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NOTES

CALIFORNIA v. KLEPPE: WHO REGULATES AIR QUALITY OVER THE OUTER CONTINENTAL SHELF?

The rising cost of imported oil and a worsening balance of trade deficit have prompted efforts to increase domestic petroleum production. Due to its immense size, one of the most promising sources of domestic oil and gas is the Outer Continental Shelf (OCS). The federal government, however, does not allow unregulated exploration and development of OCS resources. The Outer Continental Shelf Lands Act of 1953 established both jurisdiction and control of the OCS in the federal government and authorized the Secretary of Interior (Secretary) to supervise OCS mineral development. Recognizing the need to balance energy development with the protection of the human, marine, and coastal environments, Congress, in 1978, amended the 1953 Act. In addition to providing authority over

1. In 1974, for example, the total recoverable reserves from the OCS were estimated as high as 200 to 400 million barrels of oil and 1,000 to 2,000 trillion cubic feet of natural gas. Council on Environmental Quality, 1 OCS Oil and Gas — An Environmental Assessment 20-21 (1974), cited in Breeden, Federalism and the Development of Outer Continental Shelf Mineral Resources, 28 STAN. L. REV. 1107, 1107 n.3 (1976). The total area of the OCS is about one-third the size of the continental United States. The inner boundary of the shelf begins three geographical miles from the adjacent state's coastline, corresponding with the outer boundary of the state's coastal zone. See Outer Continental Shelf Lands Act, 43 U.S.C. § 1331(a) (1976). The outer boundary of the OCS is less precise, extending seaward to the limit of the nation's ability to utilize its resources. So long as this is the test governing national sovereignty, the limits of national jurisdiction over the OCS are those of technological capacity rather than fixed geographical boundaries. See Breeden, supra, at 1107 n.2.


5. Pub. L. No. 95-372, 92 Stat. 629 (codified at 43 U.S.C.A. § 1331 (West Supp. 1979)). The 1978 Amendments more specifically define the Secretary's authority to promulgate rules and regulations necessary to implement the provisions of the Act. Between 1953 and 1978, there was only one limited amendment to the Act, The Deepwater Port Act of 1974, Pub. L. No. 93-627, 88 Stat. 2126 (1974) (codified at 33 U.S.C. § 1501 (1976)), requiring state laws applicable to OCS activities to be continually updated. The passage of the 1978 Amendments was preceded by the creation in 1975 of the Ad Hoc Select Committee on the Outer Continental Shelf, which in turn resulted from public concern over the Department of Inte-
the supervision and cancellation of leases, the amendments authorize the Secretary to prescribe regulations to ensure a lessee’s compliance with the national ambient air quality standards (NAAQS) pursuant to the Federal Clean Air Act (CAA). While the Secretary is authorized to issue such regulations for compliance with the CAA, the amendments are silent on the jurisdiction of the Environmental Protection Agency (EPA), which administers the Act. Nevertheless, the EPA recently claimed jurisdiction over OCS activities affecting states’ air quality on the basis of the 1953 Act’s extension of federal law to the OCS. Thus, the EPA’s reliance on the 1953 Act, aided by some conflicting legislative history of the subsequently passed 1978 Amendments, eventually led to a jurisdictional conflict between EPA and certain lessees under Interior’s regulatory scheme.

The conflict arose over Interior’s approval, in July, 1976, of Exxon’s application to proceed with an offshore storage and treatment facility (OS&T) off the coast of Santa Barbara, California. On April 18, 1978, the EPA published a final determination in the Federal Register interpreting the federal jurisdictional grant of the 1953 OCS Lands Act as permitting it to apply certain provisions of the Clean Air Act to Exxon’s OS&T. Thus, in order to complete the facility, Exxon was not only required to comply with Interior’s leasing regulations but was further instructed to obtain air permits from the EPA.

Prior’s accelerated OCS leasing schedule under the general authority of the 1953 Act. It was felt by most that the Act, then 23 years old, was in need of modernization. See H.R. Rep. No. 95-590, 95th Cong., 2d Sess. 56, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 1450, 1463.


10. The OS&T is a converted tanker with processing equipment located on its deck. It is to be moored to a Single Anchor Leg Mooring System (SALM) and will provide equipment for crude oil dehydration and sweetening, water treating, and power generation for the OS&T itself and for Platform Hondo, the facility which will exploit and produce the crude oil to be refined at the OS&T. See 43 Fed. Reg. 16,393-94 (1978).

Exxon and several other oil companies sought review of the EPA's ruling by moving to file a counterclaim in a pending district court suit brought by California to challenge Interior's original approval of the OS&T. The district judge, believing that the issue should be resolved in the court of appeals as provided in the CAA, denied the motions. In reviewing the district court's decision, the United States Court of Appeals for the Ninth Circuit, in California v. Kleppe, ruled that neither the clear statutory language nor the legislative history of the 1978 Amendments supported duplicate jurisdiction over the OCS. Judge Wallace, writing for the three-judge panel, held that the language of the amendments clearly granted authority to promulgate air regulations over the OCS to the Secretary of Interior. Moreover, since the court found EPA authority over OCS air quality to be inconsistent with the statutory scheme, it reasoned that judicial review under the OCS Lands Act in the district courts alone was contemplated. This note will examine the Kleppe decision in light of the legislation affecting the OCS, especially those portions creating the controversy between Exxon and EPA. An analysis of the reasoning behind the Ninth Circuit's ruling will demonstrate that the opinion fails to resolve some important issues raised by the controversy. Nevertheless, the result reached is sound and will promote more effective regulation over the OCS.

I. THE OUTER CONTINENTAL SHELF: "THE CAST OF REGULATORY CHARACTERS"

A. State versus Federal Ownership

Between the American Revolution and World War II, many coastal states claimed jurisdiction over submerged lands from the coast outward to the three-mile limit and beyond. This practice was tacitly approved by the federal government, but, as resources and revenues grew in importance, its position changed. In 1945, President Truman issued a proclamation asserting federal jurisdiction over shelf areas beyond the three-mile limit. Two years later, in United States v. California, the Supreme Court held that the federal government, not California, had control over the three-mile territorial sea. Incidental to this control was full dominion

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12. For the procedural history of the case, see note 104 infra.
13. 604 F.2d 1187 (9th Cir. 1979).
14. Id. at 1193, 1198.
15. Id. at 1193.
16. Id. at 1192.
17. See Breeden, supra note 1, at 1111.
over the resources of the soil under that area, including oil.\textsuperscript{20} In response to this and other decisions,\textsuperscript{21} Congress enacted the Submerged Lands Act of 1953,\textsuperscript{22} granting ownership of the seabed and its minerals to the coastal states within the three-mile territorial sea. Nevertheless, since Congress granted to the states only “lands beneath navigable waters,” jurisdiction and control of the water and air space over the seabed of the territorial sea was retained by the federal government.\textsuperscript{23}

\textbf{B. The Outer Continental Shelf Lands Act}

Jurisdiction and control of the OCS was not asserted by the federal government until the passage of the Outer Continental Shelf Lands Act of 1953.\textsuperscript{24} The OCS was defined as all submerged lands under American jurisdiction lying seaward of those areas granted to the states under the Submerged Lands Act.\textsuperscript{25} The OCS Lands Act provided that federal laws would apply to the OCS as if it were an area of exclusive federal jurisdiction within a state.\textsuperscript{26} The Secretary of Interior was empowered to grant oil and gas leases on the OCS to the highest responsible qualified bidder.\textsuperscript{27} The Secretary was also given responsibility to promulgate rules and regul-

\textsuperscript{20} Id. at 38-39.
\textsuperscript{21} The California case was followed by actions against other states with similar results. See, e.g., United States v. Texas, 339 U.S. 707 (1950); United States v. Louisiana, 339 U.S. 699 (1950). The Court’s reasoning in these cases is the subject of some controversy. The basis for the ruling was the federal government’s obligation to defend the territorial sea in time of war. United States v. California, 332 U.S. 19, 35 (1947). But the federal government would also be obligated to defend the land mass of the states in the event of war. Federal control over an entire state has yet to be established on the basis of this defense role. See Breeden, supra note 1, at 1111 n.17.
\textsuperscript{22} 43 U.S.C. § 1301 (1976). This Act was viewed as a congressional response to the decisions upholding federal control of the territorial sea. See note 21 supra; Breeden, supra note 1, at 1111.
\textsuperscript{23} 43 U.S.C. § 1301(a) (1976).
\textsuperscript{24} Ch. 345, 67 Stat. 462 (1953) (current version at 43 U.S.C.A. § 1331 (West Supp. 1979)).
\textsuperscript{26} Ch. 345, § 4(a)(1), 67 Stat. 464 (1953) (current version at 43 U.S.C.A. § 1333(a)(1) (West Supp. 1979)).
\textsuperscript{27} Ch. 345, § 8, 67 Stat. 466 (1953) (current version at 43 U.S.C.A. § 1337 (West Supp. 1979)). The Secretary is also authorized to grant sulphur leases as well as leases of “any mineral other than oil, gas and sulphur. . . .” Id. Within the Department of Interior, the Bureau of Land Management (BLM) administers the leasing provisions of the OCS Lands Act, while the United States Geological Survey (USGS) has primary responsibility within the Department for overseeing the development of a tract once it has been leased. See H.R. REP. No. 95-590, 95th Cong., 2d Sess. 59, reprinted in [1978] U.S. CODE & AD. NEWS 1450, 1466.
lations to prevent waste and conserve the natural resources of the OCS.\textsuperscript{28} The 1953 Act also provided that jurisdiction of controversies arising out of operations on the OCS should be in the United States district courts.\textsuperscript{29}

\section*{C. The Clean Air Act}

In 1964, Congress enacted the Clean Air Act (CAA)\textsuperscript{30} to provide technical and financial assistance to state and local governments in their efforts to control air pollution\textsuperscript{31} and to encourage and assist the development of regional air pollution control programs.\textsuperscript{32} The CAA replaced existing environmental law\textsuperscript{33} by explicitly delineating and strengthening the authority of the Department of Health, Education and Welfare with respect to its activities in air pollution research, training, and demonstration programs.\textsuperscript{34}

In 1970, Congress extensively amended the CAA\textsuperscript{35} and transferred the responsibility for carrying out the provisions of the Act by creating the Environmental Protection Agency (EPA).\textsuperscript{36} The EPA Administrator was directed to establish primary and secondary national ambient air quality standards (NAAQS). Primary NAAQS are those which the Administrator deems necessary to protect the public health, while secondary NAAQS are generally more stringent standards designed to protect the public welfare.\textsuperscript{37} Subsequently, the EPA promulgated NAAQS for each air pollutant for which air quality criteria had been issued prior to January 31, 1971.\textsuperscript{38}

\begin{itemize}
\item \textsuperscript{28} Ch. 345, § 5(a), 67 Stat. 465 (1953) (current version at 43 U.S.C.A. § 1334(a) (West Supp. 1979)).
\item \textsuperscript{29} Ch. 345, § 4(b), 67 Stat. 464 (1953) (current version at 43 U.S.C.A. § 1349(b)(1) (West Supp. 1979)). Proceedings with respect to any such controversy can be instituted "in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose." \textit{Id}.
\item \textsuperscript{31} Pub. L. No. 88-206, § 1(b), 77 Stat. 393 (1963) (current version at 42 U.S.C.A. § 7401(b) (West Supp. 1979)).
\item \textsuperscript{32} \textit{Id}.
\item \textsuperscript{33} The CAA replaced the Air Pollution Control Act of 1955, Ch. 360, 69 Stat. 322 (1955) (current version at 42 U.S.C.A. §§ 7401-7642 (West Supp. 1979)).
\item \textsuperscript{34} For example, the Secretary of HEW was directed by the CAA to establish a national research and development program for the prevention and control of air pollution. Clean Air Act § 3(a), Pub. L. No. 88-206, 77 Stat. 394 (1963) (current version at 42 U.S.C.A. § 7403(a) (West Supp. 1979)).
\item \textsuperscript{36} 42 U.S.C.A. § 7602(a) (West Supp. 1979).
\item \textsuperscript{37} \textit{Id}., § 7409(b).
\item \textsuperscript{38} \textit{See} 40 C.F.R. §§ 50.1 to .11 (1978). These pollutants included sulfur dioxide, par-
1. The State Implementation Plan

In addition to requiring the establishment of NAAQS, the 1970 Clean Air Amendments directed the states to devise a plan, known as the state implementation plan (SIP), containing measures necessary to ensure attainment and maintenance of the EPA-promulgated NAAQS. Approval by the Administrator is required if the plan is found to provide for timely attainment and maintenance of the NAAQS and otherwise comports with the Act's requirements. If, however, the Administrator determines that any portions of the SIP fail to comply with the Act's provisions, the Administrator must disapprove those portions and promulgate regulations ensuring compliance with the Act.

For the purpose of developing and carrying out the SIP's, the 1970 Amendments divide each state into air quality control regions. The state may further divide the area into smaller regions with the approval of the Administrator. A region is then classified as an "attainment area" or "nonattainment area" depending on whether it meets the NAAQS.

2. New Source Review

The 1970 Amendments further provide the states with authority to promulgate new source review (NSR) regulations. For purposes of the CAA, new sources include constructions or modifications of any stationary

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40. Id. § 7410(a)(2). Other requirements are that the SIP: (1) include emission limitations, schedules, and timetables for compliance with such limitations; (2) provide for establishment and operation of appropriate devices for monitoring air quality; (3) establish a program to provide for enforcement of emission limitations, including a permit program; (4) contain provisions prohibiting any stationary source from interfering with attainment and maintenance of NAAQS; (5) provide for adequate personnel, funding, and authority to carry out the SIP; and (6) provide for periodic testing and inspecting of motor vehicles to enforce compliance with emission standards. Id. § 7410(a)(2). For a discussion of SIP's and their enforcement, see Comment, State Implementation Plans And Air Quality Enforcement, 4 ECOLOGY L.Q. 595 (1975).
41. 42 U.S.C.A. § 7410(c)(1) (West Supp. 1979). If a state submits no air quality plan or an inadequate plan, the Administrator is required to promulgate an implementation plan for the state. The Administrator may not order the state to draft a plan according to his specifications. Friends of the Earth v. Carey, 422 F. Supp. 638 (S.D.N.Y. 1976), vacated on other grounds, 552 F.2d 25 (2d Cir.), cert. denied, 434 U.S. 902 (1977).
42. 42 U.S.C.A. § 7407(b) (West Supp. 1979).
43. Thus, a region may be an attainment area for primary NAAQS, and also a non attainment area for the more stringent secondary NAAQS. The Clean Air Act requires separate plans for the implementation, maintenance, and enforcement of primary and secondary NAAQS. 42 U.S.C.A. § 7410(a)(1) (West Supp. 1979).
44. 42 U.S.C.A. § 7411(c) (West Supp. 1979).
source commenced after the publication of the NSR regulations. While the Administrator establishes standards of performance for new sources, the states may submit procedures for implementing and enforcing the standards. This provision permits the states to analyze the impact of emissions upon the ambient air prior to the construction of new sources. However, if a state fails to submit a procedure that satisfies the Administrator, new regulations or modifications of those submitted may be prescribed.

3. Prevention of Significant Deterioration

While the new source review provision applies to nonattainment areas, the 1970 Amendments provide for a separate review process for attainment areas. This is intended to prevent significant deterioration of already clean air by ensuring that levels of a given pollutant in the ambient air are not increased by more than a certain amount. Prevention of significant deterioration (PSD) regulations prohibit the construction of any major emitting facility after August 7, 1977 unless the EPA has issued an air permit limiting emissions to conform with the requirements of the Act.

45. Id. § 7411(a)(2).
46. Id. § 7411(b)(1)(B). In accordance with this provision, the Administrator published new source performance standards for each category of sources to be regulated. See, e.g., 40 C.F.R. §§ 60.1 to .344 (1978). These sources included fossil-fueled stream generators, incinerators, cement plants, nitric acid plants, petroleum refineries, and smelters. Id.
48. 42 U.S.C.A. § 7411(d)(2)(A) (West Supp. 1979). This authority is similar to that allowing the Administrator to disapprove and amend a SIP. See note 41 and accompanying text supra.
50. The term "major emitting facility" is defined in the Act as a source that emits or has the potential to emit 100 or more tons per year of any air pollutant from various sources. See 42 U.S.C.A. § 7479(1) (West Supp. 1979). This definition is currently being revised pursuant to a recent court order. See Alabama Power Co. v. Costle, [1979] 13 E.R.C. 1225 (BNA). As proposed, the new definition provides that the words "potential to emit" would mean "the capability at maximum capacity to emit a pollutant after the application of air pollution control equipment." Thus, whether a source is major would depend on the air pollution equipment incorporated into its design. See 44 Fed. Reg. 51,924, 51,929 (1979).
52. To obtain the permit, the owner or operator must demonstrate, among other things, that emissions from the construction or operation of the facility will not cause air pollution in excess of any "(A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter." 42 U.S.C.A. § 7475(a)(3) (West Supp. 1979). PSD regulations were originally promulgated in December,
Thus, the CAA requires the EPA to establish primary and secondary NAAQS and directs the states to submit SIP's to provide for attainment and maintenance of the NAAQS. In addition, the EPA has discretion to amend the SIP's in order to bring them into conformance with the Act. The same concerns that prompted Congress to enact the CAA also gave rise to other measures to protect the environment. One of these measures was designed to protect the nation's coastal zone.

D. The Coastal Zone Management Act

In order to promote the national interest in protecting and developing the coastal zone of the United States, Congress enacted the Coastal Zone Management Act of 1972 (CZMA). The CZMA encourages statewide coastal management programs by authorizing the use of federal resources, both technical and financial, to foster their creation. Through the Department of Commerce, direct grants are administered to assist states in developing a coastal zone management plan (CZMP). Once the CZMP is approved by the Secretary of Commerce, operating assistance is also provided. Prior to approval of a CZMP, the Secretary must find that it satisfies several conditions, including adequate consideration of the national interest in federal facilities. Although a state's participation in the program is voluntary, the CZMA incorporates an additional incentive: once a state's CZMP is approved, all federal activities "directly affecting" the

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53. Pub. L. No. 92-583; 86 Stat. 1280 (1972) (current version at 16 U.S.C. § 1451 (1976)). The precise definition of the coastal zone is the subject of much controversy. Most authorities agree that the outer boundary of the zone is a line three geographical miles from the adjacent state's coastline, coinciding with the inner boundary of the OCS. See 43 U.S.C. § 1312 (1976); note 1 supra. Conflict occurs over the inner boundary of the coastal zone. The CZMA states that "[t]he zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on coastal waters." Pub. L. No. 92-583, § 304(a), 86 Stat. 1280 (1972) (current version at 16 U.S.C. § 1453(1) (1976)). Problems arise in defining uses of land having "direct and significant impact on coastal waters." See Breeden, supra note 1, at 1130 n.114.


state's coastal zone must be consistent with the plan.57

As originally enacted, the CZMA did not address the question of whether oil and gas leases issued pursuant to the 1953 OCS Lands Act constituted an activity affecting the coastal zone of a state.58 Consequently, Congress adopted amendments to the CZMA in 1976,59 specifically applying the consistency requirements of the Act to oil and gas exploration, development, and production activities on the OCS.60 Moreover, the 1976 Amendments require the Secretary of Commerce to find that the plan adequately considers the national interest in planning and siting energy facilities prior to granting final approval.61 Thus, while the state must consider the nation's energy interests in developing its CZMP, oil and gas lessees must conform their OCS activities with the plan once it is approved. Since approval of a CZMP (and hence a finding that the energy interests are considered) must precede any application of the consistency requirements, protection of the national interest seems assured.62

The 1976 Amendments also contain specific enforcement provisions applicable to OCS activities.63 Persons submitting an exploration plan or a


58. The broadest interpretation of the consistency requirement is that it applies to activities outside the coastal zone that affect land or water uses in the coastal zone. Under this interpretation, if a state could demonstrate that an “exploratory drilling” was an activity affecting its coastal zone and that such activity was inconsistent with its CZMP, it could prevent the government from issuing the exploration permit. See Rubin, supra note 57, at 412.


61. Id. § 1455(c)(8). This language adds specificity to the requirement that the plan adequately consider the national interest in other than local facilities. See note 56 and accompanying text supra.

62. The exact meaning of the term “adequately consider the national interest” is currently being litigated in the federal courts in California. The district court rejected the position that the CZMA consistency provisions require the state to create a “zoning map” which would eliminate the need for lessees to consult with the state regarding activities in or affecting its coastal zone. American Petroleum Inst. v. Knecht, 456 F. Supp. 889 (C.D. Cal. 1978). Instead, the court held that affirmative accommodation of energy facilities is not a quid pro quo for approval of a CZMP. Id. at 924. The appeal is now pending before the Ninth Circuit. No. 77-3375 (9th Cir. 1978).

63. See 16 U.S.C. § 1456(c)(3)(B) (1976). The original consistency provisions contained no enforcement provisions. They were general in nature, providing that federal activities or projects undertaken by a federal agency which directly affected the coastal zone of a state
development and production plan to the Secretary of Interior under the OCS Lands Act must certify to the affected state that each activity under the plan is consistent with the state’s CZMP. If the state fails to concur with or object to the certification within six months after receipt, its approval is conclusively presumed. Additionally, if the state objects and such objection is not overridden by the Secretary of Commerce, the applicant must submit a new or amended plan, subject to an abbreviated review process of three months.

Thus, while the 1953 OCS Lands Act regulates only those activities conducted on the OCS as that area is defined in the Act, the CZMA as amended reaches those activities conducted in the coastal zone and also those conducted on the OCS to the extent they affect the coastal zone. In this respect, the CZMA is broader in scope than the OCS Lands Act.

E. The Outer Continental Shelf Lands Act Amendments of 1978

In 1978, Congress amended the 1953 OCS Lands Act extensively in order to expedite the exploitation and development of the OCS. The 1978 Amendments were designed to give states more input into decisions concerning OCS development. The Secretary is prohibited from granting licenses or permits for activities affecting a state’s coastal zone unless the consistency provisions of the CZMA are met. The amendments further provide for coordination mechanisms between federal and state government must be consistent “to the maximum extent practicable” with the CZMP. 16 U.S.C. § 1456(c)(1), (2) (1976).

64. 16 U.S.C. § 1456(c)(3)(A) (1976). This provision was slightly altered by the 1978 Amendments to the OCS Lands Act. Pub. L. No. 95-372, § 504, 92 Stat. 693 (1978) (codified at 16 U.S.C.A. § 1456(c)(3)(B)(ii) (West Supp. 1979)). The state now has three months after receipt of the certification to notify the lessee of the status of review, citing reasons for further delay in issuing a final decision. It then has three additional months to issue a final decision. If either of these requirements is not complied with, the state’s concurrence is conclusively presumed.

65. The Secretary of Commerce may find that the proposed activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A) (1976). It is arguable, therefore, that the nation’s current energy crisis might allow the invocation of the “national security” provision, but there is no precedent for such action to date. See Rubin, supra note 57, at 428.


71. Id. § 1340(c)(2). This provision is applicable only to those states with an approved CZMP. See notes 61-68 and accompanying text supra.
ments. Explicit authority is granted for cooperative agreements between the Secretary and affected states for information sharing, expert advice, planning, and enforcement. Prior to leasing any lands within three miles of the seaward boundary of a state's territorial sea, the Secretary must provide information to its governor. Additionally, the state must be offered the opportunity to enter an arrangement for the special leasing of that area which might contain a geological structure common to both federal and state lands.

As in the 1953 Act, the Secretary is required to promulgate rules and regulations to carry out the provisions of the amendments, but the scope of such regulations is more specifically defined. The most significant change with respect to controlling air pollution on the OCS is the provision requiring regulations for compliance with the NAAQS, established pursuant to the Clean Air Act, to the extent that OCS activities significantly affect the air quality of any state. Thus, the NAAQS, established by the EPA, must be met on the OCS. However, while the 1978 Amendments increased the Secretary's responsibility to regulate air quality on the OCS, there was no expression of any corresponding decrease in the EPA's authority. Indeed, the Act specifically provides that the Administrator's authority to protect the environment shall not be affected by the amendments.

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72. Id. § 1345(e).
73. Id. § 1337(g). In the event of a refusal by the governor of the affected state, the Secretary may proceed with the leasing but all bonuses, royalties, and other revenues are to be placed in an escrow fund until geological information allows the parties to determine the proper allocation of payments. Id. § 1337(g)(4). See H.R. REP. NO. 95-590, 95th Cong., 2d Sess. 50, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 1450, 1456 [hereinafter cited as Legislative History].
76. The provision requires that
[t]he regulations prescribed by the secretary under this subsection shall include, but not be limited to, provisions . . . (8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act, to the extent that activities authorized under this subsection significantly affect the air quality of any State.
77. 43 U.S.C.A. § 1347(d) (West Supp. 1979). The EPA's role in OCS activities involve its being consulted on all studies and reviews under the National Environmental Protection Act (NEPA), 42 U.S.C. § 4321 (1976), and in setting and enforcing discharge levels of pollutants. See Legislative History, supra note 73, at 1567. The NEPA established the Council on Environmental Quality (CEQ) to issue guidelines for federal agencies on compliance with the Act. See 36 Fed. Reg. 7723 (1971). The object of the NEPA and the guidelines was to inject an appropriate and careful consideration of environmental aspects of proposed action into agency decisionmaking processes. See, e.g., Calvert Cliffs' Coordinating Comm. v.
Additionally, the 1978 amendments retain provisions of the original Act applying state law only to the extent that it is applicable and not inconsistent with the Act. 78 Moreover, under the amendments, state law is not to be interpreted as a basis for claiming jurisdiction for any state for any purpose over the OCS. 79 Finally, the 1978 Amendments retain the provision, with some modifications, that federal law is to apply to the OCS as if it were an area of exclusive federal jurisdiction located within a state. 80

II. Disputed Jurisdiction over OCS Air Quality

In February, 1968, pursuant to authority under the OCS Lands Act, 81 the Secretary of Interior offered oil and gas leases in the Santa Barbara Channel for competitive bidding. Seventeen leases were subsequently aggregated to form the Santa Ynez Unit. 82 This unit was approved by the United States Geological Survey (USGS) on November 12, 1970. 83 The holders of the leases were Exxon Corporation, Chevron U.S.A., Inc., and Shell Oil Company. Exxon was designated the operator of the unit, and in 1971 it submitted a plan detailing the facilities to be installed to develop the unit. 84 The plan provided for a facility known as the Hondo Platform to be constructed for purposes of exploration and production and proposed

United States AEC, 449 F.2d 1109 (D.C. Cir. 1971). Thus, if EPA finds any environmental impact statement prepared by BLM pursuant to the OCS leasing program unsatisfactory, it can exercise a limited protest function and refer the matter to the CEQ. The EPA is also responsible for issuing national pollutant discharge elimination system (NPDES) permits pursuant to the Federal Water Pollution Control Amendments of 1972. 33 U.S.C. § 1251 (1976). That Act controls the discharges of pollutants into navigable waters, an issue not explored in this note.

79. Id. § 1333(a)(3). Thus, it would seem that the only way for a state to interfere with the OCS leasing program would be through the consistency requirements of the CZMA. See notes 57-68 and accompanying text supra.
80. The provision mandates that:

[t]he Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State. . . .

81. See note 27 and accompanying text supra.
83. See note 26 supra.
84. See Brief for Appellees at 20, California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979) [hereinafter cited as EPA Brief].
two alternatives to process and transport the oil produced by the platform. The preferred alternative involved the use of an onshore facility which would receive crude oil through a subsea pipeline and process and store it for shipment to refineries via tankers. The second alternative, to be adopted only if Exxon was unable to obtain permission from the State of California for the onshore facility, entailed the construction of an offshore storage and treatment facility (OS&T) and the subsequent transfer of oil to tankers at the OS&T. The OS&T, a converted tanker with processing equipment located on its deck, would be moored 3.2 miles from shore, outside state jurisdiction.85

Pursuant to the mandate provided by the National Environmental Protection Act (NEPA),86 a lengthy environmental impact statement (EIS) was prepared by Interior through the Bureau of Land Management. In 1974, Interior approved Exxon's plan of development for the unit, including the two alternatives. Approval of the OS&T was conditioned on Exxon's using good faith efforts to obtain permission from appropriate state agencies to construct and operate the onshore facility under reasonable terms and conditions.

On March 3, 1976, the California Coastal Commission (CCC)87 approved Exxon's permit application for the onshore terminal but sought to condition its approval by (1) approving construction and operation of the marine loading terminal only for a temporary period of five years with the possibility of renewal and (2) subjecting the approval to the State Public Utilities Commission's determination whether Exxon should be required to build a pipeline from the facility to refineries in Los Angeles or any other area.88 Unable to reach agreement with the CCC regarding these conditions, Exxon abandoned its attempt to obtain permission for the onshore facility and in July, 1976, Interior determined that the conditions imposed by the CCC were not reasonable.89 Consequently, Exxon was

87. The CCC was established pursuant to the California Coastal Act of 1976, CAL. PUB. RES. CODE §§ 30000-30900 (1977). The Act created a permanent coastal management program enabling the state to qualify for federal grants under the CZMA, 16 U.S.C. § 1451 (1976). See notes 53-68 and accompanying text supra.
88. The decision of the Public Utilities Commission (PUC) would be based on its own independent determination of the economic feasibility of the pipeline and the refinery capacity. See Shaffer, supra note 57, at 595-98.
89. Interior agreed with Exxon that it would not be economically feasible for it to build the marine loading terminal if the state were only willing to issue a five-year temporary permit. Additionally, the state PUC would be making business decisions concerning the pipeline that had been solely within the province of Exxon. See Shaffer, supra note 57, at 597.
permitted to proceed with the offshore alternative.

In related developments, the EPA reviewed and disapproved certain portions of the state implementation plan (SIP) submitted by California pursuant to the Clean Air Act. The most significant of the disapproved portions were the new source review (NSR) provisions for the Santa Barbara and Ventura air pollution control districts (APCD's). The EPA then promulgated substitute regulations applicable to construction of new and modified stationary sources within those APCD's. The new regulations provided that no owner or operator of a new or modified stationary source could commence construction without first obtaining approval from the EPA. That approval was in turn conditioned upon the owner's or operator's demonstration that the source would not violate the SIP and would not prevent or interfere with the attainment or maintenance of any national standard. Additionally, the EPA promulgated regulations for prevention of significant deterioration (PSD) that were incorporated into the California SIP. These rules prohibit construction of any source which emits more than 250 tons of any pollutant per year without a permit.

Subsequently, on April 18, 1978, the EPA determined that Exxon's OS&T was subject to review under the NSR and PSD provisions of the Clean Air Act and EPA's implementing regulations. The ruling set forth the estimated amount of emissions from the OS&T and indicated that they would exceed NSR and PSD regulations, thus having an adverse impact on air quality within the adjacent onshore regions. The EPA defended its ruling by relying upon the provision in the 1953 OCS Lands Act applying all federal law to the OCS. The OCS Lands Act also extended applicable and consistent state law to the OCS and pro-
vided for their administration by appropriate federal officials.\(^{101}\) Accordingly, the EPA alternatively asserted that the SIP’s promulgated pursuant to the CAA were either federal or state law\(^{102}\) within the meaning of the jurisdictional provisions of the 1953 Act and that the EPA was the appropriate enforcement agency. Consequently, the EPA concluded that the CAA, the SIP’s, and regulations promulgated thereunder must apply to all OCS activities which it determines will have an adverse impact on air quality over the United States.\(^{103}\) Exxon and Chevron subsequently filed petitions in the United States Court of Appeals for the Ninth Circuit seeking review of the EPA determination.\(^{104}\)

Prior to the Ninth Circuit’s ruling in the case, Interior published a notice of proposed rulemaking seeking public participation in selecting a procedure for controlling air emissions on the OCS.\(^{105}\) On May 10, 1979, the department announced public hearings and proposed revisions to its regulations for oil and gas and sulphur operations on the OCS.\(^{106}\) Although the proposed rules are designed to ensure that the state’s ability to attain the standards set in the SIP’s is not thwarted, they do not adopt all the provisions of the SIP. As a reason for deviating from EPA’s standards, Interior stated that the Administrator’s procedures and criteria were not entirely applicable to the department’s mandate under the 1978 Amendments because OCS sources are external to the onshore areas whose air


\(^{103}\) Id.

\(^{104}\) The procedural history of the case is quite complex. The State of California originally sought review in federal district court of Interior’s 1976 decision to allow Exxon to proceed with the OS&T. California v. Kleppe, No. 76-3406 RMT (C.D. Cal. 1976). As codefendants in that suit, Exxon, Chevron, and Shell sought review of a later tentative determination that the OS&T was subject to NSR provisions by attempting to file a counterclaim, and Exxon moved to join the EPA as an additional counterdefendant. The court denied the motions, holding that since the EPA’s determination was not final, the counterclaim was not ripe. The court further stated that even if it were ripe, it would be exclusively reviewable in the Court of Appeals for the District of Columbia pursuant to the judicial review of the EPA determinations under the CAA. See 42 U.S.C.A. § 7607(b)(1) (West Supp. 1979). Following a motion for reconsideration in light of the EPA’s final determination of April 18, 1978, the court recognized the ripeness of the claim but adhered to its previous holding on jurisdiction. Exxon, Chevron, and Shell each appealed from the district court’s ruling and, in addition, Exxon and Chevron filed petitions in the U.S. Court of Appeals for the Ninth Circuit seeking review of the EPA’s determination. In an order entered October 31, 1978, the court of appeals consolidated the appeals of Exxon and Chevron. See EPA Brief, supra note 84, at 32-35.


quality they may affect. Thus, while EPA standards and tests provided some guidance, they were not controlling upon the Secretary.

III. **California v. Kleppe: An Interpretive Analysis of the 1978 Amendments**

On August 20, 1979, the Court of Appeals for the Ninth Circuit in *California v. Kleppe*, resolved the jurisdictional conflict between EPA and Interior and held that the Department of Interior has exclusive jurisdiction to regulate air emissions occurring as a result of oil and gas operations on the OCS. The court cited a portion of the 1978 amendments giving the Secretary responsibility for promulgating regulations mandating compliance with the NAAQS pursuant to the CAA and held that the plain meaning of this language was that the Secretary had exclusive authority to regulate air quality on the OCS. The court observed that under the EPA's determination, SIP's were the "basic mechanism" for protecting air quality.

Under Interior's proposed rules, the regulatory scheme was designed "wholly independent" of the SIP's although it relied on EPA criteria to some extent. Thus, observing the potential for confusion and its obligation to construe federal statutes consistently, the court concluded that the jurisdictional provisions of the Clean Air Act did not apply.

The court supported its conclusion with the legislative history of the 1978 Amendments. The accompanying House report outlining Interior's responsibilities with respect to OCS activities made no mention of EPA jurisdiction. Rather, the report specified that the Secretary was responsible for OCS air quality control while other federal, state, and local officials were to have a consultative role. In addition, remarks made by Congressman Murphy, chairman of the Ad Hoc Select Committee on the Continental Shelf, during the debate expressly indicated that the EPA did not

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107. *Id.* at 27,450.
108. 604 F.2d 1187 (9th Cir. 1979).
110. The court supported this reading of the statute by citing to other portions of the amendments where Congress delineated the specific roles of agencies with potentially overlapping responsibilities. 604 F.2d at 1193 n.8.
111. *Id.* at 1194.
112. *Id.*
113. *Id.* Additionally, the court noted that while Interior's recent action illustrated its point, it would have reached the same conclusion had the Secretary not issued regulations since the "potential for conflict would exist in any event." *Id.* 1194 n.9.
114. *Id.* at 1195 n.12. *See* Legislative History, *supra* note 73, at 1539.
have authority to go offshore.\textsuperscript{115}

Moreover, the court found the strongest evidence of congressional intent outside the language of the statute itself in a joint statement of the conference committee for the OCS Lands Act Amendments.\textsuperscript{116} The report specified the use of the Secretary’s judgment in determining the effect of future OCS operations onshore and, significantly, placed no apparent limit on the Secretary’s regulatory authority over OCS air quality.\textsuperscript{117} The Secretary was to ensure that OCS activities did not prevent attainment of state air quality standards if state air quality is “significantly affected” by those activities.\textsuperscript{118}

While the report of the conference committee did not limit the Secretary’s OCS authority, it noted the committee’s awareness of the EPA’s April determination and stated that the committee did not intend to affect “whatever present authority the EPA has in applying and enforcing the Clean Air Act.”\textsuperscript{119} The EPA relied upon this language and a provision in the 1978 Amendments indicating Congress’ desire not to affect the EPA’s authority to protect the environment in support of its assumption of OCS responsibilities.\textsuperscript{120} Since, prior to the amendments, the EPA had exclusive authority to apply the CAA, it argued that its authority could not now be diminished. Additionally, the EPA cited the remarks of Senators Muskie and Jackson that EPA had primary administrative authority over the OCS activities affecting air quality and that Interior’s authority was supplementary.\textsuperscript{121}

The court, however, was not persuaded by the EPA’s arguments. First, the court found the conference committee’s language to be facially neutral but nevertheless examined EPA’s preamendment authority. If the EPA had no OCS jurisdiction, the committee language reserved no authority at all, and the language was “mere surplusage.”\textsuperscript{122} On the other hand, if the EPA had OCS authority before the amendments, the language would indicate partially or wholly concurrent authority over the OCS.\textsuperscript{123} Without

\textsuperscript{115} 604 F.2d at 1195 n.14. The court also quoted from another portion of the House floor debate when Congressman Murphy confirmed that the Secretary was to “solicit and give due consideration to the views of the Administrator of the Environmental Protection Agency in developing his regulations.” \textit{Id.} at 1195 (quoting 124 CONG. REC. H416 (daily ed. Jan 31, 1978) (remarks of Rep. Rogers)).

\textsuperscript{116} See 604 F.2d at 1196; Legislative History, \textit{supra} note 72, at 1674, 1684.

\textsuperscript{117} 604 F.2d at 1196.

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} Legislative History, \textit{supra} note 73, at 1685.

\textsuperscript{120} See 43 U.S.C.A. § 1347(d) (West Supp. 1979); EPA Brief, \textit{supra} note 83, at 57.

\textsuperscript{121} EPA Brief, \textit{supra} note 84, at 49, 56, 58.

\textsuperscript{122} 604 F.2d at 1197.

\textsuperscript{123} \textit{Id.}
any assurance that Congress intended to create bureaucratic conflict, the court was unwilling to insert a new regulatory agency into the "cast of regulatory characters" on the basis of this uncertain language. Thus, the court concluded that the language could have no weight in resolving the jurisdictional issue.

Similarly, the court found the provision in the 1978 Amendments to be equally unclear in resolving the agency's jurisdiction since its context and history indicated that it did not arise from any concern over the EPA's April determination. Finally, the court viewed the remarks of the Senators, not spoken in debate, as insufficient to form a clear congressional intent to acknowledge EPA authority over air quality regulation on the OCS. Thus, the court concluded that Congress did not make its intent clear in the legislative history with respect to EPA authority over OCS air quality. Such authority, however, would impair or frustrate the authority clearly provided to the Secretary by the statute. Consequently, the court held that Congress did not intend such a result and the jurisdictional grant to the Secretary was controlling. The petitions for review filed under the Clean Air Act were therefore dismissed since that Act did not apply.

Since the OCS Lands Act provides for jurisdiction in the federal district court, the case was remanded for resolution consistent with the appellate court's opinion.

The immediate result of the decision is that Interior has sole authority to control air quality emissions over the OCS. To this extent, it is sound and comports with the legislative intent of eliminating duplicative regulation of the OCS. While the result of the decision is a proper one, the court neglected relevant legislative history in reaching its conclusion. For exam-

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124. Id.
125. Id. at 1197 n.17. The provision also noted that the authority of the Secretaries of Labor and Transportation was not to be affected in regard to occupational safety and health and pipeline safety, respectively. 43 U.S.C.A. § 1347(d) (West Supp. 1979).
126. 604 F.2d at 1198. The court, however, did acknowledge that the remarks carried some weight since Senator Muskie was the "principal author" of the CAA, while Senator Jackson was both a member of the conference committee and chairman of the committee that submitted the amendments and report in the Senate. Id. See City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 637 (1973).
127. 604 F.2d at 1198.
128. The CAA provides for jurisdiction in the Court of Appeals for the District of Columbia, if the Administrator's action has national scope. If the action is locally or regionally applicable, then jurisdiction lies in the court of appeals for the appropriate circuit. 42 U.S.C.A. § 7607(b)(1) (West Supp. 1979).
130. See note 104 supra.
ple, the court appeared troubled by the conference committee statement indicating Congress’ awareness of the EPA’s present environmental authority.132 This matter could have been disposed of more appropriately had the court more closely examined the scope of the EPA’s authority over the OCS prior to 1978. In addressing this argument, the court ignored legislative history that effectively refuted the EPA’s assumption that it had authority to regulate the air quality over the OCS prior to the amendments. The legislative history of the amendments suggests that Congress contemplated no such authority. The EPA’s role on the OCS was described as consultative,133 and no mention was made of any authority to regulate the OCS environment. Arguably then, it was this advisory function that Congress intended not to disturb by the amendments. Moreover, in the House report on the amendments, Congress enumerated legislation applicable to the OCS prior to 1978.134 The noticeable absence of the Clean Air Act from the list lends support to the contention that the EPA was never vested with authority to apply that Act to the OCS. If the EPA’s authority existed only in the consultative sense discussed above, then the congressional intent not to disturb that authority is given more realistic meaning. Such an interpretation would defeat the EPA’s argument while at the same time avoid the court’s conclusion that this portion of the legislative history carried no weight.135

Additionally, the court did not reach the articulated basis of the EPA’s determination, i.e., that the CAA could be applied to the OCS through the provision of the amendments extending federal law to the OCS.136 In the court of appeals, the EPA chose to rely on this interpretation rather than the provision directing the Secretary of Interior to issue regulations for compliance with the CAA.137 In its ruling, the question of whether the SIP, the basic mechanism for enforcing the CAA, was state or federal law

132. Legislative History, supra note 73, at 1674, 1684.
133. See Legislative History, supra note 73, at 1467; note 77 and accompanying text supra.
135. See 604 F.2d at 1197; text accompanying notes 119-24 supra.
was dismissed as irrelevant. Nevertheless, the question does appear to be relevant, for if the SIP is state law, it applies to the OCS only to the extent that it is consistent with the Act and other federal laws and regulations. Since Exxon's permit to proceed with the OS&T was obtained under the 1953 OCS Lands Act and Interior's promulgating regulations, the application of the SIP as state law could be inconsistent with federal law and therefore precluded. Furthermore, the Act provides that state law shall never be the basis for claiming jurisdiction on behalf of any state over the OCS. Thus, by its own admission, the EPA asserted jurisdiction over the OCS to protect the ambient air quality over the State of California and therefore did so "on behalf of" that state in violation of the Act.

Moreover, while the Kleppe decision at first glance appears finally to settle the issue of EPA/Interior duplicative jurisdiction, a closer examination suggests that it may have left open as many questions as it resolved. For example, if Interior's regulations allowed a lessee to emit pollutants on the OCS in excess of a state's SIP, preventing attainment or maintenance of NAAQS, environmental plaintiffs may bring suit against Interior for violating the CAA. Kleppe would not be dispositive of such a challenge since it addressed only the issue of agency jurisdiction. While the court did compare the EPA's CAA standards with Interior's proposed regulations and noticed Interior's departure from the SIP as its regulatory vehicle, the decision provides no guidance concerning the degree of latitude afforded Interior in regulating air quality over the OCS. However, since

140. See notes 81-89 and accompanying text supra.
142. See EPA Brief, supra note 84, at 48. The EPA also asserted that there was a "void" in federal law since Interior did not promulgate new regulations pursuant to the 1978 Amendments. Id. at 58-59. However, Interior had already published guidelines concerning environmental considerations for OCS leasing, 43 Fed. Reg. 3885 (1978), and Congress stated that Interior was not required to repromulgate regulations already consistent with the amendments. See Legislative History, supra note 73, at 1536. Even if there was a "void" in federal law, the question would still arise as to whether the EPA was the "appropriate" federal official to fill it. See 43 U.S.C.A. § 1333(a)(2)(A) (West Supp. 1979). Since the Act specifically stated that Interior could issue regulations for compliance with the CAA on the OCS, id. § 1334(a)(8), it appears that the Secretary, not the Administrator, is the "appropriate" official. See Reply Brief of Petitioner and Appellant at 29-30, California v. Kleppe, 604 F.2d 1187 (9th Cir. 1978). In addition, Interior has promulgated rules for bringing OCS activities into conformance with the 1978 Amendments. 44 Fed. Reg. 17,448 (1979). See notes 105-07 and accompanying text supra.
the 1978 Amendments instruct Interior to prescribe regulations “for compliance” with the NAAQS pursuant to the CAA, it is likely that Congress did not intend Interior to formulate regulations contrary to those issued by the EPA. Nevertheless, an argument can be made that if Congress had intended the EPA’s standards to be inflexibly applied to the OCS it would not have assigned that task to Interior. This argument, in favor of a broader mandate to Interior to govern OCS air quality, is consistent with the statute’s purpose; namely, to consolidate all OCS regulatory activities within Interior to ensure a consistent and uniform approach. Such an argument is also supported by Interior’s assertion in proposing its regulations that “it was necessary” to deviate from the EPA’s standards since “OCS sources are external to the onshore areas whose air quality they may affect and therefore the EPA procedures and criteria are not entirely applicable to the Department’s mandate under the Act.” Thus, if a controversy over the scope of Interior’s air quality authority arises, the Kleppe decision does not provide any immediate answer.

Additionally, it is uncertain whether an environmental plaintiff would sue in the court of appeals in accordance with the CAA or pursue a remedy in the district court as provided in the OCS Lands Act. The Court in California v. Kleppe dispensed with this question by merely saying that since Congress intended the OCS Lands Act to prevail, then its jurisdictional provisions govern. Thus, in an environmental action against Interior alleging a violation of the CAA, it is possible that court of appeals jurisdiction under the CAA will also be available. Finally, if Interior regulations violated a state’s SIP, the state could presumably use the consistency provisions of the CZMA to block OCS activity. Such interference would lead to duplicate jurisdiction which, according to the court, Congress sought to avoid.

One possible solution to these problems has been proposed by one commentator, Richard Breeden, who favors passage of a National Offshore Policy Act to outline the goals of OCS development, to establish proce-

147. See text accompanying notes 129-30 supra.
148. See notes 29, 129, and accompanying text supra.
149. 604 F.2d at 1199. See note 104 supra.
150. See notes 63-68 and accompanying text supra. Additionally, any requirements established pursuant to the CAA are incorporated into the state’s CZMP. 16 U.S.C. § 1456(f) (1976). This provision would give the state added leverage in challenging Interior’s regulations which violated the SIP.
151. See note 1 supra.
dures for OCS decisionmaking, and to create a special congressional committee to review OCS policy.\textsuperscript{152} Alternatively, Breeden favors an amendment to the Submerged Lands Act\textsuperscript{153} giving states an adjacent buffer zone between the coastal zone and the OCS. This amendment would allow states to control leasing in near-shore areas and would further the policy of state participation in OCS decisionmaking.\textsuperscript{154} This kind of proposal may ultimately be the appropriate response to avoid the confusion and uncertainty resulting from overlapping jurisdiction.\textsuperscript{155}

IV. CONCLUSION

Congress enacted the 1978 Amendments in order to balance the country's need for the expeditious development of its natural resources with the environmental concerns for the OCS and its adjacent coastal states. To achieve this balance, it directed the Secretary of Interior to apply the provisions of the Clean Air Act to those activities affecting the coastal areas of adjacent states. The purpose of this mandate was to facilitate "one stop shopping" by those involved in the development of resources of the OCS, thereby expediting the country's independence from foreign oil sources. Thus, the Secretary of Interior was to be the coordinator of all OCS regulations.

The EPA's claim of jurisdiction and application of SIP's to OCS activities conflicts with clear congressional intent and would have frustrated Interior's execution of OCS leases and thereby discouraged further OCS development. The Ninth Circuit's decision in \textit{California v. Kleppe} recognized the clear purpose of the 1978 Amendments and will allow Interior to execute the OCS leasing program unhindered by conflicting agency directives. While the ruling avoided some issues, such as whether a SIP is state

\textsuperscript{152} Breeden, \textit{supra} note 1, at 1152.
\textsuperscript{154} Breeden, \textit{supra} note 1, at 1154.
\textsuperscript{155} \textit{See} \textit{Get Oil Out!} Inc. v. Exxon, 586 F.2d 726 (9th Cir. 1978). A nonprofit corporation sought to enjoin construction by Exxon of an offshore loading terminal, similar to the OS&T, until a license was obtained pursuant to the Deepwater Port Act of 1974, 33 U.S.C. § 1501 (1976). The district court denied the injunction and plaintiffs appealed on the grounds that the lower court erred in ruling that the facility proposed by Exxon was not regulated by the Act. The court of appeals agreed with the district court that plaintiff's interpretation of the Deepwater Port Act would render provisions of the OCS Lands Act ineffective. The court viewed its obligation as giving congressional intent its fullest expression by construing federal statutes consistently. Since construction and operation of the facility was essential to develop the mineral resources of the OCS, application of the Deepwater Port Act would allow other federal agencies and state officials to frustrate Interior's objective in executing the leases. 586 F.2d at 729. The facility was therefore outside the Deepwater Port Act and no permit was required. \textit{Id.} at 732.
or federal law, and perhaps created others for future litigation, the positive result will be increased oil production and careful consideration of the coastal effect of OCS activities.

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