

SCELP Wins Precedent-Setting Supreme Court Victory

Since our summer newsletter was mailed, the South Carolina Supreme Court issued a precedent-setting opinion declaring that S.C. law requires protection of isolated wetlands, and that citizens groups have the right to enforce those protections. In the opinion, *Georgetown County League of Women Voters v. Smith Land Company*, our State's highest Court reversed a lower court order and ruled that the Pollution Control Act authorizes private enforcement actions, that DHEC has jurisdiction over isolated wetlands under the Act, and that Smith Land Company violated the Act by filling in the wetlands without a permit.



Smith Land Company owns a 0.332 acre lot in Pawleys Island, SC. The lot contains a portion of one of the unique wetland bodies often referred to as a Carolina Bay, which consisted of vegetated wetlands and a pond, above right. Smith cleared the lot, brought in truckloads of dirt and filled the wetlands and pond without receiving a permit from DHEC, below left. SCELP, representing the League of Women Voters of Georgetown County, challenged the action arguing that the Pollution Control Act requires a permit before filling wetlands. The wetlands on the property were delineated as "isolated" by the U.S. Army Corps of Engineers, meaning that no federal Clean Water Act permit is required. But SCELP argued that the S.C. Pollution Control Act requires a permit before filling isolated wetlands, and the Court agreed.

The Court first held that DHEC does have jurisdiction to regulate isolated wetlands, regardless of whether the U.S. Army Corps of Engineers has jurisdiction to regulate isolated wetlands under the



Clean Water Act. Given that DHEC has jurisdiction over the wetlands, the Court next held that Smith was required to get a permit before discharging fill material into the wetlands, and violated South Carolina law by failing to do so. Finally, the Court held that the Act provides a private right of action to enforce violations of the Act. The Supreme Court's order is a landmark decision establishing protections for isolated wetlands throughout the State, mandating that a State permit be obtained prior to filling any of our State's unique and essential wetland resources, and assuring citizens' rights to enforce violations.