

Case updates . . .

Pinewood Landfill

In December 2001, the federal Fourth Circuit Court of Appeals denied the landfill's appeal, affirming the ruling that led to the closure of this hazardous waste landfill in September 2000. SCEL P attorney Jimmy Chandler has worked to close this landfill since 1985. All of the hard work paid off in 2000, when the SC Court of Appeals made crucial rulings on the landfill permit, DHEC ordered the landfill to close, and Federal Judge Matthew Perry refused the company's request to continue operating. The landfill is now in bankruptcy. All parties recently signed an agreement that, if approved by a Delaware bankruptcy judge, will keep the landfill closed and provide funds for 100 years of monitoring the landfill site. On behalf of Sierra Club, SCEL P is now pursuing a petition for attorneys fees against DHEC.

Groins

If you thought our groin case ended last summer when the General Assembly amended the Beachfront Management Act, guess again. As we reported last December, in 2001 the SC Court of Appeals ruled that groins (beachfront structures of large timbers and rocks) are prohibited by the SC Beachfront Management Act. DHEC and the Town of Hilton Head asked the SC Supreme Court to overturn the Court of Appeals' groin ruling. But soon after the 2002 legislative session began, the Act was amended to specifically allow groins under certain limited circumstances. After the legislature amended the Act, the Court asked whether the amendment had rendered further appeals moot. Although we believe it did, the town disagreed, so the Supreme Court asked for another set

of briefs on all issues. The case is now in the hands of the Supreme Court.

Speedway

SCEL P filed a "friend of the court" brief in this case, to defend the validity of the SC Coastal Management Program. The case involves the proposed construction of a stock car race track near Four Holes Swamp and the Francis Beidler Forest. The DHEC Board reversed the agency staff decision to issue a stormwater permit and coastal zone management consistency certification for the racetrack and the race-track promoters appealed.

In February 2002, the SC Supreme Court ruled that the DHEC Board had exceeded its authority and sent the case back to the Administrative Law Judge Division for additional review. The Court held that the DHEC Board had no authority to make its own findings of fact in permit appeal cases and that the Board is limited to a determination of whether the Administrative Law Judge's findings of fact are supported by substantial evidence. The Court did not rule on the racetrack's argument that the SC Coastal Management Program is invalid.

In a footnote, the Supreme Court reversed portions of two prior SCEL P cases. In 1991 and 1998, SCEL P had asked the Supreme Court and Court of Appeals to rule that coastal zone consistency certifications are "contested cases" governed by the state Administrative Procedures Act. We won both cases on other grounds, but in each case the courts ruled that certifications are not "contested cases." In this Speedway case's footnote, the Supreme Court said that "to the extent they hold CMP certifi-

cation pursuant to § 48-39-80 is not reviewable under provisions of the APA, [the 1991 and 1998 rulings] are overruled." This cryptic footnote gives us new legal tools for appealing future coastal zone consistency certifications.

Portrait Homes

We settled this small isolated wetlands case in March. In return for dropping our opposition to the filling of two small degraded wetlands, the Office of Ocean and Coastal Resource Management (OCRM) agreed to a consent order stipulating that all future appeals of coastal zone consistency certifications will be treated as "contested cases" under the Administrative Procedures Act (reaffirming the Speedway case ruling) and requiring the agency to improve its methods of giving public notice of proposed certifications.

Daufuskie

We suffered a setback in April, when an Administrative Law Judge dismissed our appeal of the renewal of the permit for a large inland harbor marina at Daufuskie Island.

We have appealed that ruling to the Coastal Zone Management Appellate Panel and expect to have a hearing on that appeal early in 2003.

Cherry Grove

In early January 2002, we signed a settlement agreement in this case. About one-third of the proposed Heritage Shores development has been turned over to the City of North Myrtle Beach and dedicated as a public park. The developer is building roads and

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