

Consideration of the withdraw of the proposed repeal of 312 IAC 18-3-12 governing larger pine shoot beetle quarantine, and 312 IAC 18-3-20 governing Brazilian elodea; LSA #14-400; Administrative Cause No. 14-067E

The Commission gave preliminary adoption of the repeal of 312 IAC 18-3-12 governing larger pine shoot beetle quarantine and 312 IAC 18-3-20 governing Brazilian elodea at its September 16, 2014. As reported in the pertinent portions of the September minutes:

Consideration for preliminary adoption of the repeal of 312 IAC 18-3-12 and 312 IAC 18-3-20, governing the control of larger pine shoot beetle and the regulation of Brazilian elodea, respectively; Administrative Cause No. 14-066E and 14-067E

Sandra Jensen, Assistant Director of the Division of Hearings, presented this item. Jensen explained that she agreed to present this item on behalf of the Division of Entomology and Plant Pathology. She explained that 312 IAC 18-3-12 regulated the movement of pine products in an effort to control the spread of the larger pine shoot beetle. Jensen advised that because the entire State of Indiana is now under federal quarantine the rule is no longer needed because Federal regulations control the movement of pine outside the State of Indiana.

With respect to the regulation of Brazilian elodea, Jensen advised that the Commission adopted 312 IAC 18-3-23, which identifies Brazilian elodea as an invasive aquatic plant declared a “pest 5 or pathogen”. Because Brazilian elodea is now identified within 312 IAC 18-3-23, 312 IAC 18-3-20 is duplicitous and no longer necessary.

Jensen offered the proposed repeals for preliminary adoption noting that the repeal of these rules is also consistent with the initiative to eliminate unnecessary regulation.

John Davis explained that Brazilian elodea had to be eradicated from Griffy Lake a few years ago noting that the action prompted a discussion with aquarium suppliers before Brazilian elodea was prohibited by the adoption of 312 IAC 18-3-20. Davis advised that while the written material indicates that this rule may, in light of the adoption of 312 IAC 18-3-23, be creating confusion to small businesses it was agreed by aquarium suppliers previously that Brazilian elodea be identified as a prohibited species of plant.

Don Ruch stated that “Brazilian elodea is an oxymoron. You’re using a native plant; you’re giving it a common name to an invasive weed. The real name is Brazilian waterweed.” Ruch suggested that 312 IAC 18-3-23(4) should be amended to correct the name.

Jensen explained that any correction to the name in 312 IAC 18-3-23(4) would involve amending that rule. She indicated she would notify the Division of Entomology and Plant Pathology who, in consultation with Ruch, could proceed with the needed correction through a future rule amendment. John Davis concurred.

Jensen recommended that the Commission proceed with preliminary adoption of the repeal of both 312 IAC 18-3-12 and 312 IAC 18-3-20

Jane Stautz moved to approve preliminary adoption of the repeal of 312 IAC 18-3-12 and 312 IAC 18-3-20 governing the control of larger pine shoot beetle and the regulation of Brazilian elodea. Don Ruch seconded the motion. Upon a voice vote, the motion carried.

The Notice of Intent to Adopt a Rule was posted to the *Indiana Register* on October 8, 2014, which began the one-year statutory time in which to adopt the repeals. Presently, there is not sufficient time to complete the remaining statutory requirements for this adoption. It is recommended that the Commission withdraw the proposed repeals of 312 IAC 18-3-12 governing larger pine shoot beetle quarantine, and 312 IAC 18-3-20 governing Brazilian elodea.