

William & Mary Environmental Law and Policy Review

Volume 2 (1976-1977)
Issue 1 *Environmental Practice News*

Article 4

November 1976

Department of Interior Holds First Sale of Atlantic Offshore Leases

Follow this and additional works at: <https://scholarship.law.wm.edu/wmelpr>



Part of the [Energy and Utilities Law Commons](#)

Repository Citation

Department of Interior Holds First Sale of Atlantic Offshore Leases, 2 Wm. & Mary Envtl. L. & Pol'y Rev. 3 (1976), <https://scholarship.law.wm.edu/wmelpr/vol2/iss1/4>

Copyright c 1976 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmelpr>

DEPARTMENT OF INTERIOR HOLDS FIRST SALE
OF ATLANTIC OFFSHORE LEASES

The first sale of leases to permit drilling for oil and gas offshore from the mid-Atlantic states was held by the Department of Interior's Bureau of Land Management on August 17. The sale involved 876,750 acres in the Baltimore Canyon, an undersea trench located off the coast of lower New Jersey and Delaware. The lease area, from fifty to one hundred miles offshore, promises to contain sufficient quantities of oil and gas to make the development of these resources profitable. The petroleum industry's expectations for the area were illustrated by the fact that 101 of the 154 tracts available drew bids totalling \$3.5 billion. This was a greater amount than had been expected. The Bureau of Land Management's environmental impact statement, required by the National Environmental Policy Act (NEPA), concluded that the socio-economic and environmental impact from the development of the leases in the sale would be felt most highly in New Jersey, New York, Delaware, Maryland, and Virginia. National Policy Act §102 (c), 42 U.S.C. § 4332(c) (1969).

The lease sale had been delayed on August 13 when the United States District Court for the Eastern District of New York granted a preliminary injunction against the sale pending a later trial. Suits challenging the government's leasing programs in general and the mid-Atlantic sale in particular had been

filed by several New York municipalities, the State of New York, and the Natural Resources Defense Council. Judge Jack Weinstein's eighty page opinion held that the Bureau of Land Management's environmental impact statement violated the National Environmental Policy Act by failing to properly consider the regulatory authority of the mid-Atlantic states in the oil and gas development process. The court specifically noted that the impact statement's assumed use of pipelines to bring the oil and gas onshore was oversimplified in light of the authority of the states involved to regulate pipelines and related facilities. The court reasoned that state objections to pipeline use could compel the use of tankers and barges to bring the offshore oil and gas onshore, which would present different environmental impacts than those from pipelines. Because the lease sale would cause "irreparable harm" to the plaintiffs, the district court granted the preliminary injunction against the mid-Atlantic lease sale, though the requested injunction against all further offshore leasing was denied.

The preliminary injunction was stayed on August 16 by the United States Court of Appeals for the Second Circuit. Judges von Graafeiland, Kelleher and Gagliardi disagreed with the proposition that the NEPA violation and the holding of the lease sale would cause the requisite "irreparable harm." They noted that future litigation against the program would not be precluded by the lease sale, and that there was little chance of damage to environment occurring prior to the trial before Judge Weinstein in late September or October. Moreover, the court stated that the national interests relating to the "energy crises" would be damaged by preventing the sale. Justice Thurgood Marshall, circuit justice for the Second Circuit, refused to lift the stay on August 17, permitting the lease sale to proceed. No opinion accompanied his decision.

This first sale of leases offshore from the mid-Atlantic states is a significant event in several respects. It illustrates the concern caused by the nation's increasing dependence on foreign energy sources, and demonstrates that the coastal states will be bearing a large measure of the impact of this national concern. Should commercially acceptable quantities of oil and gas be discovered in the mid-Atlantic lease lands, new industry, and population to support the industry, will seek to locate in the Atlantic coastal states, including Virginia. The potential socio-economic and environmental impact of these new industries is increased by the fact that the petroleum exploratory and development industry is essentially non-existent in the mid-Atlantic coastal states, and the very nature of the offshore petroleum industry dictates that much of the developmental pressure will be concentrated in the coastal zone. Given the potential conflicts in this environmentally sensitive area, litigation stemming from the mid-Atlantic lease sale can be expected to continue.