



Insight

# EPA v. Florida: Fundamental Fight without the Facts

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On Saturday, February 18, 2012, federal Judge Robert L. Hinkle upheld the 2009 determination that the Environmental Protection Agency (EPA) had jurisdiction to mandate clean water regulations for the state of Florida's major water bodies.

## Background

In 1998, EPA mandated Florida develop new rules for nutrient criteria, limiting phosphorus and nitrogen in waterways. EPA sought to prevent algal blooms and fish kills. Florida did not comply with the EPA deadline, causing environmentalists to sue in 2004. This was supposed to be resolved in 2009, when EPA mandated Florida to develop cleaner water regulation.

## Lawsuits

The EPA standards were more stringent than the Clean Water Act, causing Florida to similarly file suit, as Florida claimed their standards were effective enough. On Saturday, Judge Hinkle ruled EPA's numeric nutrient standards are necessary for Florida's waters, but he also invalidated certain EPA water quality criteria standards.

EPA was unable to develop acceptable stream criteria based on modeling and field studies, and thus adopted stream criteria using a different approach. Judge Hinkle not only marked the data and models as questionable, since increases in nutrient levels above EPA dictations only resulted in increases in flora and fauna, but also stated that based on lack of scientific paper and data citation, EPA's rulings were unwarranted and too severe.

## The Verdict

Both sides have expressed victories here, but it seems the major victory has gone to Florida. With EPA's cost-benefit analysis not expressing job loss as a cost, and adding in "co-benefits" to their calculations (i.e. lack of pollution leading to epidemiologic factors, resulting in fewer sick days, and therefore less private business cost, and lower medical expenses), the regulatory analysis was dubious.

This is a win for Florida – if states are allowed to challenge EPA legislation when sound evidence does not exist– what would this mean for the [Utility MACT](#) rule? Will executive overreach cease?

## The Solution?

Senator Marco Rubio has tried to answer these questions legislatively. Last week, he introduced S.2115, which would generally prevent EPA from enforcing "numeric nutrient criteria that would result in a negative economic impact of 15 percent or higher...." The companion bill in the U.S. House is H.R.3856, introduced by Steve

Southerland.

*Thomas Hale-Kupiec contributed to this resesarch.*