

ENTERED

March 08, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

STATE OF TEXAS, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 3:15-CV-162
	§	
UNITED STATES ENVIRONMENTAL	§	
PROTECTION AGENCY, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

The Court has remanded the “Clean Water Rule: Definition of ‘Waters of the United States’”, 80 Fed. Reg. 37,054 (June 29, 2015) (“the Final Rule”), to the appropriate administrative agencies (Dkt. 193). A repeal rule was published on April 21, 2020 and took effect on June 22, 2020. *See* 85 Fed. Reg. 22,250 (Apr. 21, 2020).


“[A] case challenging a statute, executive order, or local ordinance usually becomes moot if the challenged law has expired or been repealed.” *Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020); *see also, e.g., Lewis v. Continental Bank Corp.*, 494 U.S. 472, 474 (1990) (holding that amendments to statutes mooted a challenge to those statutes under the Commerce Clause); *Massachusetts v. Oakes*, 491 U.S. 576, 582–84 (1989) (holding that amendments to a statute mooted a challenge to that statute as overbroad); *Diffenderfer v. Central Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 414–15 (1972) (holding that repeal of a statute mooted a challenge to that statute under the Establishment and Free Exercise Clauses). Accordingly, the Court ordered the parties to provide supplemental briefing on the issue of whether this Court still has subject matter jurisdiction over this case. (Dkt. 242)

The Court has reviewed the parties’ briefing and has concluded that the general rule applies and that the case is moot. The voluntary-cessation doctrine does not apply, as nothing in the record shows that there is any risk that the Final Rule will be reenacted or

that Defendants, who are presumed to be acting in good faith, will otherwise repeat their allegedly wrongful conduct. *Cf. Northeastern Florida Chapter of Associated General Contractors v. City of Jacksonville*, 508 U.S. 656, 661–63 & n.3 (1993); *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 & n.11 (1982); *see also Sossamon v. Texas*, 560 F.3d 316, 325 (5th Cir. 2009) (“[G]overnment actors in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties. Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing.”). The “capable of repetition, yet evading review” exception also does not apply, as the record reveals, at most, a theoretical possibility that the challenged governmental action will occur again. *Lopez v. City of Houston*, 617 F.3d 336, 340 (5th Cir. 2010) (“[T]he party invoking jurisdiction must show a ‘demonstrated probability’ or ‘reasonable expectation,’ not merely a ‘theoretical possibility,’ that it will be subject to the same government action.”). Finally, the possible outcomes of other lawsuits involving these rules do not give *this* Court subject matter jurisdiction in *this* case. *See, e.g., Chamber of Commerce of the United States v. Environmental Protection Agency*, 642 F.3d 192, 208 (D.C. Cir. 2011) (“The prospect that litigants could be injured ‘if’ a court were someday to invalidate the federal regulations and ‘if’ California thereafter were to reimpose its standards, is little different from the prospect that any litigant could be injured ‘if’ EPA (or Congress) were eventually to enact a rule it presently had under consideration. To seek judicial review of such a contemplated-but-not-yet-enacted rule is to ask the court for an advisory opinion in connection with an event that may never come to pass.”).

This case is therefore **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. Each party will bear its own fees and costs. **THIS IS A FINAL JUDGMENT.**

SIGNED at Houston, Texas, this 2nd day of March, 2021.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE