

Minnesota Pollution Control Agency

Industrial Division

REQUEST FOR COMMENTS on Amendments being Considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, *Minnesota Rules*, chs. 7035 and 7045; Revisor's ID Number R-04806

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on amendments being considered for waste treated seeds to both solid waste rules and hazardous waste rules, *Minnesota Rules*, chapters 7035 (Solid Waste) and 7045 (Hazardous Waste). This rulemaking is referred to as the Waste Treated Seeds Rule. The MPCA is required to undertake this rulemaking to comply with Laws of Minnesota 2023, chapter 60, article 3, section 28. The MPCA is considering amending chapters 7035 and 7045 to add requirements related to waste treated seeds and requests comments on the possible new rules from affected or interested parties. Comments should be submitted in writing according to the [Comments](#) section below.

In a previous Request for Comments (RFC) on this rulemaking published in the State Register on August 28, 2023, the MPCA asked for comment on the waste treated seeds rule under possible parts 7035.3700 – 7035.3900. If you submitted comments to the original RFC, those responses will still be considered along with the responses to this second RFC; you do not need to resubmit comments.

The main purpose of this second RFC is to expand the range of amendments from parts 7035.3700 – 7035.3900 identified in the first RFC to include chapters 7035 and 7045. Doing so helps to ensure that amendments being considered for waste treated seeds can be included throughout chapters 7035 and 7045, where appropriate, as the MPCA develops the rule amendments.

This second request for comments (RFC) is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the [Subject of Rules](#) section.

If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, we recognize that costs to regulated parties can be a concern with rulemaking, if you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

View the [Alternative Format/Accommodation](#) and [MPCA Contact Person](#) sections of this notice for information on requesting this document in an alternative format.

Subject of Rules. The MPCA requests comments on its possible new rules specifically governing waste treated seed, as required under Laws of Minnesota 2023, chapter 60, article 3, section 28. The MPCA is considering rules that provide for the safe and lawful disposal of waste treated seed. The rules will clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed. The MPCA has previously published some guidance regarding management of waste treated seeds in April, 2022, in MPCA fact sheet #w-hw4-51, available on the MPCA's website at <https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>.

The guidance in fact sheet #w-hw4-51 was based only on the MPCA's application of existing solid waste and hazardous waste rules and did not create any new requirements. The MPCA may

consider the guidance and interpretations in this fact sheet in the development of these possible new rules specifically governing waste treated seed.

However, the MPCA cautions that careful application of the requirements of Laws of Minnesota 2023, chapter 60, article 3, section 28; additional information received by the MPCA since the April, 2022, publication of this fact sheet; and comments received to this RFC may individually or collectively result in provisions in any rule proposed in this rulemaking that were not contained in that fact sheet or are not specified in this RFC. For example, MPCA fact sheet #w-hw4-51 only generally presents the regulatory jurisdiction of state agencies other than the MPCA and local governments with regard to waste treated seed, but that element is a mandated consideration in this rulemaking.

Parties Affected. The new rules would likely affect agricultural cooperatives; treated seed manufacturers, distributors, and retailers; farmers; ethanol plant operators; landowners adjacent to ethanol plants; and solid waste landfill operators. The MPCA does not believe that the possible new rules would impose any substantive new costs on any of these likely affected parties.

The MPCA does not believe that air emissions from any Waste-To-Energy (WTE) facility potentially burning waste treated seeds for energy recovery will be substantively affected from the present by this rulemaking, however the MPCA does recognize that environmental justice areas downwind of WTE facilities in Minnesota are already generally affected by existing emissions.

In addition, the MPCA believes that enhanced clarity regarding regulatory requirements for parties handling waste treated seeds will result in increased compliance and more transparency for any citizens in environmental justice areas that may currently unknowingly be affected by waste treated seed management, such as burial, incineration, or use as ethanol feedstock.

The MPCA does not plan to appoint an advisory committee to comment on the possible rules.

Comments. Interested parties may submit written comments or information on these possible rules until **4:30 p.m. on Tuesday, January 30, 2024**. Submit written comments or information to the Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>. Any questions about submitting comments via the Rulemaking eComments website should be direct to William Moore, Office of Administrative Hearings, telephone 651-361-7893, William.T.Moore@state.mn.us. You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf.

Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this RFC. The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes* section, 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. Cumulative effect means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

NOTE: The MPCA will carefully consider all comments received in response to this RFC. However, these comments will not necessarily be included in the formal rulemaking record submitted to

the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed with a Notice of Intent to Adopt Rules. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you should resubmit your comments after the rules are formally proposed with a Notice of Intent.

Where to Get More Information. Information about this rulemaking is available on the rulemaking webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>.

MPCA Contact Person. The MPCA contact person is Yolanda Letnes at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2527; and yolanda.letnes@state.mn.us. Technical questions on the planned rule amendments should be directed to Joshua Burman at the MPCA, telephone 507-344-5243 or joshua.burman@state.mn.us. You may also call the MPCA at 651-296-6300 or 1-800-657-3864 or use your preferred relay service info.pca@state.mn.us.

Rules Drafts. The MPCA has not yet drafted the possible rules. Parties interested in being notified when a draft of the rules is available and of other activities relating to this rulemaking are encouraged to register at:

http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_524 (MPCA GovDelivery-Rulemaking: Waste Treated Seeds).

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the [MPCA contact person](#).

Statutory Authority. [Laws of Minnesota, chapter 60, article 3, section 28](#), authorizes the MPCA to adopt rules that provide for the safe and lawful disposal of waste treated seed. The rules must clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed. The MPCA also has additional authority to propose changes under Minn. Stat. §§ 116.07, subd. 2(b) and subd. 4(b) for solid waste and Minn. Stat. §§ 116.07, subd. 2(d) and 4(g) for hazardous waste.



Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

December 15, 2023 _____
Date