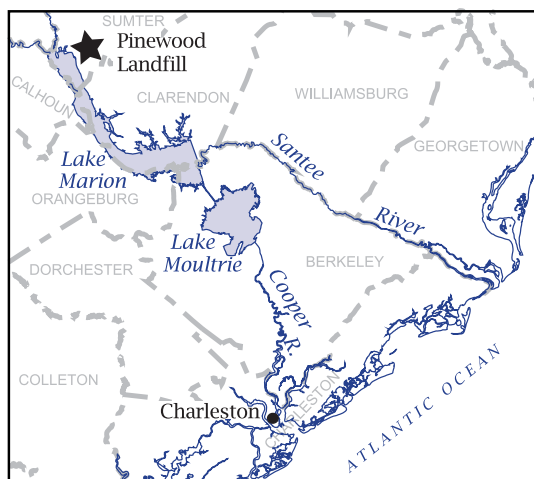


# Mountains & Marshes

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## March 2000 Update



Located at the headwaters of the Santee Cooper lakes — a major tourist attraction and source of drinking water, the Pinewood Landfill threatens to contaminate a huge and valuable watershed.



Millions of tons of toxic waste lie in a **flawed** landfill only 1200 feet from Lake Marion, the state's largest lake. **Will you be forced to pay to clean this up?**

### **SCORECARD: SCLP & The Environment 2, Laidlaw/Safety Kleen 0**

In January 2000, the South Carolina Environmental Law Project (SCLP) and its clients won two legal battles which are huge victories for the environment. First, on January 12, the United States Supreme Court ruled that Friends of the Earth, Sierra Club, and CLEAN have standing to sue a hazardous waste incinerator operator under the citizens suit provisions of the Clean Water Act, to obtain penalties for violations of the incinerator's wastewater discharge permit. Then on January 17, the South Carolina Court of Appeals upheld key portions of our challenge to the permit for the Laidlaw hazardous waste landfill on Lake Marion.

Both cases were against Laidlaw Environmental Services, Inc., a national hazardous waste company headquartered in Columbia. Laidlaw recently changed its name to Safety Kleen.

In the incinerator case, SCLP is working with the DC law firm Terris, Pravlik & Millian. Our suit seeks penalties against Laidlaw for hundreds of violations of the incinerator's wastewater discharge permit. Most of the violations were discharges of mercury, a highly toxic substance, in excess of the permit limits. Federal District Court Judge Joe Anderson ruled in 1997 that Laidlaw

had to pay \$405,800 in fines for the violations. This fine is in addition to \$100,000 already paid by Laidlaw to DHEC under a consent order which was deemed by Judge Anderson not to constitute "diligent prosecution" of the violations. On appeal, the federal Fourth Circuit Court of Appeals dismissed the case and vacated the fine, ruling that the whole case had been rendered moot when Laidlaw ended its violations — after the lawsuit was filed. The US Supreme Court reversed the Court of Appeals, holding that the case is not moot. The Supreme Court also ruled that Friends of the Earth and the other plaintiffs have standing to pursue the case.

The Supreme Court's ruling on standing ends the Court's recent trend toward more difficult standing tests, and should make it easier for public interest groups to establish standing in future environmental cases.

In the landfill case, the Court of Appeals, although upholding the permit, ruled that Laidlaw must "immediately" begin complying with the 1994 DHEC ruling which required the company to

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make annual payments to establish a \$133 million cash trust fund to pay for cleanup and restoration of environmental impairment caused by the landfill. The Court's ruling struck down a hurriedly-passed 1995 DHEC regulation which had allowed Laidlaw to give an unsecured corporate guarantee instead of the annual cash payments. In the last 5 years, Laidlaw has missed 5 payments of over \$14 million each, so at least \$70 million is now required to meet the company's obligations under the 1994 financial responsibility decision.

In what could be an even more significant ruling, the Court of Appeals rejected Laidlaw's appeal of the capacity limit for the landfill, and upheld our arguments challenging a part of the capacity decision which had added about 800 acre-feet to

the landfill's capacity. Under the Court of Appeals ruling, it is highly likely that Laidlaw has already exceeded the permitted capacity of the landfill and will have to shut down.

SCELP's clients, Sierra Club and Energy Research Foundation, were joined in the landfill case by Senator Phil Leventis, CASE, Santee Cooper, the SC Department of Natural Resources, and Sumter County.

The US Supreme Court opinion is available on the Internet at the following site: <http://supct.law.cornell.edu/supct/html/98-822.ZS.html>. The Court of Appeals opinion is available on the Internet at: <http://www.law.sc.edu/ctapp/3103.htm>.

## **BUT, THE BATTLE IS NOT OVER IN EITHER CASE!**

**Laidlaw/Safety Kleen has already begun a quiet campaign seeking to overturn the Court of Appeals landfill ruling.** The company will seek new legislation and new regulations relieving the company of its cash payment requirement. The effort to lobby the Governor, the legislature and the DHEC Board is already underway.

**We must mobilize to defeat this effort.** If you're concerned about protecting the environment, or even if you simply don't want to be stuck with paying for the mess made by Laidlaw, you should write to the Governor, your legislators and the DHEC Board members, urging them to refuse to help Laidlaw/Safety Kleen avoid paying for cleanup of problems caused by flawed landfill design, operation and maintenance.

Laidlaw/Safety Kleen will also be making additional legal maneuvers in court in an attempt to further appeal or otherwise wiggle out of these rulings. We will do our best to continue our strong legal efforts to defeat this effort by the company.

The Laidlaw incinerator is now closed, but its hazardous waste landfill may be the most serious existing threat to this state's environment. **Millions of tons of just about every toxic waste known to mankind lie in a flawed landfill only 1200 feet from Lake Marion, the state's largest lake.** Eminent scientists hired by Santee Cooper examined the landfill and its location and concluded:

*The location presents several concerns to me. First of all, it's very close to a valuable water resource, so just its proximity to that immediately throws up a red flag to me. Secondly, the landfill is sited and constructed in such a way that part of it is under the water table. In my opinion, that's a fatal flaw . . . .*

***I've reached the conclusion that the location of the landfill is just terrible, basically. One couldn't find a worse location in the United States for a hazardous waste landfill. . .***

*Location is of paramount importance because from a scientific perspective, one just cannot escape the conclusion that every component of a landfill system, every technology used, will fail, and the only ultimate way to protect health and environment is to understand and accept the fact that one does not have long-term effectiveness and reliability in landfill technology itself, and so the best preventive approach is don't put a landfill close to anything that matters. **You don't put a landfill close to drinking water supplies, in terms of groundwater, and you shouldn't put a landfill close to valuable ecological assets.***

DHEC realized in 1985 that the flaws in the landfill would one day require a cleanup, and the cost estimates have ranged from \$100 million to over \$2 billion. In 1989, DHEC called for a \$133 million cleanup trust fund. In 1994, the DHEC Board said: "[T]he substantial risks posed by the design and operation of Section I support the Board's determination that substantial and risk-free financial assurance must be available." To date, we don't have anything close to that, only a promise to pay from a company that has mounted legal challenges to just about every issue that has come along.

**The battle now is over who will pay for the cleanup of this dump -- the company that's responsible for this mess, or the state's innocent citizens.**