changed as a result of our comments. Perhaps the most telling indication of our success is that after 25 years the demand for our services, and public recognition of its value, has grown.

### **How you can help...**

**Y**ou can help us continue our work with your financial contributions.

Please log on to our website [www.scelp.org](http://www.scelp.org) to donate or use the enclosed envelope to mail you gift today.

*Thank you.*

### ***SCELP's Future:***

The SCELP Board has been working hard to increase SCELP's capacity to bring and win important cases by hiring a third attorney. We are very close to reaching our goal, and look forward to continuing and growing the legacy Jimmy began 25 years ago. We thank everyone who has played a lead role in the effort, particularly Frances Close, Sally Mitchell, John Mark Dean, Margaret & John Fabri, Paula Feldman, Becca and Harry Dalton and Wendy Zara. We believe that this effort will be instrumental in sustaining SCELP another 25 years.

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