

An "Understanding" on Offshore Oil

Anyone familiar with the inner workings of the federal bureaucracy is likely to be troubled by the ambiguous way in which controversial questions often are decided. Ambiguity is certainly a word fairly applied to some recent intimate dealings between the Environmental Protection Agency (EPA) and the Department of the Interior with respect to Interior's proposed oil lease sale on the outer continental shelf (OCS) in the eastern Gulf of Mexico. If, on balance, the public interest may have been fairly well served in those dealings, one may nevertheless question whether it could not have been served still better had officials at EPA been less concerned about not bruising feelings among their counterparts at Interior.

In his energy message of 18 April, President Nixon called for a tripling by 1979 of the total acreage of OCS lands under lease for oil and gas exploration and production. OCS lands off California and Alaska as well as lands in the Gulf of Mexico are to be offered for lease, but the earliest lease sale—proposed to be held this December—was to cover nearly 900,000 acres in the eastern Gulf, off Alabama, Mississippi, and Florida.

The sale could not, however, be made until Interior and its Bureau of Land Management (BLM) had complied with the National Environmental Policy Act (NEPA) by preparing an environmental impact statement on the proposal. Furthermore, before issuing a final impact statement, Interior would have to circulate a draft statement among other federal agencies such as EPA, interested state agencies, and private environmental groups. Indeed, the state of Florida, through its Department of Administration (which functions as a clearinghouse for state agency comments on impact statements), said that the draft statement issued last June was "inadequate." One reason why the statement fell short, the state indicated, was that it failed to take sufficient account of the possible adverse long-term effects of the oil development on Florida, in light of the special social and economic importance in this state of tourism and amenity living.

The Florida Audubon Society, in a comment prepared by Edward T. LaRoe, a marine biologist (who is now on the coastal zone management staff of the National Oceanic and Atmospheric Administration), was scathing in its criticism. LaRoe characterized the 700-page statement as a "diffuse, disorganized, and self-contradictory document that gives only superficial, generalized, and uncritical treatment of the issues" and "attempts to overpower the reader by its sheer bulk."

In its comment, EPA was quite emphatic in stating that this document was necessarily inadequate because too little was known about the marine resources at stake. "Adequate baseline data are not available," EPA said.

The upshot of EPA's review was that, when it came time to prepare a formal letter of comment, a committee made up of various middle-level staff people within the agency agreed that the lease sale proposal should be rewritten to provide, among other things, that the gathering of baseline data be started simultaneously with "preproduction" activities in the more easterly, and more environmentally critical, sections of the lease sale area.

Also, this committee gave the draft statement a rating of "3" (meaning "inadequate"), this being the lowest rating on a scale in which a "1" stands for "adequate," and a "2" means "insufficient information."

However, according to Rebecca Hanmer, deputy director of EPA's Office of Federal Activities and a member of the review committee, EPA follows a "no surprise" policy and, before a rating of "3" is actually assigned, the agency that prepared the draft statement is usually told of EPA's intention. In this instance, the notice of the impending rating seems to have been especially disturbing to officials at BLM and Interior because Florida officials had indicated that the state might sue to block the proposed lease sale.

Hanmer says that the Interior officials were concerned that a trial judge might accept the unfavorable rating as prima facie evidence that Interior had failed to meet the procedural requirements of NEPA. These officials are also said to have objected to EPA's recommending that the lease sale proposal itself be rewritten.

By 20 September, when Interior and EPA staff people last met to discuss the lease sale and EPA's comments about the draft statement, the two agencies' top officials had become involved. Under Secretary John C. Whitaker was speaking for Interior, and Deputy Administrator John R. Quarles, Jr., was representing EPA. Although no agreement as such was reached at this meeting, a tacit understanding seems to have been arrived at.

The formal letter of comment issued by EPA on 26 September contained a rating indicating only that the draft statement offered insufficient information and that EPA had "environmental reservations" about the proposed lease sale. Also, what had once been recommendations for a rewriting of the proposal had now become recommendations of alternatives to be mentioned in the final impact statement. Hanmer says that the EPA staff assented willingly to these changes and regarded them as of little substantive importance.

For its part, Interior set about improving the impact statement and actually rewriting the lease sale proposal to provide for the data gathering and monitoring which EPA had recommended. As finally issued on 17 October, the impact statement, now in five volumes, is more unwieldy than ever, but it no doubt is an improvement over its predecessor, whatever its remaining inadequacies. Also, it must be pointed out that EPA's original analysis of the draft statement's shortcomings is included in the final document.

The catch here is that most of the new research to which Interior has now agreed will be done only if the Office of Management and Budget and Congress provide the several millions of dollars needed. Furthermore, it is not clear that the lease sale itself will be delayed in the absence of money for the research—research necessary to carrying out drilling and pipeline operations in a manner protective of the marine biota. EPA may yet regret having softened its objections to Interior's lease sale proposal and the impact statement.—LUTHER J. CARTER