

Connecticut Attorney General's Office

Press Release

STATE OF CONNECTICUT

NEWS RELEASE

ATTORNEY GENERAL RICHARD BLUMENTHAL

DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMISSIONER ARTHUR J. ROCQUE, JR.

ATTORNEY GENERAL AND DEP CHIEF FILE COURT CHALLENGE TO STOP OPERATION OF CROSS-SOUND CABLE

September 22, 2003

Attorney General Richard Blumenthal and Department of Environmental Protection Commissioner Arthur J. Rocque Jr. today announced that they are filing an appeal in federal court to overturn the Department of Energy's (DOE) illegal order allowing the indefinite operation of the Cross-Sound Cable.

The order is illegal because federal law only lets DOE override state rules and permits in "emergencies," such as war or a natural disaster, Blumenthal and Rocque said. There is obviously no longer an emergency that justifies the cable's continued operation while it is in violation of its state and federal permits, the Attorney General and the DEP Commissioner said.

"Federal officials cannot unlawfully declare an emergency by dictatorial edict – enabling operation of an illegally located cable that endangers Connecticut's environment, consumers and economy," Blumenthal said. "There is no emergency that would justify federal officials destructively overriding valid state laws and permits. We seek a court order to stop the federal government from manufacturing an emergency by administrative fiat. This cable will raise

Connecticut's electricity prices by at least \$36 million annually and reduce reliability of the entire electric system, as well as imperil Long Island Sound and shipping in New Haven Harbor. The supposed emergency is camouflage for another Administration effort to rescue a special energy interest at the expense of the public interest."

"It's unfortunate that litigation is necessary, but this case is extremely important," Rocque said. "Not only is state sovereignty over its tidelands at risk, so is the integrity of its permit programs. The case is a precedent for other expected disputes such as the Islander East gas pipeline. I expect other coastal states will take a keen interest in the outcome of this case."

The Cross-Sound Cable violates its state and federal permits because it is not buried to the required depth along hundreds of feet of New Haven Harbor. The U.S. Army Corps of Engineers ordered the cable buried to 48 feet below mean low tide in order to ensure safe navigation and future deepening of the channel in the state's busiest harbor.

On Aug. 15, Energy Secretary Spencer Abraham ordered the cable switched on during the massive blackout that hit New York, much of the mid-West and Canada. On Aug. 28 after power had been restored throughout the affected areas, Abraham extended that order indefinitely, claiming that an "emergency" existed until the causes of the power outage were determined.

Blumenthal and Rocque filed this appeal today in the United States Court of Appeals for the Second Circuit in New York.

The state is withdrawing its state court appeal in light of these developments.

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STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Arthur J. Rocque, Jr.
Commissioner

June 13, 2002

The Honorable Richard Blumenthal
Attorney General
Of the State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Dear Mr. Attorney General:

Thank you for your letter of June 5, 2002, concerning the Department of Environmental Protection's permit number 200102720-MG issued to the Cross Sound Cable Company. While I appreciate your advice and your viewpoint, I believe that your interpretation of the permit conditions for this permit and recommendations regarding the project are inconsistent with past practices of the Department.

While it is apparently true that the cable is not presently installed at all points to the depth specified in the permit, Cross Sound has currently stopped work in compliance with the seasonal restrictions in the permit. As you know, these restrictions were imposed by DEP in order to protect spawning shellfish and anadromous fish. No extension or waiver of these restrictions has been requested; it is unlikely that it would be granted under present habitat conditions even if requested. The permit, however, provides in its terms and conditions for a three-year construction time-period, a standard practice on such permits. Therefore, Cross Sound is clearly authorized to resume their construction activities insofar as they are permitted when the seasonal restrictions expire without any additional authorization from this Department. Should Cross Sound elect to seek modifications of their construction activities under this permit, such modifications would be evaluated to determine whether or not they constitute a minor modification. Under most circumstances and consistent with longstanding agency policy, such modifications would not be deemed either a new application or a new proceeding.

I would be remiss if I did not note my disappointment in your characterization of the impacts associated with both the installation of the cable and the failure to attain greater depths in part of the federal channel as serious, critical and devastating environmental impacts. At no time has any reviewing permit analyst with expertise in marine projects, at either the state or federal level, raised concerns in terms approaching these. Given my own background in marine environments in general and Long Island Sound in particular, I must confess that I agree with the analysts. From an environmental perspective, this cable project pales in comparison to even maintenance dredging of the federal navigational channel in New Haven Harbor. Moreover, in terms of direct impact on shellfish beds in particular, neither the cable project nor maintenance

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Attorney General Blumenthal

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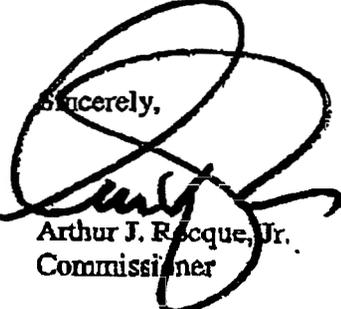
June 13, 2002

dredging begin to compare with the impacts associated with deepening the federal navigation channel. I point this out not to express concern over the permissibility of New Haven Harbor dredging projects for which I know you have expressed support; they have been permitted in the past. Rather, I point this out over concern that published rhetoric has eclipsed facts on this project, at least from an environmental impact standpoint.

Without a specific request before me, I think it unwise for me to speculate as to what our conclusion will be on the future options available for the Cross Sound Project. Rest assured, however, that this Department has taken the Cross Sound Cable project very seriously and would have done so even if it were not controversial. We will endeavor to make sure that the applicant completes the project to the best of their ability in accordance with the terms and conditions of the issued permit. Should they do otherwise, we will pursue the appropriate remedy. If that remedy includes the need to enforce any of the terms and conditions of the permit, we will, as we most always do, turn to your staff for assistance.

If you have any questions or any additional comments you would like to make, I would be pleased to receive them.

Sincerely,



Arthur J. Racque, Jr.
Commissioner

AJR/lmt

cc: Jane Stahl, Deputy Commissioner
Charlie Evans - DEP