



In the Matter of:

**BEVERLY M. MIGLIORE,**

**COMPLAINANT,**

v.

**RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,**

**RESPONDENT.**

**ARB CASE NO. 99-118**

**ALJ CASE NOS. 98-SWD-3  
99-SWD-1  
99-SWD-2**

**DATE: OCT 23 2002**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER GRANTING STAY OF PROCEEDINGS**

On September 21, 2002, the Administrative Review Board issued an order requiring the parties to inform the Board how they wish to proceed in this case in light of *Rhode Island Department of Environmental Management v. United States*, 304 F.3d 32 (1st Cir. 2002). The Assistant Secretary filed a response to the order requesting a further stay of proceedings before the Board “pending the exhaustion of any further judicial review” of the First Circuit’s decision. The Complainants stated that they intend to request the First Circuit to rehear the case en banc and concurred in the Assistant Secretary’s request that the Board continue to stay the case.

The Rhode Island Department of Management (“RIDEM”) responded that “the only available action left in this matter is a dismissal with entry of judgment for Respondent.” RIDEM did not discuss the effect of the possibility of further judicial review in this case or of the First Circuit’s modification of the district court’s injunction to “allow the Secretary of Labor, if she so chooses, to intervene in the proceedings before the AU, thereby curing any sovereign immunity bar.”

As urged by the Assistant Secretary and Complainants, the Board will continue to stay the litigation of this case pending the exhaustion of any further judicial review of this appeal. Once the parties have exhausted such review, they are ordered to promptly inform the Board of how they wish to proceed with this case.

**FOR THE ADMINISTRATIVE REVIEW BOARD:**

**Janet R. Dunlop**  
**General Counsel**