

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:) **Administrative Cause**
) **Number: 16-019W**
EXPIRATION OF 312 IAC 27 GOVERNING)
THE FLOOD CONTROL REVOLVING FUND)

RECOMMENDATION FOR FINAL ACTION ON RULE EXPIRATION

A. INTRODUCTION

For consideration is the expiration of 312 IAC 27, which governs the Flood Control Revolving Fund (“the Fund”) established at IC 14-28-5 et seq. This article can be accessed through the Indiana General Assembly’s website at: <http://www.in.gov/legislative/iac/T03120/A00270.PDF>. In accordance with IC 4-22-2.5-2, 312 IAC 27 will expire on January 1, 2017, unless readopted pursuant to IC 4-22-2.5-3.

The administrative control of and the responsibility to administer the Fund was previously vested in the Commission by IC 14-28-5-6. In 2015, the authority to hold and administer the Fund was transferred to the Indiana Finance Authority, with the Commission retaining certain responsibilities, including the authority to adopt administrative rules. IC 14-28-5-6, P.L. 155-2015, Sec. 22 and IC 14-28-5-5, P.L. 155-2015, Sec. 21, respectively. Also in 2015 the Indiana General Assembly, in a noncode provision, specified that administrative rules adopted by the Commission that were in effect before July 1, 2015 would “remain in effect until rules are adopted... by the Indiana finance authority.” P.L. 155-2015.

An amendment to IC 4-4-11-0.4 effective July 1, 2016 specifies that:

- (d)...all powers, duties, agreements, and liabilities of ...the department of natural resources, the natural resources commission... with respect to:
 - (1) the flood control program established by IC 14-28-5-1; and
 - (2) the flood control revolving fund created by IC 14-28-5-5

Are transferred to the [Indiana Finance Authority] as the successor agency...

IC 4-4-11-0.4(d), P.L. 111-2016. Sec. 1. Correlating amendments, as particularly relevant here, also repealed IC 14-28-5-6, which previously established the Commission's authority to adopt administrative rules associated with the Fund. P.L. 111-2016, Sec. 27. Further, the noncode provision specifying that Commission administrative rules in effect before July 1, 2015 would remain in effect until rules were adopted by the Indiana Finance Authority was eliminated. P.L. 111-2016.

Pursuant to 312 IAC 2-2-4(b), the Director of the Division of Hearings possesses delegated authority to grant preliminary adoption for the readoption of administrative rules. This authority is customarily exercised in January of the year preceding the expiration of an administrative rule article but was deferred in light of the pending legislative action in January 2016.

B. ANALYSIS AND RECOMMENDATION

The amendment of Indiana Code § 4-4-11-0.4 and correlating amendments to IC 14-28-5, which became effective on July 1, 2016, absolve the Department of Natural Resources and the Commission of all powers and duties and eliminate the Commission's authority to adopt administrative rules associated with the Fund. Therefore, the hearing officer recommends that the Commission approve the expiration of 312 IAC 27.

Dated: August 3, 2016

Sandra L. Jensen
Hearing Officer