

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION OF WASHINGTON  
BUSINESS, *et al.*,

*Plaintiffs.*

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY., *et al.*,

*Defendants,*

and

STATE OF WASHINGTON, *et al.*,

*Intervenor-Defendants.*

No. 23-cv-03605 (DLF)

**ORDER**

Before the Court is intervenor-defendants' Motion to Dismiss for Lack of Jurisdiction, Dkt. 64, and EPA's Motion to Hold in Abeyance, Dkt. 67. For the reasons that follow, the Court will grant the intervenor-defendants' motion and deny EPA's motion.

The plaintiffs bring this action seeking vacatur of a final rule EPA issued under the Clean Water Act (CWA)—Restoring Protective Human Health Criteria in Washington, 87 Fed. Reg. 69183 (Nov. 18, 2022) (2022 Rule). Compl., Dkt. 1. The 2022 Rule promulgated human health criteria for various pollutants affecting the State of Washington's waters. 87 Fed. Reg. at 69183.

On June 28, 2024, the Court permitted the State of Washington and various federally recognized tribes to intervene as defendants. *See* Mem. Op. and Order, Dkt. 47, 48. On December 27, 2024, after the parties completed briefing on cross motions for summary judgment, Dkts. 44,

49, 50, 52, 53, 54, 55, EPA filed a Notice of Agency Action, Dkt. 63. In that notice, EPA indicated that it had approved revised human health criteria that the State of Washington adopted into state law. EPA Not. at 1. Those revised human health criteria were identical to the criteria in the 2022 Rule. *Id.*; EPA Approval, Dkt. 63-1. EPA stated that “because the State’s EPA-approved human health criteria are as stringent as the corresponding federal human health criteria established in the [2022 Rule], the State’s EPA-approved human health criteria are now the applicable human health criteria for [CWA] purposes.” EPA Not. at 1.

Subsequently, intervenor-defendants moved to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Dkt. 64; *see* Tribes’ Not. of Joinder, Dkt. 65. They argue that this action is moot because Washington’s EPA-approved state human health criteria are now the applicable water quality standards under the CWA. Int.-Def.’s Mot. to Dismiss at 1–2. Thereafter, EPA moved to hold this case in abeyance for 90 days, Dkt. 67, but it does not oppose dismissing this action without prejudice, *see* EPA Resp., at 2, Dkt. 71. The plaintiffs oppose the intervenor-defendants’ motion. Dkt. 73.

“Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies.” *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013) (quoting *Iron Arrow Honor Soc’y v. Heckler*, 464 U.S. 67, 70 (1983)); *see also* U.S. Const. art. III, § 2. To ensure an actual controversy remains, mootness must be assessed at “all stages of review.” *Decker v. Nw. Env’t Def. Ctr.*, 568 U.S. 597, 609 (2013). “[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Schmidt v. United States*, 749 F.3d 1064, 1068 (D.C. Cir. 2014). This occurs when, for example, “intervening events make it impossible to grant the prevailing party effective relief,” *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008), or when the Court’s decision “will

neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future," *Aref v. Lynch*, 833 F.3d 242, 250 (D.C. Cir. 2016). A court that lacks jurisdiction because a case is moot must dismiss the action. Fed. R. Civ. P. 12(b)(1), 12(h)(3).

This case is moot because, under the CWA, the plaintiffs are subject to Washington's state human health criteria—not the federal criteria promulgated in the 2022 Rule that plaintiffs challenge in this action. As the CWA provides, once EPA determines that a revised or new state water quality standard meets the requirements of the CWA, "such standard shall thereafter be the water quality standard for the applicable waters of that State." 33 U.S.C. § 1313(c)(3). "Thereafter" means "after that in time, order, or sequence; subsequently; afterwards." *Thereafter*, Oxford English Dictionary, [https://www.oed.com/dictionary/thereafter\\_adv](https://www.oed.com/dictionary/thereafter_adv) (last visited March 17, 2025). And it is "well established that 'the' particularizes the subject which it precedes and acts as a word of limitation." *Del. Dep't of Nat. Res. & Env. Control v. EPA*, 895 F.3d 90, 99 (D.C. Cir. 2018) (cleaned up). EPA's approval of Washington's water quality standard renders that standard the sole applicable standard for the relevant waters of that state. *See* 33 U.S.C. § 1313(c)(3); *see also* 40 C.F.R. § 131.21(c)(2) ("[O]nce EPA approves [a state's] water quality standard, it becomes the applicable water quality standard for purposes of the [CWA]" unless or until "EPA has promulgated a more stringent water quality standard."). The plaintiffs resist this conclusion, arguing that EPA's federal criteria remain applicable until EPA withdraws those criteria through notice-and-comment rulemaking. *Opp'n* at 4–5. But the plain language of the CWA makes clear that a state water quality standard becomes applicable upon EPA approval without reference to whether EPA already promulgated its own criteria. *See* 33 U.S.C. § 1313(c)(3).

The implementing regulation, 40 C.F.R. § 131.21(c)(2), leads to the same conclusion. The first half of the regulation is a simple if-then clause—if a State adopts a water quality standard, then once EPA approves that standard, it becomes the applicable standard. 40 C.F.R. § 131.21(c)(2). The second half of the regulation, which causes an EPA-promulgated standard to become effective in lieu of a state standard, is not triggered “unless or until EPA has promulgated a more stringent water quality standard.” *Id.* (cleaned up). Here, EPA has not promulgated a more stringent water quality standard than Washington’s current, approved standard. *See* EPA Approval at 5 (noting that “[t]he HHC adopted by Washington are identical to the federally promulgated HHC”). Thus, Washington’s water quality standard is the applicable standard under the CWA.

Because EPA has approved Washington’s state human health criteria, the criteria in the challenged 2022 Rule no longer apply. As a result, a court decision regarding the 2022 Rule would not “presently affect the parties’ rights,” rendering this case moot. *Aref*, 833 F.3d at 250; *see Anderson v. U.S. Dep’t of Hous. and Urb. Dev.*, 731 F. Supp. 3d 19, 31 (D.D.C. 2024) (noting that “when one agency action supersedes another, prospective challenges to the superseded agency action generally become moot” because “[t]he new agency action, not the old one, is what injures the plaintiff going forward”); *Blue Water Balt. v. Pruitt*, 266 F. Supp. 3d 174, 180–81 (D.D.C. 2017) (holding that challenge to classifications in an EPA report were mooted by EPA’s subsequent promulgation of a new report). The Court thus lacks subject matter jurisdiction and must dismiss this action. Fed. R. Civ. P. 12(b)(1), 12(h)(3). Accordingly, it is

**ORDERED** that Intervenor-Defendants’ Motion to Dismiss, Dkt. 64, is **GRANTED**. It is further

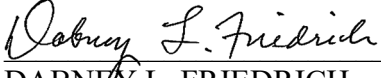
**ORDERED** that Plaintiffs’ Motion for Summary Judgment, Dkt. 44, Defendants’ Cross-Motion for Summary Judgment, Dkt. 49, Intervenor-Defendants’ Cross-Motions for Summary

Judgment, Dkts. 52, 54, and Defendants' Motion to Hold in Abeyance, Dkt. 67, are **DENIED AS MOOT**; it is further

**ORDERED** that this case is **DISMISSED** without prejudice. The Clerk of Court is directed to close this case. This is a final appealable order.

**SO ORDERED.**

March 19, 2025

  
DABNEY L. FRIEDRICH  
United States District Judge