



In the Matter of:

**BEVERLY M. MIGLIORE,**

**ARB CASE NO. 99-118**

**COMPLAINANT,**

**ALJ CASE NOS. 98-SWD-3**

**v.**

**99-SWD-1**

**99-SWD-2**

**RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,**

**DATE: February 8, 2000**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

### **ORDER**

Three motions currently are pending before the Administrative Review Board in this case.

First, the Assistant Secretary of Labor has requested the Administrative Review Board to issue an order granting him leave to file an *amicus* brief within 21 days and permitting the parties an opportunity to file a response to the Assistant Secretary's brief.

Second, Respondent Rhode Island Department of Environmental Management (Rhode Island) has moved the Board for an order striking Complainant Beverly M. Migliore's brief on the ground that it violates our November 5, 1999 order establishing a 55-page limitation.

Third, Rhode Island has moved the Board to stay this action pending the resolution of an action in the United States District Court for the District of Rhode Island.<sup>1/</sup> Rhode Island has requested the district court to grant it a declaratory judgment pursuant to Fed. R. Civ. P. 57 holding that the filing, investigation and prosecution of this case violate Rhode Island's sovereign immunity and the Eleventh Amendment. Rhode Island has also asked the court for a temporary restraining order, preliminary and permanent injunctions pursuant to Fed. R. Civ. P. 65 ordering the U.S. Department of Labor to immediately cease and desist any further investigation, prosecution or filing of this or similar cases and to dismiss each of these cases with prejudice.

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<sup>1/</sup> *State of Rhode Island v. United States of America, et al.*, Case No. 00-44T.

For good cause shown, we **GRANT** Rhode Island's motion to stay these proceedings pending the resolution of its district court action. Rhode Island is ordered to inform the Board immediately of the outcome of the district court action upon issuance of the court's decision.

We defer ruling on the Assistant Secretary's request to file an *amicus* brief and Rhode Island's motion to strike Migliore's brief until the district court action is resolved. If Rhode Island prevails, the motions may be moot, depending on further appeals of the court's decision, if any. If Rhode Island does not prevail, we will consider the motions upon notification of the district court's decision.

**FOR THE ADMINISTRATIVE REVIEW BOARD:**

Paul Greenberg  
Chair

**NOTE:** Questions regarding any case pending before the Board should be directed to the Board's staff assistant, Ernestine Battle.

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