



# State of South Carolina

## Office of the Governor

NIKKI R. HALEY  
GOVERNOR

1205 PENDLETON STREET  
COLUMBIA 29201

September 19, 2012

Mr. Nicholas S. Torrey  
Southern Environmental Law Center  
601 West Rosemary Street, Suite 220  
Chapel Hill, North Carolina 27516

Dear Mr. Torrey,

On August 28, 2012, our office received your Freedom of Information Act request for:

all public records in possession or control of the Office of the Governor relating to the Governor's approval of bill H.4654 / R.255, Act 198 of 2012, which amended the South Carolina Pollution Control Act[, which] ... includes, but is not limited to, all notes and emails ... [and] all public records that indicate the time of day at which the Governor signed and/or approved the legislation (H.4654 / R.255, Act 198 of 2012) amending the South Carolina Pollution Control Act.

Please find enclosed records responsive to your request.

Sincerely,

A handwritten signature in black ink that reads "Swati S. Patel".

Swati S. Patel  
Chief Legal Counsel

Enclosures

## Haley, Nikki

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**From:** Schimsa, Rebecca  
**Sent:** Wednesday, June 06, 2012 6:10 PM  
**Subject:** Bill Signing Notice

Today, Governor Nikki R. Haley signed into law R255, H.4654, a bill that revises the Pollution Control Act.

Thank you.

Rebecca Schimsa  
Office of Governor Nikki Haley  
Asst. to Chief of Staff Tim Pearson  
O: (803) 734-5068 | C: (803) 429-4561

## Schimsa, Rebecca

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**From:** Schimsa, Rebecca  
**Sent:** Wednesday, June 06, 2012 6:10 PM  
**Subject:** Bill Signing Notice

Today, Governor Nikki R. Haley signed into law R255, H.4654, a bill that revises the Pollution Control Act.

Thank you.

Rebecca Schimsa  
Office of Governor Nikki Haley  
Asst. to Chief of Staff Tim Pearson  
O: (803) 734-5068 | C: (803) 429-4561

## Schimsa, Rebecca

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**From:** Schimsa, Rebecca  
**Sent:** Wednesday, June 06, 2012 6:11 PM  
**Subject:** Bill Signing Notice

Today, Governor Nikki R. Haley signed into law R255, H.4654, a bill that revises the Pollution Control Act.

Thank you.

Rebecca Schimsa  
Office of Governor Nikki Haley  
Asst. to Chief of Staff Tim Pearson  
O: (803) 734-5068 | C: (803) 429-4561

## Schimsa, Rebecca

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**Subject:** Bill Signing Notice

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Thank you.

Rebecca Schimsa  
Office of Governor Nikki Haley  
Asst. to Chief of Staff Tim Pearson  
O: (803) 734-5068 | C: (803) 429-4561

## Schimsa, Rebecca

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**From:** Veldran, Katherine  
**Sent:** Wednesday, June 06, 2012 3:22 PM  
**To:** Baker, Josh; Schimsa, Rebecca  
**Subject:** FW: Urgent Request  
**Attachments:** Smith Land Company Synopsis.docx; ATT00001.txt

-----Original Message-----

**From:** Darrell Scott [<mailto:darrell.scott@scchamber.net>]  
**Sent:** Wednesday, June 06, 2012 3:03 PM  
**To:** Veldran, Katherine  
**Cc:** Sara Hazzard  
**Subject:** Urgent Request

Katherine

Attached is a brief summary of the pollution control act fix.

The senate gave 3rd reading to H 4654 today and the house concurred with senate amendments.

The house and senate clerks are working to ratify this afternoon and get the bill to the Governor's desk today.

Governor Haley's signature today is paramount to stopping frivolous lawsuits against SC companies. Just today, we were notified by a member that they will be sued for not having a "PCA permit", even though that permit does not exist.

This legislation corrects a SC Supreme Court ruling that would stifle economic development.

We need the Governor's signature ASAP so that more frivolous lawsuits cannot be filed in the next couple days. We do not know how many companies have been sued today, but signature today would prevent any lawsuits from being filed tomorrow for sure.

the bill prohibits citizen suits and creates an administrative remedy for citizens to petition DHEC where the lack of a permit may be in question. The bill also states the conditions are or are not needed.

The compromise also creates an isolated wetlands and Carolina bays task force to study and present findings on if any further steps should be taken to protect those lands.

Sara and I would like to meet with you this afternoon if possible.

This has been a key economic development priority all session for chamber, scma and numerous other business groups. This bill is critical and in line with Governor Haley's strong economic development platform. The significance of doing this quickly is the uncertainty of how many lawsuits are pending that the environmental law center and other environmental groups may file in the next several days.

Thank you for your consideration.

Darrell

>

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## SMITH LAND COMPANY AND THE POLLUTION CONTROL ACT

Under the Supreme Court's Smith Land Company opinion of July 11, 2011, many citizens may be in violation of the Pollution Control Act (PCA) and every other citizen has the right to sue them for it.

In the Smith Land Company case, less than 2/10 of an acre of an isolated wetland was filled after the landowner contacted the U.S. Army Corps of Engineers and DHEC. Neither agency had a regulatory program requiring a permit to fill the isolated wetland. Therefore, the landowner did not acquire any permit from any agency, because no regulatory program was applicable.

Nonetheless, the Supreme Court, in a unanimous 5-0 vote, held that a permit from DHEC was required on the ground that the PCA contains what the Supreme Court interpreted as an absolute prohibition on any discharge into the environment without a DHEC permit. Further, the majority of a divided Supreme Court in a 3-2 vote held that a "private right of action" exists that would allow any citizen to sue an alleged violator under the PCA.

Both of these interpretations are a significant change in the implementation and operation of the PCA since its enactment in 1950. Additionally, these interpretations create a high degree of regulatory uncertainty for business and industry and opens up the doors of the courthouse for additional environmental litigation.

### Permit Requirement

*Impact:* Opinion affects more than just isolated wetlands.

Examples of what could now require DHEC permits:

- Driving a motor vehicle (tailpipe emissions);
- Chemical applications to agriculture;
- Seepage from septic tanks;
- Any emission otherwise implicitly (and possibly even specifically) currently exempted from DHEC permitting (including any emission or discharge below a threshold limit);
- "Fugitive" air emissions;
- "Nonpoint source" water discharges.

*Remedy:* Amend the PCA to restore the intent to require permits only when a regulatory program applies to the activity and requires a permit to be obtained.

### Private Right of Action

*Impact:* By creating a new cause of action, the Opinion suggests that any person can file a claim for any discharge into the environment without a DHEC permit.

Federal environmental acts (like the Clean Water Act and the Clean Air Act) have "citizen suit" provisions that allow citizens to bring a claim for a violation of the permitting requirements. There is no such language in the PCA.

Citizens have common law claims (such as nuisance, negligence, and trespass) for alleged environmental harms.

The PCA is intended to allow the State (such as the Attorney General, solicitors, and DHEC) to enforce the PCA, as the purpose of the PCA is to protect the State's environment, not an individual's aesthetic interest.

*Remedy:* Amend the PCA to explicitly state that no private right of action exists.

## Schimsa, Rebecca

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**From:** Schimsa, Rebecca  
**Sent:** Wednesday, June 06, 2012 3:30 PM  
**To:** Pearson, Tim  
**Subject:** FW: Urgent Request  
**Attachments:** Smith Land Company Synopsis.docx; ATT00001.txt

FYI.

Rebecca Schimsa  
Office of Governor Nikki Haley  
Asst. to Chief of Staff Tim Pearson  
O: (803) 734-5068 | C: (803) 429-4561

-----Original Message-----

**From:** Veldran, Katherine  
**Sent:** Wednesday, June 06, 2012 3:22 PM  
**To:** Baker, Josh; Schimsa, Rebecca  
**Subject:** FW: Urgent Request

-----Original Message-----

**From:** Darrell Scott [<mailto:darrell.scott@scchamber.net>]  
**Sent:** Wednesday, June 06, 2012 3:03 PM  
**To:** Veldran, Katherine  
**Cc:** Sara Hazzard  
**Subject:** Urgent Request

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Thank you for your consideration.

Darrell

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## Schimsa, Rebecca

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**From:** Schimsa, Rebecca  
**Sent:** Wednesday, June 06, 2012 4:28 PM  
**To:** Renea Harper  
**Subject:** Signed bill today

Renea – We have a signed bill that must be submitted to you today. Please be on standby. I will let you know the best I can if it will be after 5:00 pm and how soon after. Thank you.

Rebecca Schimsa  
Office of Governor Nikki Haley  
Asst. to Chief of Staff Tim Pearson  
O: (803) 734-5068 | C: (803) 429-4561

## Godfrey, Rob

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**From:** Godfrey, Rob  
**Sent:** Wednesday, June 06, 2012 6:33 PM  
**To:** Baker, Josh; Soura, Christian; Pitts, Ted  
**Subject:** Guidance needed?

**From:** Fretwell, Sammy [<mailto:sfretwell@thestate.com>]  
**Sent:** Wednesday, June 06, 2012 06:31 PM  
**To:** Godfrey, Rob  
**Subject:** From Sammy Fretwell, late breaking news

Rob,  
Needed to check with you on an issue that developed this afternoon. The Southern Environmental Law Center filed a citizens suit today to stop what it says is coal ash pollution of the Waccamaw River by Santee Cooper. Such citizens suits won't be allowed under a bill approved by the House and Senate. I understand this was an attempt to get in under the wire, before the governor signed it, so that the suit could go forward.  
I'm looking for some reaction.

Call me.

Thanks,

Sammy Fretwell  
Staff Writer  
The State  
771 8537

## Godfrey, Rob

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**From:** Godfrey, Rob  
**Sent:** Wednesday, June 06, 2012 6:37 PM  
**To:** 'sfretwell@thestate.com'  
**Subject:** Re: From Sammy Fretwell, late breaking news

The governor signed the bill this afternoon.

**From:** Fretwell, Sammy [<mailto:sfretwell@thestate.com>]  
**Sent:** Wednesday, June 06, 2012 06:31 PM  
**To:** Godfrey, Rob  
**Subject:** From Sammy Fretwell, late breaking news

Rob,  
Needed to check with you on an issue that developed this afternoon. The Southern Environmental Law Center filed a citizens suit today to stop what it says is coal ash pollution of the Waccamaw River by Santee Cooper. Such citizens suits won't be allowed under a bill approved by the House and Senate. I understand this was an attempt to get in under the wire, before the governor signed it, so that the suit could go forward.  
I'm looking for some reaction.

Call me.

Thanks,

Sammy Fretwell  
Staff Writer  
The State  
771 8537

**Baker, Josh**

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**From:** Baker, Josh  
**Sent:** Thursday, June 07, 2012 8:33 AM  
**To:** Patel, Swati  
**Subject:** Amendments to the Pollution Control Act

Swati,  
Governor Haley signed this bill at approximately 5:15 PM.  
Best,  
Joshua

Joshua D. Baker  
Senior Policy Advisor  
Office of the Governor of South Carolina  
803.734.5153 (o)  
803.351.0981 (c)  
[Joshbaker@gov.sc.gov](mailto:Joshbaker@gov.sc.gov)

## Baker, Josh

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**From:** Baker, Josh  
**Sent:** Wednesday, June 06, 2012 3:28 PM  
**To:** Veldran, Katherine  
**Subject:** Re: Urgent Request

I'll see them for 5 min if they want to come down.

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Sent using BlackBerry

----- Original Message -----

From: Veldran, Katherine  
Sent: Wednesday, June 06, 2012 03:21 PM  
To: Baker, Josh; Schimsa, Rebecca  
Subject: FW: Urgent Request

-----Original Message-----

From: Darrell Scott [<mailto:darrell.scott@scchamber.net>]  
Sent: Wednesday, June 06, 2012 3:03 PM  
To: Veldran, Katherine  
Cc: Sara Hazzard  
Subject: Urgent Request

Katherine

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## Baker, Josh

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**From:** Leslie B. Hope <LHope@carolinasagc.org>  
**Sent:** Wednesday, June 06, 2012 9:15 PM  
**To:** Baker, Josh; Pitts, Ted; Patel, Swati  
**Subject:** PCA

All,

On behalf of my contractor members, a huge thanks to all of you and Gov. Nikki Haley for signing the Pollution Control Act legislation today. This legislation is extremely important to my members and we appreciate the support by the Governor's office.

Thanks,

Leslie

Sent from my iPad

## Question List: Policy Bills

### Governor

Bill	Short Title	Question/Follow-up
3035	School term length and makeup days	And follow-up with education
3083	SC Conservation Bank Act	Ted follow-up
3407	Educational Opportunity Act	Tax credits
3410	SC Higher Edu Efficiency and Administrative Policies Act of 2011	Needs discussion → CS/TP
3508	Government Owned Communications Service Providers	Industry proposed
833	Tuition rates for military personnel & dependents for certain courses	Trey Walker
3028	Teachers' induction contract period	
3934	Assessment of undeveloped acreage	OK—tax credits
4632	Creates the "Marion County School District" and outlines the duties of the Marion County Board of Education	OK—school district consolidation; talk to Ted

### Legislative Follow-up

Bill	Short Title	Question/Follow-up
1150	Increases regulations related to unfair trade practices	Ask Ryberg (Danny Veret)
4205	Not-for-profit corporations providing water permitted to convert to public service district	Follow-up with Swati and Rep. Funderburk - there is more here that we need to work out with respect to mergers.
3478	Petroleum products and diesel fuel suitable for sale, etc	Talk to Danny Varet
4269	Automated clearing house payment processing charges	Pay day lenders cash advance; find out if capping at \$5 b/c people were charging more
4678	Expands the parties authorized to execute a mortgage satisfaction	OK—Talk with Rep. Nanney
91	Temporary lottery sales license	OK—follow-up with Danny Varet

### Agencies

Bill	Short Title	Question/Follow-up
3730	Requires a Commercial fur license and hunting license	Need DNR to sign-off

Bill	Short Title	Question/Follow-up
4983	Revises the boundaries of certain bird sanctuaries in York County	talk to DNR--practical consequence of bill
(3035)	School term length and makeup days	Dept. of Edu
732	Revision of penalties for obtaining non-ferrous metals unlawfully	OK—follow-up with SLED
224	Free tuition for certain veterans' children	OK—talk with CHE/Julie Carullo
502	Sailboat motor exemption	OK—need DNR for fiscal impact

### Outside Organizations

Bill	Short Title	Question/Follow-up
4008	Hospital has no liability when undertaking certain acts without malice	SCMA; SCHA; CJC; Swati
771	Monetary liability for hospitals	See above
1110	Adopts the 2009 edition of the International Energy Conservation Code as the Energy Standard	OK—need letters of support from homebuilders
3474	Public policy for building codes; separates the duties of the SC Building Codes Council	OK—Julian Barten; letters of support from homebuilders
3558	Allow make-up work due to absence b/c of military service	OK—follow up with CHE, tech schools and Trey/Clemson

### Take a closer look

Bill	Short Title	Question/Follow-up
3730	Requires a Commercial fur license and hunting license	Read bill
4092	Smoking ban for public buildings and campuses/educational institutions	What does this do? What is the point?
4967	Provides for "Class 3" members of SCRS (SC Retirement System) after June 30, 2012	Read bill
4939	Allows for the discounting of alcoholic beverages	Probably legislative follow-up→talk about committee amendment with Josh
1321	Outlines terms and penalties of offenses under the Omnibus Crime	Read bill

Bill	Short Title	Question/Follow-up
	Reduction and Sentencing Reform Act of 2010	
3716	Edu Finance Act reforms	Read bill
4654	Provides exemptions and limitations to the Pollution Control Act	OK—need more time with this bill