

MANDATE
United States Court of Appeals
For the First Circuit

No. 05-2022

CITY OF MARLBOROUGH, MASSACHUSETTS,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Before

Boudin, Chief Judge,
Stahl, Senior Circuit Judge,
and Howard, Circuit Judge.

JUDGMENT

Entered: September 30, 2005

The respondent's motion to dismiss for lack of jurisdiction is allowed. "[W]here [agency] proceedings are ongoing--as they are here--there has not as yet been an issuance or denial of a permit sufficient to support the invocation of circuit court jurisdiction under [33 U.S.C.] section 1369(b)(1)(F)." Rhode Island v. United States E.P.A., 378 F.3d 19, 23 (1st Cir. 2004). The Town of Sudbury's motion to intervene is denied as moot.

The petition for review is dismissed without prejudice for want of appellate jurisdiction.

By the Court:

Richard Cushing Donovan, Clerk.

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk


Deputy Clerk

JULIE GREGG

By: _____
Operations Manager.

Date: 11/22/05