


MEMORANDUM

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TO: Isolated Wetlands Task Force

CC: Chris Smith, Mining Association of South Carolina

FROM: Leslie S. Riley 

DATE: September 14, 2012

RE: Comments from MASC on Isolated Wetlands Regulation

On behalf of the Mining Association of South Carolina I am submitting this summary of my comments in support of the Association's position on isolated wetlands. We appreciate the opportunity to provide these comments and I thank the members of the committee for giving their time for such a significant issue. Isolated wetlands have been a difficult topic to grapple with from a legislative perspective.

But I do not want to neglect to emphasize to the members that you do not need to be resigned to an isolated wetlands regulation. The issue of whether isolated wetlands should be regulated at all should not be a foregone conclusion. As the committee moves through this review and evaluation process, I would request the committee keep this question in mind: what is the real benefit to the state of regulating such a small percentage of wetlands, when the cost to property owners in terms of property rights is so great?

The committee is sitting here today at least in part due to the South Carolina Supreme Court's decision in Georgetown County League of Women Voters v. Smith Land Company, Inc., 393 S.C. 350, 713 S.E.2d 287 (2011). In that case, the Court construed the Pollution Control Act as requiring a permit from DHEC for impacts to isolated wetlands, as well as creating a private right of action under the Pollution Control Act. The Legislature very wisely took most of the teeth out of that decision through the recent amendments to the PCA and created the Isolated Wetlands Task Force, created for the purpose of studying issues surrounding isolated wetlands. The Association would submit that after this committee conducts its analysis, the conclusion it should reach is that we do not

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need an isolated wetlands regulatory program.

The facts in Smith Land are very distinct. Smith Land Co. owned one private residential lot with a very small truly isolated wetland located within its boundaries. As there was no Corps of Engineers permit required for impacts to this wetland because it was not connected to any other waters of the U.S., the state had no review of the impacts of this wetland either. The Supreme Court held that filling the wetland constituted a violation of the Pollution Control Act. Since the fill activity that gave rise to Smith Land, the U.S. Supreme Court has issued its decision in the Rapanos case and the Corps of Engineers has amended its guidance, which has resulted in the Corps asserting jurisdiction over more wetlands than they were previously. Additionally, the South Carolina Supreme Court recently affirmed DHEC's application of the policies of the Coastal Management Program in Spectre, LLC v. SCDHEC et al., 386 S.C. 357, 688 S.E.2d 844 (2010). Both of these decisions have significantly increased the protection isolated wetlands have throughout the state. The facts in Smith Land are not likely to occur with any frequency again due to these developments. As the committee becomes more educated on the real numbers of jurisdictional wetlands as opposed to truly isolated wetlands, this will become more clear.

The Association believes that the regulation of wetlands, which do not have any sort of significant connection to a larger system, runs contrary to the State's commitment to private property rights.

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