

Mountains & Marshes

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

Supreme Court Upholds Enforcement Action for Illegal Filling of Salt Marsh

Filling in salt marsh to increase lot size is illegal, and on August 23, 2010, the South Carolina Supreme Court affirmed this prohibition. In a unanimous decision, the Supreme Court upheld an enforcement action against a landowner, Wayne Hill, who filled in close to 1500 square feet of saltwater marsh to increase his lot size in the Heritage Shores section of North Myrtle Beach. The Court's decision requires Hill to remove the fill, restore the site and pay a \$1000 fine.

Our state's rules governing bulkheads (often referred to as "seawalls") are aimed at protecting critical area salt marsh and require that the structures be constructed no more than 18 inches from the high ground into the salt marsh. Hill applied for and received a permit to construct such a bulkhead with conditions that required it to be constructed no more than 18 inches from the high ground. But that is not what Hill did. Instead, Hill began constructing his bulkhead up to 31 feet into the salt marsh.

Nearby landowners contacted the S.C. Department of Health and Environmental Control, and SCELPL, to report the violations. DHEC staff made a site inspection, took measurements of the distance between the bulkhead and high ground, and took photographs depicting the salt marsh behind the bulkhead. The photograph to the right shows the salt marsh before it was filled. Despite being advised to stop work, Hill proceeded and filled in the salt marsh, significantly enlarging his lot. Hill placed 17 truckloads of dirt into the salt marsh behind the bulkhead destroying the vegetation and wildlife living in the marsh.

The Department of Health and Environmental Control brought an enforcement action against Hill for violations of the Coastal Zone Management Act and his bulkhead construction permit. Hill appealed that decision to the Administrative Law Court. Representing the S.C. Coastal Conservation

League ("SCCCL"), SCELPL intervened to defend the prohibition of filling salt marsh to increase lot size and to ensure that Hill would have to remove the illegal bulkhead and fill. The case was heard by then-Administrative Law Judge John Geathers in 2004, who affirmed the enforcement action and ordered Hill to remove the bulkhead and fill, restore the site and pay the fine.

Hill appealed Judge Geathers' decision to the S.C. Coastal Zone Management Appellate Panel, who upheld the ALJ's decision. Hill then appealed to Circuit Court where Judge Breeden reversed the ALJ and the Appellate Panel. Judge Breeden assigned error on four separate grounds, ruling that the ALJ did not have jurisdiction to hear the enforcement matter, that the ALJ improperly excluded evidence, that Hill's equal protection rights had been violated and that the ALJ erred in concluding that Hill illegally filled in critical area salt marsh.

SCELPL, on behalf of SCCCL, and DHEC both filed appeals in the S.C. Court of Appeals. After the case was fully briefed, the S.C. Supreme Court decided to bypass the Court of Appeals and hear the case directly. The Supreme Court's Order is a sweeping rebuke of



This aerial shows the Cherry Grove area where Hill's lot is located.

A Note from the Director



Writing this article has caused me to pause and reflect on the events and changes that have occurred over the past several months. For those of you who have not heard, SCELPA, and South Carolina's natural environment, have suffered a great loss with the death of SCELPA's founder Jimmy Chandler. Jimmy was a remarkable man. He is and always will be my hero, and I am truly grateful for the eight years I spent working alongside him. Though incredibly saddened by losing Jimmy, I find comfort in reflecting on a life well-lived. A life filled with incredible achievements and marked by integrity, dedication and passion.

I have been asked numerous times "what's going to happen to SCELPA?" since Jimmy's death. Fortunately, Jimmy and I were able to discuss and plan for SCELPA's future. As hard as those conversations were, and as much as I had hoped that he would be able to beat the kidney cancer that took his life, looking back those conversations were consistent with Jimmy's way of handling any challenge. He was always thoroughly prepared, particularly for his cases, and he also prepared for SCELPA's future.

Jimmy and I agreed on three key issues. First was that SCELPA must continue the critical work of fighting environmental destruction with all available legal tools. Second, we agreed that if he did not survive I was ready (and willing) to take on the responsibility of running the organization. And third, that we needed to hire Michael Corley, a young attorney that had spent an impressive summer interning with us.

The SCELPA Board's commitment to the organization became evident, even in the midst of tragic loss. The Board acted quickly to appoint me as the new President of SCELPA, to approve hiring Michael and to assist with a smooth transition. I am very thankful to our Board, and all of our friends and supporters that have called, emailed and written to offer help, kind words and thoughtful remembrances of Jimmy during this difficult time.

It is with a great sense of awe and respect for this wonderful organization that I assume my new role at SCELPA. And it is with your continued support of our work that I am able to do so.

- Amy E. Armstrong

SCELPA Welcomes New Attorney, Michael G. Corley



Let me start by just expressing the obvious: I am very excited to be a part of the SCELPA team. I first worked for SCELPA as a summer intern during law school, and since that time I have been trying my best to get back. I am also very honored that before his passing, Jimmy was able to participate in the decision to hire me as only the third attorney in the history of SCELPA. Although I will regrettably not have the opportunity to work with Jimmy again, I am touched to have received his "seal of approval."

SCELPA is in great hands-and I'm not talking about my own. Since my first day of work on September 1, 2010, Amy has, with my neophytic attempts at assistance, churned out the work product of a ten-person law firm. Even in the midst of losing a beloved mentor and friend, Amy and SCELPA have met every deadline and challenge, even putting together a lovely evening of tribute and celebration at the Hobcaw House. During the almost comedic balancing act Amy had to perform while planning

the Hobcaw event, I watched her seamlessly switch from consideration of complex legal issues to consideration of napkins and compostable dinnerware without missing a beat. Needless to say, after witnessing that display, I have no doubts about Amy's ability to thrive in her new role.

In the way of personal information, I was born and raised in Clinton, South Carolina. I went to Clemson for my undergraduate, where I received a degree in Industrial Engineering. My law degree is from the University of South Carolina. I enjoy South Carolina's history almost as much as its environment, and during my free time I can often be found exploring both. I appreciate your continuing support of SCELPA and look forward to serving you and the citizens of South Carolina through this great organization. Thanks!

- Michael G. Corley

SCELP Mourns the Loss of Founder, Jimmy Chandler

Many of you knew Jimmy personally, many only knew of his numerous successes in protecting our natural resources, but all of us will miss terribly the trailblazer of environmental law in South Carolina. Jimmy was a friend, father and fearless fighter for the environment. He was a zealous advocate, innovator and stalwart champion for our natural resources. Jimmy Chandler was all of these things, and so much more.

Growing up in Georgetown County and spending his childhood in the rivers, creeks and marshes, Jimmy developed a love and passion for the natural environment. That love and passion was expressed in how he lived his life – working for the protection of our natural resources.

Jimmy's start began in 1979 when an oil refinery was being proposed in Georgetown County. The oil refinery had wide spread political support, and taking on that battle was seen by many as career suicide. Even Jimmy's father tried to dissuade him from that fight, but that did not stop Jimmy, and in the end Jimmy helped stop the refinery. Jimmy's continued determination to take on big polluters, indiscriminate developers and projects that would wreak environmental havoc marked his career.

In 1986, Jimmy founded SCELP, and continued taking on one challenge after the other. Jimmy's successes include a 15 year battle that finally resulted in closing the hazardous waste landfill on Lake Marion. Later, in a battle over dredging marsh to create new waterfront lots, Jimmy prevailed in overturning that dredging permit. The S.C. Supreme Court said that "purely economic benefit" is not a sufficient overriding public interest to warrant issuance of a permit for dredging new canals.

Jimmy was also successful in ensuring that citizens and environmental groups could obtain judicial review of environmental decisions. He brought the first citizens enforcement action under the S.C. Coastal Zone Management Act. And he led the fight to uphold the validity of the Coastal Management Program, which is used to regulate isolated wetlands in the coastal zone. That battle was won earlier this year, as reported in our Spring/Summer newsletter.

Jimmy was as enthusiastic about his courtroom advocacy as he was about his daughter Leigh's softball games. His joy in talking about Leigh and her accomplishments and ambitions was as evident as his joy in winning another court victory. And it is that *joie de vie* with which we remember Jimmy.

Jimmy was a remarkable man—the kind of person that we all aspire to be. His death represents a tremendous loss to South Carolina and those who knew him, yet gives cause to reflect on his many achievements and impacts he made on our state's environment. He was a trailblazer in every sense and left an amazing legacy that SCELP is proud and determined to carry on.



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A Celebration of Jimmy's Life and Work

On October 23, 2010, friends, family and colleagues gathered at the lovely Hobcaw House overlooking Winyah Bay to share stories and remembrances of our beloved Jimmy Chandler. We could not have asked for a more perfect evening – the temperature was just right, without a cloud in the sky. As friends and colleagues Dennis Allen, Liz Blood, Mary Shahid, Alan Rasheed, Joe Shaw and SCEL P Board member Gary Poliakoff spoke to us about how Jimmy had marked their lives, a bald eagle flew overhead and flocks of swallows fished. As the sunset glowed orange over the bay, guests were serenaded by Jimmy's former band, Three Way, and dined on a delicious meal.



While it may sound like the kind of perfect evening that only comes together on the set of a Hollywood movie, those in attendance can attest that the natural beauty of the outdoor setting acted as a true tribute to Jimmy. The tribute was made even more fitting by the fact that Jimmy spent his first years in Georgetown with an office at the marine field lab on the



Baruch property, until the lab was destroyed during Hurricane Hugo. Given the setting, we at SCEL P could not help but feel that Jimmy's tireless work as an environmental advocate and steward had come full circle.

The evening was a joyous occasion and an opportunity to renew old friendships and make new ones. Together we celebrated a life well-lived and felt Jimmy's spirit with us, continuing to inspire us at SCEL P to carry on his legacy.

We are thankful to all those who attended the event, and especially our sponsors, without whom the Wild Side would not have been possible. We had such a positive response that we have decided to make the Wild Side an annual celebration of the work that Jimmy pioneered. We hope to see you next year!

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CASE UPDATES

Over the past year, SCEL P has had a significant number of cases in the appellate stages of review. Here are some of our cases in the appellate courts:

Captain Sam's Spit: We have appealed Administrative Law Judge Ralph King Anderson, III's order authorizing a 40-foot wide, half-mile long concrete block revetment along the Kiawah River at Captain Sam's Inlet. We asked the South Carolina Supreme Court to bypass the Court of Appeals and hear the case directly, as well as to impose a "stay" prohibiting any construction until the appeal is decided. The Supreme Court granted both of our requests. We have completed final briefing, which entails presenting our legal arguments to the Court. The case will be heard by the Supreme Court on January 18, 2011.

Landfill cases: We have submitted final briefs in the S.C. Court of Appeals in two of our landfill cases challenging the Laurens County and York County landfills. No dates for arguments have been set in these cases.

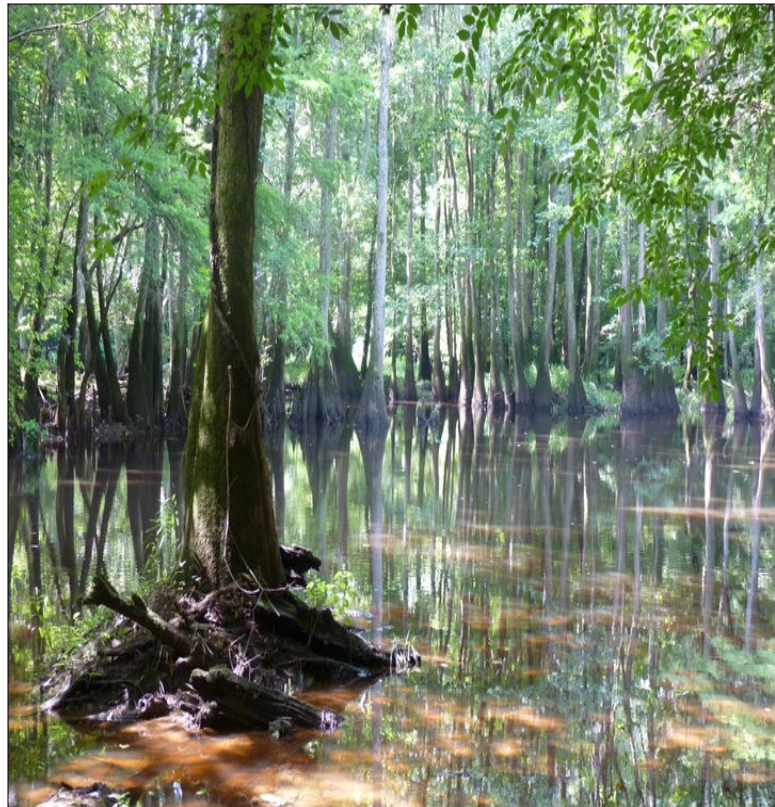
In the Laurens County case, we are representing Engaging and Guarding Laurens County's Environment ("EAGLE") in defending our success in the Administrative Law Court. Administrative Law Judge Ralph King Anderson, III, overturned a landfill permit that would have authorized 154,000 tons of construction and demolition (C & D) waste annually, even though Laurens County only generates 17,000 tons of C & D waste annually and currently has excess capacity. In the York County case, we are representing the County in an effort to overturn an Administrative Law Judge's decision that there was a need for a C & D landfill in York County, even though the County already has 22,000 tons of excess landfill capacity. In both of these cases the waste would come largely from out-of-State. In addition to these appeals, we are working with a citizens group, Citizens for Marlboro County, to prevent a megadump from locating in Marlboro County.

SCEL P files a new case over Congaree National Park:

SCEL P has filed its second case in federal court related to the Highway 601 bridge project through Congaree National Park, our State's only national park. The Federal Highway Administration and SCDOT propose to replace the existing Highway 601 crossing through the Congaree floodplain with practically the identical outdated design as was used in the 1940s before the designation of the National Park and the enactment of modern environmental laws. The proposed plan calls for over eight acres of additional wetlands to be filled and the existing embankments in the floodplain wetlands to remain in place.

The National Environmental Policy Act ("NEPA") requires government agencies to conduct a thorough environmental investigation before undertaking a project that will have a significant impact on the environment. SCEL P is representing Friends of Congaree Swamp, South Carolina Wildlife Federation and National Audubon Society, who contend that a project through an area with such ecological significance deserves a true analysis of environmental impacts and a thoughtful assessment of alternatives and mitigating measures that can be taken.

SCEL P won the first challenge, with Judge Margaret Seymour holding that the agencies had not taken a "hard look" at the environmental impacts of the Highway 601 project and ordering them to conduct a new investigation. However, when the agencies issued their second environmental assessment, very few if any of the weaknesses brought out by the Judge's order had been resolved. Rather, the agencies attempted to lengthen the assessment by providing generic background information not specific to the Highway 601 project without conducting any actual scientific analysis or studies. The second assessment is not in accordance with the Judge's prior order or NEPA. SCEL P therefore filed another action; currently pending in federal court, which is aimed at requiring the agencies to conduct a true and meaningful look at the environmental impacts on this unique resource.



Cedar Creek, Congaree National Park. Photo courtesy of Friends of Congaree Swamp

Josh Eagle Joins SCERP's Board

SCERP is happy to welcome Professor Josh Eagle to the SCERP Board. Professor Eagle teaches property, environmental and natural resources law at the University of SC School of Law. He has published in the past on a range of issues, including fishery management and endangered species. His current research focuses on ocean zoning, marine protected areas, and on improving public participation in resource decision-making.



Prior to joining the faculty at the University of SC in 2004, Professor Eagle was Director of the Stanford Fisheries Policy Project, an interdisciplinary research project aimed at improving fishery management through better integration of marine science and law.

While at Stanford, Professor Eagle taught law school and undergraduate courses in environmental and ocean law and policy. He also wrote several case studies that are now used to teach environmental and natural resources law in classrooms around the country.

From 1990 to 1995, Professor Eagle served as a trial attorney for the United States Department of Justice in Washington, D.C. From 1997 to 1998, he was wildlife counsel in the policy office of the National Audubon Society in Washington, D.C. Professor Eagle is a graduate of Johns Hopkins University (B.A.), Colorado State University (M.S., Forest Sciences), and Georgetown University Law Center (J.D.)

Cover Story; continued...

the lower court's decision. The Supreme Court reversed the lower court on all grounds, and ruled that the ALJ correctly found Hill had violated the terms of his permit and the Coastal Zone Management Act by building a bulkhead more than 18 inches into the salt marsh and that the ALJ had jurisdiction to hear this case. By reversing the lower court, the Supreme Court's decision had the affect of reinstating the ALJ's Order requiring removal of the offending bulkhead, restoration of the site and the fine.

SCERP has been working to prevent the destruction of salt marsh in the Cherry Grove area of North Myrtle Beach since the late 1990s. Our first case arose when the developer of Heritage Shores, where Hill's lot is located, sought a permit to construct a bridge and fill in critical area salt marsh in connection with a residential development.

The bridge would have allowed development of a portion of Heritage Shores that was essentially an island because it was separated from the rest of the site by salt marsh. SCERP was able to prevent the bridge construction and the filling in salt marsh in connection with a proposed residential development in exchange for some limited development at Heritage Shores. But no filling for individual lots was authorized under the settlement, and, indeed none is allowed under the governing rules and regulations.

SCERP will continue to vigilantly pursue enforcement actions like this when our salt marshes, wetlands and water ways are impacted in violation of state and federal laws.

**South Carolina
Environmental Law Project, Inc.**
*(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.*

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Thank you.