

High court rules on Pawleys Island land fight

Isolated wetlands now fall under DHEC control

July 13, 2011

By Gina Vasselli gvasselli@thesunnews.com

A case involving less than a quarter-acre of land in Pawleys Island has set a new precedent for wetlands protection in South Carolina.

On Monday, a majority of the S.C. Supreme Court ruled that the S.C. Department of Health and Environmental Control has jurisdiction over isolated wetlands, a reversal of the Georgetown County Circuit Court's ruling and previous operating procedure.

"A landmark decision," said Amy Armstrong, the director of the S.C. Environmental Law Project and a member of the Georgetown County League of Women Voters, which brought the suit against developer Smith Land Company.

No one from DHEC was available to comment.

The suit was filed over a 0.332 acre lot in Pawleys Island, 0.19 acres of which is an isolated wetland, meaning it does not have a direct connection to other waters or wetlands.

That wetland area was filled in by Smith Land Company. The work was done after the company notified the Army Corps of Engineers and DHEC of its plans.

Such wetlands were previously ruled outside of DHEC's control, said attorney David DuRant, who represented the land company on the case.

"Historically speaking, South Carolina DHEC has not taken the position that they have been given that authority by the [South Carolina] House and Senate," said DuRant.

Those wetlands had been ruled isolated by the Army Corps, meaning no Federal Clean Water Act permit was required. But the Supreme Court said while a previous case "holds that the Corps may not regulate isolated wetlands [that case] ... has no impact on DHEC's ability, as a state agency, to do so."

Armstrong said the case established "protections for isolated wetlands throughout the state, and mandating that a state permit be obtained prior to filling any of our state's unique and essential wetland resources."

Now, according to the court's ruling, before any isolated wetland area is filled in a permit must be obtained through S.C. DHEC, which is given the authority to issue such permits

under the state's Pollution Control Act.

Armstrong said the decision will have a larger impact on the areas outside of the state's eight coastal counties, which already have protection under stormwater regulations.

"It adds another layer of protection" in those coastal counties Armstrong said, but "the implications are going to have much greater impact" outside that area.

The Supreme Court also ruled that the act has a "private right of action," meaning a private person or group has the ability to bring a lawsuit if they observe violations of that law.

The circuit court had previously ruled that the Georgetown County League of Women Voters had no standing to bring the suit.

The court's decision was split 3-2, with Justices Kaye Hearn and John Kittridge agreeing that DHEC had the jurisdiction to regulate isolated wetlands, but not that private citizens could bring suits under the Pollution Control Act.

Armstrong said the private right of action decision "struck down what would have been a significant obstacle to those citizens seeking environmental accountability in this state. The Supreme Court's opinion ... opens the door for private citizens to enforce its terms."

The court's decision agrees with the League that Smith Land Company did not meet all the legal requirements for filling the wetlands since it did not get a permit from DHEC.

But DuRant said "there was no process for my clients to go get a permit ... We notified them but they didn't have a process for permitting an isolated wetland."

He said Smith Land Company will now have to see what DHEC wants them to do.

Armstrong said how DHEC will permit these isolated wetlands "may take them a little bit of time."

But she said there are many existing rules and regulations that it can use as a starting point for these regulations.

Contact GINA VASSELLI at 443-2434.

© 2011 [TheSunNews.com](http://www.thesunnews.com) and wire service sources. All Rights Reserved. <http://www.thesunnews.com/>