

**Special House Legislative Commission to Study the Effects and Procedures for the Reorganization of the Rhode Island Coastal Resources Management Council**

Thursday, March 17, 2022

Time: 2:00 PM

Meeting Notes

(Not intended as official meeting minutes)

**Commission Members in Attendance:** Representative Deborah Ruggiero, Representative Arthur Handy, Representative Lauren Carson, Kendra Beaver, Jamie Hainsworth, William DePasquale, Jr., Stephen Land, David Baud, Richard Hittinger, Michael McGiveney, Lawrence Taft, Sven Risom, Nancy Letendre

**I. Call Meeting to Order**

Representative Ruggiero called the meeting to order at 2:05.

**II. Opening Comments: Chairwoman Ruggiero**

Representative Ruggiero thanked Acting Director Terrance Gray.

**III. Presentation by Terrance Gray, Acting Director, Department of Environmental Management: DEM's Role in Coastal Issues and How the Department Coordinates with the Coastal Resources Management Council**

Acting Director Gray gave a statement on how DEM and CRMC work together. He stated that the Director of DEM sits on the council by statute and Ron Gagnon is typically the designee and attends council meetings. He meets with Ron Gagnon before CRMC meetings and discusses the agenda to formulate DEM's position on the matters before the council. Ron Gagnon has been the designee for several DEM directors.

He also has a standing call with CRMC Director Willis each month to discuss areas of mutual interest including budgets, permitting and offshore wind. Two words he wants to emphasize to describe DEM and CRMC are coordinated but not duplicative.

DEM is a co-regulator and also a regulated entity. DEM owns coastal property including beaches, boat ramps, and access ways. DEM needs to improve and maintain these properties and has a memorandum of understanding with CRMC that streamlines any approvals to help DEM manage the properties but also stay in compliance with coastal regulations.

The two agencies coordinate as co-regulators. It often starts with the pre-application meetings. DEM's office of customer technical assistance organizes customer pre-application meetings where an applicant can come in and learn about what programs they need to interact with including CRMC. A good example is the new soccer stadium in Pawtucket. CRMC is the lead permitting agency because the site is in a coastal zone, but DEM has strong involvement because it involves water quality work on the river and cleanup work of the old Narragansett Electric site. It has been well coordinated for the applicant, so the applicant does not have multiple silos they have to navigate through.

Another area DEM and CRMC work closely on is marine dredging. This new model resolved the old uncoordinated approach. A statute was passed a few years ago and now there is a joint application, a joint review, joint public notice and then the separate authorities issue their approvals. The same type of process is used for aquaculture and on offshore wind. CRMC is the lead agency but they interact with the fisheries and fish and wildlife programs.

When CRMC has a compliance problem they deal with it through their own administrative enforcement policies but sometimes it gets to the point where there is either a criminal element or there is repeated noncompliance and they need a little heavier presence. They work with our enforcement division and our environmental police officers can back up their efforts and bring sites back into compliance.

Another area the agencies work together on is freshwater wetlands. A law passed several years ago that changed the jurisdiction for wetlands in coastal zones and inland areas and set up a process for buffer zones. DEM and CRMC worked with environmental organizations and the RI Builders Association to make sure our regulations and processes are aligned as much as possible. A builder should experience the same statewide standards wherever they do business. We worked to make the rules, terminology and process consistent. We tried to keep the rules in sync, both agencies are set to have the new rules come effective on July 1 of this year. We are working together on the workshops, and guidance to help people navigate the system.

If a project does not have a septic system, DEM is the primary permitting authority no matter where it is. If the building is in the coastal zone and needs a septic system, DEM works very closely with CRMC to make sure the permitting of that system is consistent with the rest of the project. We have one statewide storm water manual, so the standards are consistent.

We are working together to modernize the permit tracking data base. The governor has proposed \$6M to invest in the permitting system and DEM is working to coordinate and invest in CRMC as well. Hopefully there will be one application for either agency.

DEM supports CRMC in their offshore wind projects. It involves water quality certifications required by federal clean water act, and any part of a project that comes into RI waters, including cables, would be subject to a water quality certification. That same integration happens with anything in the water.

#### **IV. Questions from the Commission**

Representative Ruggiero asked Acting Director Gray about his thoughts on CRMC utilizing DEM hearing officers. He replied that he had never heard of the CRMC hearing officer position before. Following the last hearing he had a call with Chief of Staff Afonso and Executive Director Jeff Willis as well as DEM's hearing officer David Spinella. Jeff Willis explained to us the role and expectations of the CRMC hearing officer. He understood it would be a part-time position that primarily focused on penalties that CRMC assessed. Any appeals on permitting decisions would go to the council. First, the DEM hearing officer hears all appeals of violations as well as any citations and permitting appeals. Although there are not a lot of hearings, there is a lot of negotiation, mediation and settlement discussions. Often the hearing officer facilitates a dialogue and there is a resolution before it goes to the adjudicated hearing. With our hearing officer's work load it would be a stretch to take on any more work or new authorities.

Representative Ruggiero asked if DEM would have to workload to fill up the time of another addition hearing officer who was dedicated to CRMC about 1/3 of the time. Acting Director Gray is not sure at this point. DEM is at comfortable place and it might not be the most efficient use of resources. DEM would have to look at the business processes to see if taking on CRMC cases would work. The DEM hearing officer works like an administrative judge, they do not communicate with the other attorneys in the department and there is a strict firewall so DEM is on the same footing as the person who had filed the appeal. They are independent, and report directly to the director. We would have to see how that would fit with the CRMC model.

Kendra Beaver asked how many decisions does the hearing officer issue. Acting Director Gray will check on that. She also asked if there is a clerk, and he responded yes. Kendra Beaver continued that when she thinks of shared hearing officers that they would share a clerk who could handle the filing. Her understanding is that most of the negotiation is not with the hearing officer but between the DEM and the applicant. They agree to the settlement and then submit it to the hearing office for approval. There would no barrier if there was a part-time hearing officer and if they could share office space and a clerk.

Kendra Beaver applauded the coordination between CRMC and DEM and asked if CRMC and DEM meet before a septic system involving CRMC is installed. Acting-Director Gray said that in most pre-applications it does happen but not in every single one.

Representative Carson asked what the strengths of CRMC are and does he have any suggestions for improvements. Acting Director Gray responded that one of the strengths is how the council has been forward looking in regards to offshore wind. The state has a seat at the table of the federal permitting process because of their work. RI is well positioned to advocate for the fishing community and to make sure that any environmental impacts are considered in the permitting process and hopefully mitigated.

The SAMP process should be commended and helps control conflicting uses. Working closely with staff has been helpful to DEM. The storm tool that CRMC developed with URI is groundbreaking. DEM used this in our permitting process and I would like to see it extended to the river systems. The model is something to build off of. Acting Director Gray said he does not personally have much experience with the council, he has only been to one council meeting. It is a different decision model than DEM and he does not have an opinion if it is good or bad.

Representative Carson asked him to explain the difference. He responded that at DEM the buck stops with him. The director has the final decision making authority on most things. It is appealable to superior court. With the council, it is a vote of the council with multiple parties involved. There might be yes's and no's on the council, it is a group decision.

Sven Risom stated that Director Willis told the commission that the council brings different perspectives to a decision, not just technical and science based information. Sven Risom asked how DEM gets feedback on its decisions. Acting Director Gray responded that one example is the RI Fisheries Council gives recommendations to the director. Sometimes it is consistent with the division, sometimes not. It is up to the director to sort out the difference. There are also informal groups that DEM reaches out to including the RI Builders Association and the RI Environmental Council and all its members, the RI Farm Bureau and multiple user groups.

Sven Risom asked if there are ways to increase efficiency and effectiveness of enforcement at both CRMC and DEM. Acting Director Gray responded that both agencies are under-resourced in enforcement. DEM requested additional resources this year in the budget, some of the positions are framed as permitting positions, but they do not only review permits but also follow up on them for compliance. A permit is worth nothing if people do not follow it. If there is a case with joint jurisdiction we do team up.

Nancy Letendre asked if DEM is allowed to deny an application if it is in conflict with regulations and what standards are applied in a denial. Acting Director Gray responded that permitting programs are backed up by regulations and most regulations include the standards for what has to be in an application for a permit and some of those standards are set by federal law and others are set by state law. Typically if there is a problem with an application the process usually starts with a deficiency letter, and there can be multiple deficiency letters to try to correct the problems. Sometimes there is not an agreement and DEM believes the application does not meet the standards in the regulations and will deny the application. When that denial happens the applicant has the right to appeal to the administrative adjudication office. The hearing officer can

settle the appeal or keep the denial and the applicant can appeal to Superior Court. We feel it is a fair process, the regulations set the standards, it gives the applicant a clear target and the comment letters help with the nuances. If it leads to a denial the applicant has multiple chances to appeal it.

Nancy Letendre asked if the adjudication process allows for third parties to come before DEM and present the case against or in favor of an application. Acting Director Gray responded that third parties can petition just like in court to become an intervener in the case.

Richard Hittinger commented there is a built in conflict in the permitting process at CRMC because the agency is tasked with promoting the development of aquaculture and is also in charge of permitting. He asked if there any possibility that those two functions could be separated.

Acting Director Gray responded that the conflict is not unusual in natural resources regulation. A perfect example of this is DEM and local farms. DEM promotes and regulates farming and marine fishing. There is a potential for conflict and the department has to be careful and follow the rules. If the promotion and regulation are in different departments, sometimes regulators do not understand the nature of the business.

Bill DePasquale asked about the advantages to the two distinct models of decision making. The council approach which is similar to a town planning board, where you have the regulations interpreted by staff, the staff issues an opinion and the board uses facts and findings to come to a decision, or an agency approach, with the director making the decision. He added the he finds that boards can add an understanding beyond the black and white of regulations.

Acting Director Gray responded that he does not have a lot of experience with the board type decision making process. First, in the decision model at DEM, there is consistency. One body is making the calls. Obviously as directors change there is plenty of opportunity for transition, but the way the system is set up there is a lot of consistency that gets built in to it. It also has transparency and certainty for the applicants because they know the process. With a group, you have the ability to debate decisions. Sometimes making a decision as a director can be lonely. There is not a lot of opportunity to get different perspectives in the process.

Michael McGiveney commented the Marine Fisheries Council was once a regulatory body but was changed to advisory. At first the fishing industry was upset but it has worked out. Acting Director Gray responded that if a decision is pending that affects a fishery the division will brief the council members on the issue, and the council, chaired by a staff member from DEM, will meet and then vote. The vote is documented in a memo to the director, as well as the staff perspective on the issues. The director reviews the memo and then makes a decision. The decision is then documented in a separate memo and it is posted on the Web.

Kendra Beaver asked if the Marine Fisheries Council is made up of people with backgrounds in the issues. Acting Director Gray responded yes and Kendra Beaver remarked that it is not

parallel to the CRMC. Kendra Beaver asked if it would be beneficial to go to a group of 8 people without expertise in the area when you are applying technical regulations. She asked if it would be helpful to get advice from the general public on how to apply the regulations.

Acting Director Gray responded that it would probably be helpful not at that point. But most of DEM's permit applications are subject to public notice, so DEM does get a lot of public feedback. If something is controversial we will get a lot of opinions and that is part of the decision making process. A decision making board within DEM would be a very different model.

#### V. **Next Steps: Chairwoman Ruggiero**

Representative Ruggiero commented that the conversation was very insightful and helpful and thanked Acting Director Gray. The next step will be to discuss the findings of the commission.

#### VI. **Adjournment**

The meeting adjourned at 2:58 PM.