

EPA promulgated rules for numeric nutrient criteria under a consent decree issued by the Federal Court in a suit involving EPA and Earthjustice. The criteria in this rule covered springs, lakes, and streams. The rule was challenged by a few utilities from the panhandle and the Federal Court ruled the streams criteria to be invalid. The springs and lakes criteria were not challenged since they had a solid scientific basis. Since that time, EPA with the permission of Earthjustice has extended the implementation date for springs and lakes to January 6, 2013. The two parties agreed to propose new criteria for streams and submit those by November 30, 2012 with final criteria published by August 31, 2013. Further, under the consent decree EPA and Earthjustice have agreed to extend the date for the proposal of estuary and marine waters NNC to July 20, 2012 with final criteria published by May 10, 2013. The panhandle utilities that won in Federal court did have two arguments rejected by the Federal Court. In fact only one was flatly rejected and that was done for the wrong the reason. The other argument was not addressed at all by the court. Therefore, the utilities have appealed to the Appellate Court with jurisdiction. In addition, the Federal Judge rejected the argument that the necessity determination was made incorrectly by EPA and this finding has also been challenged in appellate court.