



SCELP

The South Carolina
Environmental Law Project
Lawyers for the *Wild Side* of South Carolina

WINTER
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SUCCESS IN SECURING BETTER DISPOSAL PRACTICES FOR RADIOACTIVE WASTE

South Carolina is one of 3 states in the country that disposes low-level radioactive nuclear waste. This radioactive waste disposal facility, run by Chem-Nuclear, has been operating under permits continually reissued by DHEC for 43 years and is a symbol of SC's status as the nation's dumping ground.

In 2005 SCELP, on behalf of the Sierra Club, launched the first challenge to Chem-Nuclear's radioactive waste permit. We challenged the permit because the sub-standard disposal methods were allowing radioactive waste to leach into the groundwater, form a tritium plume beneath the site, and migrate through the groundwater and eventually into the surface waters of Mary's Branch Creek, which feeds into the Savannah River.

The disposal methods include placing radioactive waste in unsealed, ungrouted vaults with holes in the bottoms in unlined dirt trenches. Neither the vaults nor the trenches are covered or protected from rainfall while they are being filled, which can take up to two years. Thankfully, SC has placed limitations on its radioactive waste disposal, and we are accepting much less than we were in 2005. However, those limitations fail to address the sub-standard disposal methods that are continuing to allow waste to come into contact with water and percolate into the soil and groundwater.

The case began in the Administrative Law Court ("ALC") in 2005. At that time, the Judge recognized that leaking radiation that has contaminated groundwater and a nearby stream presents a "monumental hazardous condition that... cannot be over-

looked." Yet the facility was still granted the renewal license. SCELP filed an appeal with the Court of Appeals, which was heard in October 2009. Our appeal was successful and the Court ordered the case back to the ALC to apply the regulations and make legal conclusions based on the ALC's original factual findings. This time the Judge failed to apply the regulations to the ALC's 2005 findings, which indicated that the design of the trenches and vaults actually encouraged the contact of water with waste. We had no choice but to seek redress in the Court of Appeals for a second time.

The Court of Appeals heard oral arguments in February of this year and vigorously questioned DHEC and Chem-Nuclear about the lack of measures to minimize the contact between water and waste. On July 30, the Court ruled in our favor, agreeing that DHEC failed to ensure compliance with regulations designed to protect public health because Chem-Nuclear was not required to minimize migration of water onto and out of disposal units. The Court said: "We are concerned that DHEC did not follow the law in failing to require Chem-Nuclear to comply with all of the technical requirements." The Court ordered DHEC and Chem-Nuclear to develop a new plan to address all of the facility's disposal deficiencies within 90 days. DHEC and Chem-Nuclear have asked the Court to "reconsider" its ruling; however, with a unanimous decision and a clear recognition of the poor burial practices for radioactive waste at the Chem-Nuclear facility in Barnwell County, we are optimistic that this decision will be upheld.



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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NOTE FROM DIRECTOR



SCELP was thrilled to have the support of one of the Lowcountry's most innovative and effective organizations for this year's Wild Side event. GrowFood Carolina serves as a non-profit local food hub to connect farmers to local grocers, restaurants, community organizations and institutions, ultimately making local and healthy food more accessible to the entire community. With over 65 growers all within 120 miles of Charleston, produce comes from St. Helena to Bamberg to Georgetown and everywhere in between. GrowFood's efforts give more profit directly to local growers, which serves to

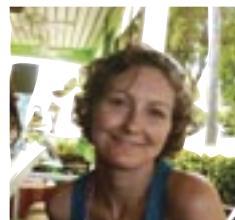
preserve the rural lands and small farmer culture that is so definitive of South Carolina.

By providing the sales and distribution infrastructure that small farmers lack, GrowFood Carolina creates a crucial link between producers and consumers. GrowFood not only serves as a centralized location for growers to deliver their product for distribution, they also provide the marketing that has cost so many farmers their edge in a globalized large-scale economy. GrowFood has worked hard to build a brand that people recognize and seek out as a local, fresh and delicious food source. Their products can now be found in over 100 restaurants in the Charleston area, wherever their leafy fork logo is advertised.

South Carolina spends \$11 billion on food annually, with only 10% purchased locally. Meaning for every additional 10% we begin to purchase locally, we will pour \$1.1 billion back into the South Carolina economy. Supporting local growers also helps preserve our agricultural history and our rural farm lands. So the next time you are in the Charleston area, find the fork!

Amy Armstrong, Executive Director

SCELP WELCOMES NEW STAFF



Staff Attorney Amelia Thompson

I am glad to join this prestigious and progressive organization. Working with Amy, Jessie, and Margaret has been wonderful. I look forward to facing the challenges that lie ahead in pursuing SCELP's mission to protect the natural environment of South Carolina.

I first became interested in environmental law in law school, at the University of North Carolina. I wrote an article concerning climate change pollution regulation that was published in my first year. That article, which piqued my interest from a human health perspective, launched me into becoming more involved with UNC Law's student organization, also serendipitously named the Environmental Law Project. I became Editor-in-Chief of ELP my second year, which involved organizing the environmental law section of a large CLE program and mentoring editors and writers through the publication process for articles on various topics, from wind power to raising urban chickens. Also in my second year, I won a spot on the Moot Court Environmental Appellate Advocacy Team. I competed in a national competition and also served as a coach for other competitors. Through these extra-curricular activities, I was able to explore and deepen my interest in environmental law.

In addition to my academic experiences, I sought practical experience in environmental litigation. I worked for EPA Region 9 in San Francisco, where I gained experience with discovery and the cleanup of hazardous waste. Next, I worked for DOJ's Environmental Enforcement Section in Washington, DC, which challenged me to take a broader look at how environmental laws are implemented across the country. By the time I graduated from law school, I knew that environmental litigation was what I wanted to pursue. I was working for Judge Howard in Greenville, NC, during my second Federal District Court clerkship, when I found a posting for this job with SCELP. I pounced on it immediately.

Now, I am working to protect the natural beauty of this state and the health of its inhabitants. Thank you in advance for welcoming me to the Hammock Coast. I am pleased to be here.



NEW CASE

Surface Water Withdrawal Act



Our challenge seeks to protect these riparian rights and preserve surface water by stopping the State from allowing such massive withdrawals without a permitting process.



SCELP is representing five individuals fighting to keep water in South Carolina's rivers and streams and to protect their rights as riparian landowners. In 2010 the South Carolina General Assembly passed a law that could cause a massive loss of surface water throughout the state by allowing an uncapped number of agricultural users to withdraw unlimited amounts of water from our waterbodies. The Act creates this special class of agricultural users who are given rights to withdraw water that are superior to any other citizen, and particularly those who own property adjacent to our State's rivers, creeks and streams ("riparian owners"). An agricultural user need only receive a "registration" from DHEC to withdraw water, as opposed to going through a permitting process like other water users. That registration is presumed reasonable and is permanent.

Significant controversy surrounding the Act surfaced recently when Walther Farms received a registration to withdraw up to 800 million gallons of water per month from the South Edisto River to grow potatoes. That figure was later revised to 400 million gallons per month through a settlement agreement; however the possibility of numerous other registrations collectively withdrawing billions of gallons of water from our State's waterways poses a serious threat to domestic and traditional uses, such as irrigation, fishing, swimming and boating.

SCELP and our clients believe that the health and integrity of South Carolina's water resources need to be protected now and for future generations. Specifically, we are concerned that the Act could lead to partial or complete loss of our rivers and creeks and the wildlife dependent on them. The Act's elimination of riparian rights prevents our clients and other riparian owners from protecting themselves and their water uses. On September 4, 2014, we filed a complaint in circuit court in Barnwell County. Our challenge seeks to protect these riparian rights and preserve surface water by stopping the State from allowing such massive withdrawals without a permitting process.

On November 13, DHEC filed a motion to dismiss our case. On November 21, we filed a motion for a preliminary injunction, asking the court to enjoin DHEC from issuing any more registrations until the merits of this case are decided. We expect the court to hear both motions very soon.

OUR HEARTFELT THANKS FOR THE COMMITMENT OF THIS YEAR'S SUPPORTERS

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WILD SIDE CELEBRATION AT HOBCAW BARONY

For the fifth year in a row, friends and supporters of SCEL P gathered at Hobcaw Barony for Wild Side. What began as a one-time memorial, has become an annual celebration that people flock to from around the state and country. Some guests come to remember the legacy of SCEL P's founder, Jimmy Chandler, with old and new friends. Others want to watch the sun set over Winyah Bay and hear the laid back catchy music of Danielle Howle. This year, many SCETV radio fans joined us to hear historian Dr. Walter Edgar speak. Still others come because a friend gave them a ticket and promised great food and drink. Whatever the reason, each year the crowd has grown and SCEL P's mission has spread.

On October 25th, attendees were graced with a perfect Lowcountry autumn day. The sun set as Dr. Edgar reminded us of why people came to the Carolinas in the first place - land. Drawn in by marketing

schemes much like those that influence us today, 17th century settlers came seeking to make their fortunes on the vast land grants awaiting them. Today we know those same desires drive many actions in South Carolina, yet the land is no longer an endless bounty. We live in a continual state of evolution where change is the only constant. Dr. Edgar reminded us that our goal should not be to arrest change in a quest for a static world, but rather to direct inevitable change towards a landscape that can be healthy for the next three centuries. Wild Side has become integral to SCEL P's ability to do just that.

Thanks to the support of sponsors, guests, volunteers, and supporters, we are able to continue to serve as legal stewards of our state's environment. Thank you for making our fifth annual Wild Side a success, your efforts speak to a bright future for South Carolina. We hope to see you all under the oaks for next year's Wild Side.



CASE UPDATES

Captain Sams Update:

Kiawah Land Dispute: Following trial last December in the dispute between the Kiawah Island developer and the community HOA over ownership of a 4.62-acre parcel adjacent to Beachwalker Park and Captain Sams Spit in which we intervened, the developer sought to have one of our client groups dismissed from the case for lack of standing. At that hearing, the court not only denied the developer's motion but issued a final order protecting the 4.62 acres of natural beach and maritime forest as Common Property. The developer then filed an additional motion seeking to alter or amend the final ruling. SCELPA filed a response reaffirming the findings of fact and law contained in the order and presented arguments in August. We are now awaiting a determination by the court on whether to alter or amend its final ruling.



Union Pier:

Our appeal of DHEC/OCRM's permit issued to the SC State Ports Authority ("SPA") to construct new and expanded cruise ship operations at the Union Pier Terminal in downtown Charleston is moving forward in the Court of Appeals. We are in the process of briefing the case, after which the Court will schedule oral arguments.



Papa's Island:

We recently completed depositions for witnesses in our case on behalf of the Coastal Conservation League seeking to protect Papa's Island, a 104-acre hammock island located in McClellanville and within the Congressionally-authorized boundaries for Cape Romain National Wildlife Refuge. The Refuge is a haven for migratory birds and home to a variety of threatened and endangered species including the bald eagle, piping plover, wood stork and the largest concentration of loggerhead sea turtles north of Florida. The owners of Papa's Island are pursuing permits which would facilitate development of the island, despite having no intent to develop or utilize the property themselves. In fact, one of the owners testified that they "love the area" and that "to the extent that we had any plan in mind, it was that either we've kept it out of the hands of somebody that might develop it or maybe sometime somehow we can help contribute to it staying in a preserved state." Yet the owners maintain the permits are necessary in order to sell the property and have been unwilling to negotiate a purchase with conservation organizations. We remain hopeful that our continued efforts in this case will lead to the inclusion of Papa's Island in the Refuge, preventing the loss of the valuable bird and wildlife habitat provided by the island.



Oakridge Landfill:

We are in the process of preparing our challenge to Oakridge Landfill's proposal to fill in 14 acres of wetlands for an expansion of its Dorchester County facility. The wetlands are significant because they are adjacent to Audubon's Beidler Forest and part of the Four Holes Swamp ecosystem. We are fortunate to be working with some of the State's top experts on water resources, wetlands ecology and botany in building a case for the preservation of these important wetlands.

STAFF (continued)



Project Manager Margaret Sands

When I filled out my college applications and answered the question “Where do you see yourself in five years?” Georgetown County, South Carolina would definitely have been last on my list. Having grown up in Murrells Inlet, I was eager to leave the state of South Carolina for greener pastures. When I departed for college at Loyola New Orleans, I thought I was primed to do just that.

During my first semester, an environmental communications elective turned me green for life. I spent my undergraduate years sampling every aspect of environmentalism I could. I planted trees, gathered signatures, counted fish, organized events, sorted compost, tested lab samples, taught kids, and ultimately graduated with an Environmental Studies degree and a good idea of what I did not want to do with my career. I decided to continue my studies where all aimless tree-huggers end up, California.

At the Monterey Institute of International Studies I pursued an M.A. in International Environmental Policy with a focus in Ocean and Coastal Resource Management and Spanish. Which is a very long way of saying that I am not a scientist, nor did I want to go to law school, but I believe there can be mutually beneficial solutions to environmental issues if someone is willing to develop them, implement them, and communicate their purpose continuously (and that I like coastal areas and vacations in Latin America).

After graduation I had had more than enough of the unexpectedly cold California weather, unfriendly strangers, and continuous teasing for saying “y’all.” I came home to ponder where I could go that would have beautiful coasts, warm weather, people who talked like me, and a need for young idealists to defend its environment. Much like Dorothy, I found my answer in my own backyard. Joining SCELPA was the final piece of the puzzle. I am so excited to be a part of an organization that has already proven its effectiveness in defending South Carolina’s environment, yet is poised for even greater impacts. Coming home has not only given me a new perspective and appreciation of where I come from, but seemingly endless opportunities to make positive change in a community I proudly call my own.

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