

# State-level protections for Isolated Wetlands

- S.C Coastal Zone Management Act, which authorized passage of the Coastal Management Program, applicable in the 8 coastal counties
- S.C. Pollution Control Act, which governs waters and wetlands throughout the State

# Coastal Management Program

- The Coastal Management Program is used by OCRM to regulate wetlands outside federal Clean Water Act jurisdiction, but that are within coastal zone
- Any state or federal permit will trigger review of a project for consistency with the Coastal Management Program
- If no state or federal permit is required, no consistency certification is required

# CMP in a nutshell:

Residential development which would require *filling or other permanent alteration of salt, brackish or freshwater wetlands will be prohibited*, unless:

- no feasible alternatives exist or
- an overriding public interest can be demonstrated, and any substantial environmental damage can be minimized

# CMP in a nutshell, con't:

Commercial proposals which require *fill or other permanent alteration of salt, brackish or freshwater wetlands will be denied* unless:

- no feasible alternatives exist and
- the facility is water-dependent

# CMP in a nutshell, cont.

**EXCEPTION:** If wetlands master planning is used, wetlands one acre or less can be impacted

# Challenge to the Coastal Management Program

- The developer, Spectre, LLC, applied for a stormwater permit to impact 60 acres, including 32 acres of wetlands in connection with a commercial development
- The project had to be certified as consistent with the Coastal Management Program

# Challenge to CMP, cont.

## *Spectre v. DHEC, et al.*

- Developer brought head on challenge to
  - the validity of the CMP and
  - The applicability of the CMP to isolated wetlands
- Administrative Law Judge ruled that
  - the CMP is invalid and
  - cannot be used to regulate wetlands outside of the Corps of Engineer's CWA jurisdiction

# Challenge to CMP, cont.

- SCELP and DHEC filed appeals in the S.C. Court of Appeals
- SCELP filed a motion asking the Supreme Court to take the case
- The Supreme Court accepted the case, and conducted arguments October 29, 2009
- On February 2010 the Supreme Court issued its opinion

# *Spectre, continued*

- The Court ruled that:
  - The CMP was validly passed as binding rules
  - The CMP applies to all wetlands in the coastal zone, including isolated wetlands
- Removed any question as to the state's authority to regulate isolated wetlands in the coastal zone





# S.C. Pollution Control Act

It shall be unlawful for any person, directly or indirectly, to throw, drain, run, allow to seep or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes and other wastes, except as in compliance with a permit issued by the Department.

# S.C. Pollution Control Act

- "Waters" means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.

# SMITH LAND CO. SITE





03/17/2006



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Georgetown County League of Women  
Voters v. Smith Land Company, 393 S.C.  
350, 713 S.E.2d 287 (July 2011)

- The first case alleging violations of the Pollution Control Act for filling isolated wetlands without a permit
- Circuit Court ruled that LWV could not bring a private cause of action and that the State could not regulate wetlands outside of Corps jurisdiction

# GCLWV v. Smith Land, cont.

The S.C. Supreme Court overturned the Circuit Court decision and ruled that:

1. The PCA does authorized private citizens to enforce violations of the Act
2. A PCA permit is required prior to filling in isolated wetlands
3. Smith Land Company violated the PCA by filling wetlands without a permit