

RULE HEARING

Exhibits List

March 5, 2025

The Minnesota Pollution Control Agency places the exhibits required under Minnesota Rules, part 1400.2220, items A to K into the hearing record for Proposed Amendments to Rules Governing Waste Treated Seed, Minnesota Rules, chapter 7035 and 7045. Exhibits A to K of this index are keyed to items A to K of part 1400.2220. Unless otherwise stated, the document is enclosed.

(Revisor's ID No. R-4806) (OAH Docket No. 23-9003-39350)

- A. Enclosed:
 - a. A-1a: Requests for Comments Published in the State Registers on August 28, 2023
 - b. A-1b: Certificate of Notice of Request for Comment #1
 - c. A-2a: Requests for Comments Published in the State Registers on December 26, 2023
 - d. A-2b: Certificate of Notice of Request for Comment #2 (E-mail)
 - e. A-2c: Certificate of Notice of Request for Comment #2 (U.S. Mail)
- B. Not enclosed: Petition for Rule making
- C. Enclosed: Proposed Rule
- D. Enclosed: Statement of Need and Reasonableness (SONAR)
- E. Enclosed: Certificate of SONAR sent to the Legislative Reference Library.
- F. Enclosed: The Dual Notice to Adopt without Hearing:
 - a. F-1a: Notice as emailed on December 30, 2024
 - b. F-1b: Certificate of Notice sent to Rulemaking Mailing List
 - c. F-1c: Notice as published in the State Register on December 30, 2024
- G. Enclosed: Certificates of Mailing the Notice of Hearing
 - a. G-1: Certificate of Mailing the Notice of Hearing to the Rulemaking Mailing List
 - b. G-2: Certificate of Accuracy of the Mailing List
- H. Not enclosed: Certificate of Additional Notice Plan
- I. Enclosed: Written comments received by the Agency during comment periods for Proposed Amendments to Rules Governing Waste Treated Seed.
 - a. I-1: Comments received during Request for Comment #1
 - b. I-2: Comments received during Request for Comment #2
 - c. I-3: Comments received during Request for Notice of Intent to Adopt
- J. Not enclosed: a copy of the document from the chief judge authorizing the agency to omit the text of any proposed rule from the notice of hearing published in the State Register because the proposed rule was published in the State Register If the Chief Judge has authorized the agency to omit from the Notice of Hearing published in the State Register the text of any proposed rule, a copy of the document authorizing the omission
- K. Enclosed: Any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting this rule:
 - a. K-1: Certificate of Sending the Notice and the Statement of Need and Reasonableness to Legislators and the Legislative Coordinating Commission.

- b. K-2: Certificate of Sending the Proposed Rules to the Commissioner of the Minnesota Department of Agriculture.
- c. K-3: Certificate of Consulting with Minnesota Management and Budget in Compliance with Minnesota Statutes, Section 14.131.
- d. K-4: Certificate of Consulting with Minnesota Department of Agriculture and the University of Minnesota.
- e. K-5: Letter sent to the Office of Administrative Hearings Requesting a Hearing after receiving more than 25 requests for hearing

- A. Requests for Comments Published in the State Registers on:
 - a. A-1a: August 28, 2023
 - b. A-1b: Certificate of Notice of Request for Comment
 - c. A-2a: December 26, 2023
 - d. A-2b: Certificate of Notice of Request for Comment #2 (E-mail)
 - e. A-2c: Certificate of Notice of Request for Comment #2 (U.S. Mail)

Minnesota Pollution Control Agency

Industrial Division

REQUEST FOR COMMENTS

Planned New Rules Governing Waste Treated Seeds, *Minnesota Rules*, ch. 7035.3700 – 7035.3900;

Revisor's ID Number R-04806

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on possible new waste treated seed rules, *Minnesota Rules*, 7035.3700 – 7035.3900. 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 adding the listed new rule parts to chapter 7035 and requests comments on the possible new rules from affected or interested parties. See the [Comments](#) and [MPCA Contact Person](#) sections of this notice for information on how to submit comments.

This 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 Friday, October 27, 2023**. During the public comment period associated with this RFC, submit written comments or information to the:

- 1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or
- 2) OAH Attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting

comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at William.T.Moore@state.mn.us.

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 OAH at the address listed above.

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; email yolanda.letnes@state.mn.us; telephone 651-757-2527. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

1. During the public comment period associated with this request for comments:
 - a) Submit all comments in response to this notice as described under [Comments](#).
 - b) Submit any clarification questions or requests for more information to the MPCA contact person listed above.
2. After the public comment period closes, route communications to the following staff:
 - a) Rulemaking process: Yolanda Letnes at 651-757-2527 and yolanda.letnes@state.mn.us
 - b) Technical subject matter: Joshua Burman at 507-344-5243 and joshua.burman@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.

Katrina Kessler

Katrina Kessler, Commissioner

Minnesota Pollution Control Agency

____ July 6, 2023 _____

Date

Minnesota Pollution Control Agency

CERTIFICATE OF MAILING THE REQUEST FOR COMMENTS IN COMPLIANCE WITH MINNESOTA STATUTES § 14.101

Proposed Rules Governing Waste Treated Seeds, Minnesota Rules, ch. 7035.3700 – 7035.3900; Revisor's ID Number R-04806

- I certify that on August 28, 2023, at St. Paul, Ramsey County, Minnesota, I mailed the Request for Comments to persons on the MPCA's rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. I accomplished this mailing by sending an electronic message via GovDelivery email to all persons and associations on the list. The message contained a hyperlink to the Request for Comments.
 - Copies of the electronic message, Request for Comments, and a summary of the GovDelivery statistics for the mailing are attached to this Certificate.
 - Copies of the Notice as published are attached to this Certificate.
- I certify that on August 28, 2023, at St. Paul, Ramsey County, Minnesota, I provided the Request for Comments to the MPCA tribal contacts with a potential interest in this rulemaking. I accomplished this mailing by sending an electronic message to contacts listed in the MPCA Tribal Contacts List. The message contained a hyperlink to the Request for Comments.
 - Copies of the electronic messages are attached to this Certificate.

Y. Letnes

Yolanda Letnes, Rule Coordinator

From: [Minnesota Pollution Control Agency](#)
To: [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#)
Subject: Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Monday, August 28, 2023 8:01:57 AM

Having trouble viewing this email? [View it as a Web page.](#)

Minnesota Pollution Control Agency



Request for Comments; Waste Treated Seeds Rule; R-04806

Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, Chapter 7035.3700 – 7035.3900; Revisor's ID Number R-04806

The Minnesota Pollution Control Agency published the above notice in the August 28, 2023, State Register. The public comment period for this notice closes at 4:30 P.M. on Friday, October 27, 2023. The notice contains links to related documents and is available by visiting the Waste Treated Seeds Rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>

The MPCA is required to undertake this rulemaking to comply with [Laws of Minnesota 2023, chapter 60, article 3, section 28](#) and the scope of this rulemaking is limited to that purpose. The MPCA requests comments on its possible new rules. 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.

For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

The mission of the MPCA is to protect and improve the environment and human health.

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[Minnesota Pollution Control Agency](#) [[Contact us](#)]

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This email was sent to yolanda.letnes@state.mn.us using GovDelivery Communications Cloud on behalf of: Minnesota Pollution Control Agency
520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

Minnesota Pollution Control Agency

Industrial Division

REQUEST FOR COMMENTS

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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.

Katrina Kessler

Katrina Kessler, Commissioner

Minnesota Pollution Control Agency

____ July 6, 2023 _____

Date

From: [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#)
To: [cholm@boisforte-nsn.gov](#); [paigehuhta@fdlrez.com](#); [anthonymazzini@fdlrez.com](#); [robertdeschampe@grandportage.com](#); [Aprilim@grandportage.com](#); [vallenc@grandportage.com](#); [Brandy Toft](#); [Carma.huseby@llojibwe.net](#); [deb.dirlam@lowersioux.com](#); [cheyanne.stjohn@lowersioux.com](#); [Kelly.applegate@millelacsband.com](#); [Susan.Klapel@millelacsband.com](#); [gmiller@piic.org](#); [Cody.Mattison@piic.org](#); [gabriel.miller@piic.org](#); [franky.jackson@piic.org](#); [noah.white@piic.org](#); [jmalinski@redlakenation.org](#); [jleblanc@redlakenation.org](#); [scott.walz@shakopeedakota.org](#); [amandaw@upperprouxcommunity-nsn.gov](#); [samanthao@upperprouxcommunity-nsn.gov](#); [Jessica.tolifson@whiteearth-nsn.gov](#); [mnorthbird@mnchippewatribe.org](#); [gfrazier@mnchippewatribe.org](#); [dvogt@1854treatyauthority.org](#); [jcoleman@glifwc.org](#); [esteban@glifwc.org](#); [randy.poelma@ho-chunk.com](#); [tina.brown@ho-chunk.com](#); [linda.nguyen@redcliff-nsn.gov](#); [ernie.grooms@redcliff-nsn.gov](#); [Noah.saperstein@redcliff-nsn.gov](#); [Marvin.Defoe@redcliff-nsn.gov](#); [Edwina.Buffalo-Reyes@redcliff-nsn.gov](#); [JasonE@swo-nsn.gov](#); [sarahs@stcroixtribalcenter.com](#); [Allison_Smart@fws.gov](#); [Walt_Ford@fws.gov](#); [Vanessa.J.Alberto@usace.army.mil](#); [walts.alan@epa.gov](#); [craig.morin@ihs.gov](#); [Jason.oberle@bia.gov](#); [scott.doig@bia.gov](#)
Subject: Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Monday, August 28, 2023 7:14:00 AM

Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, Chapter 7035.3700 – 7035.3900; Revisor’s ID Number R-04806

The Minnesota Pollution Control Agency published the above notice in the August 28, 2023, State Register. The public comment period for this notice closes at 4:30 P.M. on Friday, October 27, 2023. The notice contains links to related documents and is available by visiting the Waste Treated Seeds Rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>

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For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

From: [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#)
To: daniele@uppersiouxcommunity-nsn.gov
Subject: FW: Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Monday, August 28, 2023 7:21:00 AM

FYI, I'm forwarding this email to you per Amanda Wold's autoreply email.

From: Letnes, Yolanda (She/Her/Hers) (MPCA)

Sent: Monday, August 28, 2023 7:14 AM

To: cholm@boisforte-nsn.gov; paigehuhta@fdlrez.com; anthonymazzini@fdlrez.com; robertdeschampe@grandportage.com; AprilM@grandportage.com; vallenc@grandportage.com; Brandy Toft <brandy.toft@llojibwe.net>; Carma.huseby@llojibwe.net; deb.dirlam@lowersioux.com; cheyanne.stjohn@lowersioux.com; Kelly.applegate@millelacsband.com; Susan.Klapel@millelacsband.com; gmliller@piic.org; Cody.Mattison@piic.org; gabriel.miller@piic.org; franky.jackson@piic.org; noah.white@piic.org; jmalinski@redlakenation.org; jleblanc@redlakenation.org; scott.walz@shakopeedakota.org; amandaw@uppersiouxcommunity-nsn.gov; samanthao@uppersiouxcommunity-nsn.gov; Jessica.tolifson@whiteearth-nsn.gov; mnorthbird@mnchippewatribe.org; [gfrazier@mnchippewatribe.org](mailto:gfrazer@mnchippewatribe.org); dvogt@1854treatyauthority.org; jcoleman@glifwc.org; esteban@glifwc.org; randy.poelma@ho-chunk.com; tina.brown@ho-chunk.com; linda.nguyen@redcliff-nsn.gov; ernie.grooms@redcliff-nsn.gov; Noah.saperstein@redcliff-nsn.gov; Marvin.Defoe@redcliff-nsn.gov; Edwina.Buffalo-Reyes@redcliff-nsn.gov; JasonE@swo-nsn.gov; sarahs@stcroixtribalcenter.com; Allison_Smart@fws.gov; Walt_Ford@fws.gov; Vanessa.J.Alberto@usace.army.mil; walts.alan@epa.gov; craig.morin@ihs.gov; Jason.oberle@bia.gov; scott.doig@bia.gov

Subject: Request for Comments; Waste Treated Seeds Rule; R-04806

Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, Chapter 7035.3700 – 7035.3900; Revisor's ID Number R-04806

The Minnesota Pollution Control Agency published the above notice in the August 28, 2023, State Register. The public comment period for this notice closes at 4:30 P.M. on Friday, October 27, 2023. The notice contains links to related documents and is available by visiting the Waste Treated Seeds Rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>

The MPCA is required to undertake this rulemaking to comply with [Laws of Minnesota 2023, chapter 60, article 3, section 28](#) and the scope of this rulemaking is limited to that purpose. The MPCA requests comments on its possible new rules. 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.

For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

From: [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#)
To: [gfrazier@mnchippewatribe.org](mailto:gfrazer@mnchippewatribe.org)
Subject: FW: Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Monday, August 28, 2023 7:41:00 AM

From: Letnes, Yolanda (She/Her/Hers) (MPCA)

Sent: Monday, August 28, 2023 7:14 AM

To: cholm@boisforte-nsn.gov; paigehuhta@fdlrez.com; anthonymazzini@fdlrez.com; robertdeschampe@grandportage.com; Aprilm@grandportage.com; vallenc@grandportage.com; Brandy Toft <brandy.toft@llojibwe.net>; Carma.huseby@llojibwe.net; deb.dirlam@lowersioux.com; cheyanne.stjohn@lowersioux.com; Kelly.applegate@millelacsband.com; Susan.Klapel@millelacsband.com; gmiller@piic.org; Cody.Mattison@piic.org; gabriel.miller@piic.org; franky.jackson@piic.org; noah.white@piic.org; jmalinski@redlakenation.org; jleblanc@redlakenation.org; scott.walz@shakopeedakota.org; amandaw@uppersiouxcommunity-nsn.gov; samanthao@uppersiouxcommunity-nsn.gov; Jessica.tolifson@whiteearth-nsn.gov; mnorthbird@mnchippewatribe.org; gfrazier@mnchippewatribe.org; dvogt@1854treatyauthority.org; jcoleman@glifwc.org; esteban@glifwc.org; randy.poelma@ho-chunk.com; tina.brown@ho-chunk.com; linda.nguyen@redcliff-nsn.gov; ernie.grooms@redcliff-nsn.gov; Noah.saperstein@redcliff-nsn.gov; Marvin.Defoe@redcliff-nsn.gov; Edwina.Buffalo-Reyes@redcliff-nsn.gov; JasonE@swo-nsn.gov; sarahs@stcroixtribalcenter.com; Allison_Smart@fws.gov; Walt_Ford@fws.gov; Vanessa.J.Alberto@usace.army.mil; walt.s.alan@epa.gov; craig.morin@ihs.gov; Jason.oberle@bia.gov; scott.doig@bia.gov

Subject: Request for Comments; Waste Treated Seeds Rule; R-04806

Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, Chapter 7035.3700 – 7035.3900; Revisor’s ID Number R-04806

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For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

From: [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#)
To: bdrost@mnchippewatribe.org
Subject: FW: Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Monday, August 28, 2023 7:56:00 AM

From: Letnes, Yolanda (She/Her/Hers) (MPCA)
Sent: Monday, August 28, 2023 7:42 AM
To: gfrazer@mnchippewatribe.org
Subject: FW: Request for Comments; Waste Treated Seeds Rule; R-04806

From: Letnes, Yolanda (She/Her/Hers) (MPCA)
Sent: Monday, August 28, 2023 7:14 AM
To: cholm@boisforte-nsn.gov; paigehuhta@fdlrez.com; anthonymazzini@fdlrez.com; robertdeschampe@grandportage.com; AprilM@grandportage.com; vallenc@grandportage.com; Brandy Toft <brandy.toft@llojibwe.net>; Carma.huseby@llojibwe.net; deb.dirlam@lowersioux.com; cheyanne.stjohn@lowersioux.com; Kelly.applegate@millelacsband.com; Susan.Klapel@millelacsband.com; gmliller@piic.org; Cody.Mattison@piic.org; gabriel.miller@piic.org; franky.jackson@piic.org; noah.white@piic.org; jmalinski@redlakenation.org; jleblanc@redlakenation.org; scott.walz@shakopeedakota.org; amandaw@uppersiouxcommunity-nsn.gov; samanthao@uppersiouxcommunity-nsn.gov; Jessica.tolifson@whiteearth-nsn.gov; mnorthbird@mnchippewatribe.org; gfrazer@mnchippewatribe.org; dvogt@1854treatyauthority.org; jcoleman@glifwc.org; esteban@glifwc.org; randy.poelma@ho-chunk.com; tina.brown@ho-chunk.com; linda.nguyen@redcliff-nsn.gov; ernie.grooms@redcliff-nsn.gov; Noah.saperstein@redcliff-nsn.gov; Marvin.Defoe@redcliff-nsn.gov; Edwina.Buffalo-Reyes@redcliff-nsn.gov; JasonE@swo-nsn.gov; sarahs@stcroixtribalcenter.com; Allison_Smart@fws.gov; Walt_Ford@fws.gov; Vanessa.J.Alberto@usace.army.mil; walts.alan@epa.gov; craig.morin@ihs.gov; Jason.oberle@bia.gov; scott.doig@bia.gov
Subject: Request for Comments; Waste Treated Seeds Rule; R-04806

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<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.

For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

From: [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#)
To: Amanda.wold@llojibwe.net
Subject: FW: Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Monday, August 28, 2023 8:02:00 AM

From: Letnes, Yolanda (She/Her/Hers) (MPCA)
Sent: Monday, August 28, 2023 7:42 AM
To: gfrazer@mnchippewatribe.org
Subject: FW: Request for Comments; Waste Treated Seeds Rule; R-04806

From: Letnes, Yolanda (She/Her/Hers) (MPCA)
Sent: Monday, August 28, 2023 7:14 AM
To: cholm@boisforte-nsn.gov; paigehuhta@fdlrez.com; anthonymazzini@fdlrez.com; robertdeschampe@grandportage.com; AprilM@grandportage.com; vallenc@grandportage.com; Brandy Toft <brandy.toft@llojibwe.net>; Carma.huseby@llojibwe.net; deb.dirlam@lowersioux.com; cheyanne.stjohn@lowersioux.com; Kelly.applegate@millelacsband.com; Susan.Klapel@millelacsband.com; gmliller@piic.org; Cody.Mattison@piic.org; gabriel.miller@piic.org; franky.jackson@piic.org; noah.white@piic.org; jmalinski@redlakenation.org; jleblanc@redlakenation.org; scott.walz@shakopeedakota.org; amandaw@uppersiouxcommunity-nsn.gov; samanthao@uppersiouxcommunity-nsn.gov; Jessica.tolifson@whiteearth-nsn.gov; mnorthbird@mnchippewatribe.org; gfrazer@mnchippewatribe.org; dvogt@1854treatyauthority.org; jcoleman@glifwc.org; esteban@glifwc.org; randy.poelma@ho-chunk.com; tina.brown@ho-chunk.com; linda.nguyen@redcliff-nsn.gov; ernie.grooms@redcliff-nsn.gov; Noah.saperstein@redcliff-nsn.gov; Marvin.Defoe@redcliff-nsn.gov; Edwina.Buffalo-Reyes@redcliff-nsn.gov; JasonE@swo-nsn.gov; sarahs@stcroixtribalcenter.com; Allison_Smart@fws.gov; Walt_Ford@fws.gov; Vanessa.J.Alberto@usace.army.mil; walts.alan@epa.gov; craig.morin@ihs.gov; Jason.oberle@bia.gov; scott.doig@bia.gov
Subject: Request for Comments; Waste Treated Seeds Rule; R-04806

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<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.

For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

Minnesota Pollution Control Agency - Bulletin Detail Rep... **govDELIVERY** 

Subject: Request for Comments; Waste Treated Seeds Rule; R-04806

Sent: 08/28/2023 08:00 AM CDT

Sent By: yolanda.letnes@state.mn.us

Sent To: Subscribers of Rulemaking: Waste treated seeds

106 Recipients  Email  SMS  Facebook  Twitter  RSS**98%**

Delivered

0% Pending

2% Bounced

37% Open Rate

14% Click Rate

Email Delivery Stats

Minutes	Cumulative Attempted
3	100%
5	100%
10	100%
30	100%
60	100%
120	100%

Delivery Metrics - Details

106 Total Sent**104 (98%)** Delivered**0 (0%)** Pending**2 (2%)** Bounced**0 (0%)** Unsubscribed

Bulletin Analytics

420 Total Opens**38 (37%)** Unique Opens**73** Total Clicks**15 (14%)** Unique Clicks**12** # of Links

Delivery and performance

These figures represent all data since the bulletin was first sent to present time.

	Progress	% Delivered	Recipients	# Delivered	Opened Unique	Bounced/Failed	Unsubscribes
Email Bulletin	Delivered	98.0%	100	98	35 / 35.7%	2	0
Digest	n/a	n/a	6	6	3 / 50.0%	0	0
SMS Message	Delivered	0.0%	0	0	n/a	0	n/a

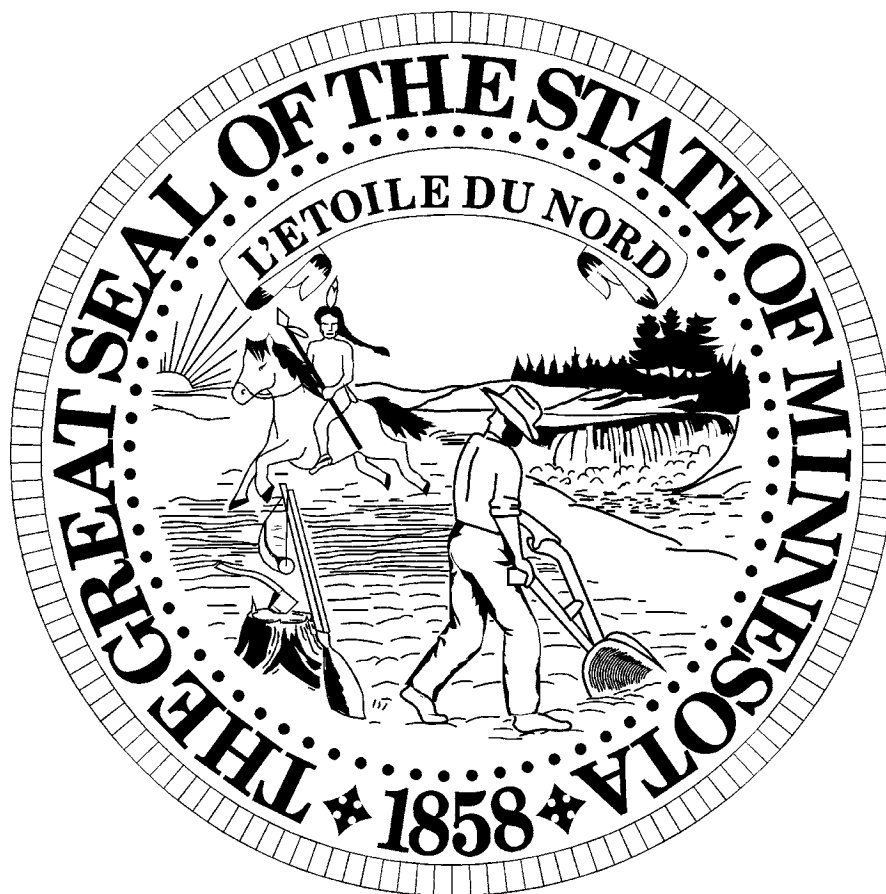
Link URL

Unique
ClicksTotal
Clicks

https://www.pca.state.mn.us/get-engaged/waste-treated-seeds	8	88
https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf	1	52
https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/60/	3	46
https://content.govdelivery.com/accounts/MNPCA/bulletins/3689a00	3	15
https://www.pca.state.mn.us/sites/default/files/mm-rule1-00.pdf	2	11
https://content.govdelivery.com/accounts/MNPCA/bulletins/3689a00?reqfrom=share	2	5
https://www.pca.state.mn.us/about-mpca/assistance	1	2
https://www.pca.state.mn.us	1	2
http://www.pca.state.mn.us/	1	2
https://public.govdelivery.com/accounts/MNPCA/subscriber/edit?preferences=true#tab1	0	0
https://subscriberhelp.govdelivery.com/	0	0
https://public.govdelivery.com/accounts/MNPCA/subscriber/unsubscribe_from_topic?verification=%5B%5BVERIFICATION%5D%5D&destination=%5B%5BEMAIL_ADDRESS%5D%5D&topic_id=MNPCA_524	0	0

Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;
Official Notices; State Grants & Loans; State Contracts; Non-State Public Bids,
Contracts and Grants**

**Monday 28 August 2023
Volume 48, Number 9
Pages 187 - 252**

Minnesota Pollution Control Agency (MPCA)**Industrial Division****REQUEST FOR COMMENTS for Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, ch. 7035.3700 – 7035.3900; Revisor's ID Number R-04806**

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on possible new waste treated seed rules, *Minnesota Rules*, 7035.3700 – 7035.3900. 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 adding the listed new rule parts to chapter 7035 and requests comments on the possible new rules from affected or interested parties. See the **Comments** and **MPCA Contact Person** sections of this notice for information on how to submit comments.

This 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.

Official Notices

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 Friday, October 27, 2023**. During the public comment period associated with this RFC, submit written comments or information to the:

1. Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or
2. OAH Attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at William.T.Moore@state.mn.us.

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 OAH at the address listed above.

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; email yolanda.letnes@state.mn.us; telephone 651-757-2527. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

1. During the public comment period associated with this request for comments:
 - a. Submit all comments in response to this notice as described under **Comments**.
 - b. Submit any clarification questions or requests for more information to the MPCA contact person listed above.

Official Notices

2. After the public comment period closes, route communications to the following staff:
 - a. Rulemaking process: Yolanda Letnes at 651-757-2527 and yolanda.letnes@state.mn.us
 - b. Technical subject matter: Joshua Burman at 507-344-5243 and joshua.burman@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.

Date: July 6, 2023

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts Section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the State Register, there is no requirement for publication in the *State Register* itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

SEE ALSO: Office of Grants Management (OGM) at: <https://mn.gov/admin/citizen/grants/>

Department of Employment and Economic Development (DEED) Notice of Grant Opportunity

NOTICE IS HEREBY GIVEN that the Minnesota Department of Employment and Economic Development (DEED) places notice of any available grant opportunities online at <https://mn.gov/deed/about/contracts/open-rfp.jsp>

Department of Human Services

Contracts and Legal Compliance Division

Notice of Changes to Grant Request for Proposal noticing in the State Register for the Department of Human Services

The Minnesota Department of Human Services (DHS) will no longer publish individual grant RFP notices to the State Register effective March 27, 2023. The RFPs and RFIs can be viewed by visiting the Minnesota Department of Human Services Grants, Requests for Proposals (RFP) and Requests for Information (RFI) website: <https://mn.gov/dhs/partners-and-providers/grants-rfps/open-rfps/>.

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.

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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/MNPCHA/subscriber/new?topic_id=MNPCHA_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

Minnesota Pollution Control Agency

CERTIFICATE OF MAILING THE REQUEST FOR COMMENTS IN COMPLIANCE WITH MINNESOTA STATUTES § 14.101

**Proposed Rules Governing Waste Treated Seeds, Minnesota Rules, ch. 7035 and 7045;
Revisor's ID Number R-04806**

- I certify that on December 26, 2023, at St. Paul, Ramsey County, Minnesota, I mailed the Request for Comments to persons on the MPCA's rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. I accomplished this mailing by sending an electronic message via GovDelivery email to all persons and associations on the list. The message contained a hyperlink to the Request for Comments.
 - Copies of the electronic message, Request for Comments, and a summary of the GovDelivery statistics for the mailing are attached to this Certificate.
 - Copies of the Notice as published are attached to this Certificate.
- I certify that on December 26, 2023, at St. Paul, Ramsey County, Minnesota, I provided the Request for Comments to the MPCA tribal contacts with a potential interest in this rulemaking. I accomplished this mailing by sending an electronic message to contacts listed in the MPCA Tribal Contacts List. The message contained a hyperlink to the Request for Comments.
 - Copies of the electronic message are attached to this Certificate.

Y. Letnes

Yolanda Letnes, Rule Coordinator

From: [Minnesota Pollution Control Agency](#)
To: [Cournoyer, Andrea \(MPCA\)](#); [Gaffney, Kevin \(MPCA\)](#); [Meyer, Glenn \(MPCA\)](#); [Hathaway, Jennifer \(She/Her/Hers\) \(MPCA\)](#); [Sabroski, Hannah \(MPCA\)](#); [Rafferty, Michael \(MPCA\)](#); [Lewandowski, Lauren \(MPCA\)](#); [Lamers, Kate \(MPCA\)](#); [Beyer, Lindsey \(MPCA\)](#); [Kepulis, Kathryn \(MPCA\)](#); [Mikkelsen, Stephen \(MPCA\)](#); [Andre, Paul \(MPCA\)](#); [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#); [Michels, Tanja \(MPCA\)](#); [Stremmel, Corinne \(She/Her/Hers\) \(MPCA\)](#); [Olson, Adam \(He/Him/His\) \(MPCA\)](#); [Donath, Alexis \(MPCA\)](#); [Held, Ted \(MNIT\)](#)
Subject: Courtesy Copy: Second Request for Comments on Amendments being Considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, Minnesota Rules, Chapters 7035 and 7045; Revisor's ID Number R-04806
Date: Tuesday, December 26, 2023 8:00:43 AM

This is a courtesy copy of an email bulletin sent by Yolanda Letnes.

This bulletin was sent to the following groups of people:

Subscribers of Rulemaking: Waste treated seeds (321 recipients)

Having trouble viewing this email? [View it as a Web page.](#)

Minnesota Pollution Control Agency



Second Request for Comments on Amendments being Considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, Minnesota Rules, Chapters 7035 and 7045; Revisor's ID Number R-04806

The Minnesota Pollution Control Agency published the above notice in the December 26, 2023, State Register. The public comment period for this notice closes at 4:30 P.M. on Tuesday, January 30, 2024. The notice contains links to related documents and is available by visiting the Waste Treated Seeds Rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>

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The MPCA is required to undertake this rulemaking to comply with [Laws of Minnesota 2023, chapter 60, article 3, section 28](#). The MPCA requests comments on its possible new rules. 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.

For more information about this and other MPCA rules in process, visit the [MPCA Rule Docket](#).

The mission of the MPCA is to protect and improve the environment and human health.

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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>.

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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.

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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/MNPCHA/subscriber/new?topic_id=MNPCHA_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

Minnesota Pollution Control Agency - Bulletin Detail Rep... **govDELIVERY** 

Subject: Second Request for Comments on Amendments being Considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, Minnesota Rules, Chapters 7035 and 7045; Revisor's ID Number R-04806

Sent: 12/26/2023 08:00 AM CST

Sent By: yolanda.letnes@state.mn.us

Sent To: Subscribers of Rulemaking: Waste treated seeds

321 Recipients Email SMS Facebook Twitter RSS**96%**

Delivered

0% Pending

4% Bounced

35% Open Rate

11% Click Rate

Email Delivery Stats

Minutes	Cumulative Attempted
3	80%
5	94%
10	98%
30	98%
60	98%
120	98%

Delivery Metrics - Details

321 Total Sent

307 (96%) Delivered

0 (0%) Pending

14 (4%) Bounced

0 (0%) Unsubscribed

Bulletin Analytics

466 Total Opens

107 (35%) Unique Opens

86 Total Clicks

34 (11%) Unique Clicks

11 # of Links

Delivery and performance

These figures represent all data since the bulletin was first sent to present time.

	Progress	% Delivered	Recipients	# Delivered	Opened Unique	Bounced/Failed	Unsubscribes
Email Bulletin	Delivered	95.1%	285	271	88 / 32.5%	14	0
Digest	n/a	n/a	36	36	19 / 52.8%	0	0
SMS Message	Delivered	0.0%	0	0	n/a	0	n/a

Link URL

**Unique
Clicks**
**Total
Clicks**

https://content.govdelivery.com/accounts/MNPCA/bulletins/380d3e1	4	35
https://www.pca.state.mn.us/get-engaged/waste-treated-seeds	9	29
https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf	10	13
https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/60/	4	7
https://www.pca.state.mn.us/sites/default/files/mm-rule1-00.pdf	4	6
https://www.pca.state.mn.us	1	3
http://www.pca.state.mn.us/	1	2
https://www.pca.state.mn.us/about-mpca/assistance	1	2
https://subscriberhelp.govdelivery.com/	0	0
https://public.govdelivery.com/accounts/MNPCA/subscriber/edit?preferences=true#tab1	0	0
https://content.govdelivery.com/accounts/MNPCA/bulletins/380d3e1?reqfrom=share	0	0

From: Letnes, Yolanda (She/Her/Hers) (MPCA)
To: cholm@boisforte-nsn.gov; paigehuhta@fdlrez.com; anthonymazzini@fdlrez.com; nancyschuldt@fdlrez.com; richardgitar@fdlrez.com; jackbassett@fdlrez.com; mwatkins@grandportage.com; robertdeschampe@grandportage.com; agathaa@grandportage.com; Aprilm@grandportage.com; mariespry@grandportage.com; tobys@grandportage.com; Trustlands.admin@grandportage.com; kwoerheide@grandportage.com; samoore@boreal.org; robhull@grandportage.com; Carma.huseby@llojibwe.net; Brandy Toft; Amanda.wold@llojibwe.net; Jakob.sorensen@llojibwe.net; Jeff.harper@llojibwe.net; jason.helgeson@llojibwe.net; Diane.thompson@llojibwe.net; kelly.applegate@millelacsband.com; Susan.Klapel@millelacsband.com; Jamie.Edwards@millelacsband.com; mike.wilson@millelacsband.com; robert.smith@redlakenation.org; jleblanc@redlakenation.org; ed.snetsinger@whiteearth-nsn.gov; Aprilm@grandportage.com; bdrost@mnchippewatribe.org; linda.nguyen@redcliff-nsn.gov; Noah.saperstein@redcliff-nsn.gov; Allissa.Stutte@redcliff-nsn.gov; Marvin.Defoe@redcliff-nsn.gov; Edwina.Buffalo-Reyes@redcliff-nsn.gov; sarahs@stcroixojibwe-nsn.gov; jeremyb@stcroixojibwe-nsn.gov; cheyanne.stjohn@lowersioux.com; deb.dirlam@lowersioux.com; Gabriel.Miller@piic.org; Henry.Stelten@piic.org; noah.white@piic.org; nicole.staudt@piic.org; Lars.lidahl@piic.org; franky.jackson@piic.org; scott.walz@shakoopedakota.org; Stephen.albrecht@shakoopedakota.org; daniele@uppersiouxcommunity-nsn.gov; brylear@uppersiouxcommunity-nsn.gov; alenab@uppersiouxcommunity-nsn.gov; samanthao@uppersiouxcommunity-nsn.gov; dvogt@1854treatyauthority.org; jcoleman@glifwc.org; esteban@glifwc.org; randy.poelma@ho-chunk.com; hinu.smith@ho-chunk.com; brandon.bleuer@ho-chunk.com; JasonE@sws-nsn.gov
Subject: Second Request for Comments; Waste Treated Seeds Rule; R-04806
Date: Tuesday, December 26, 2023 6:57:00 AM

Request for Comments on Amendments being Considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, Minnesota Rules, Chapters 7035 and 7045; Revisor's ID Number R-04806

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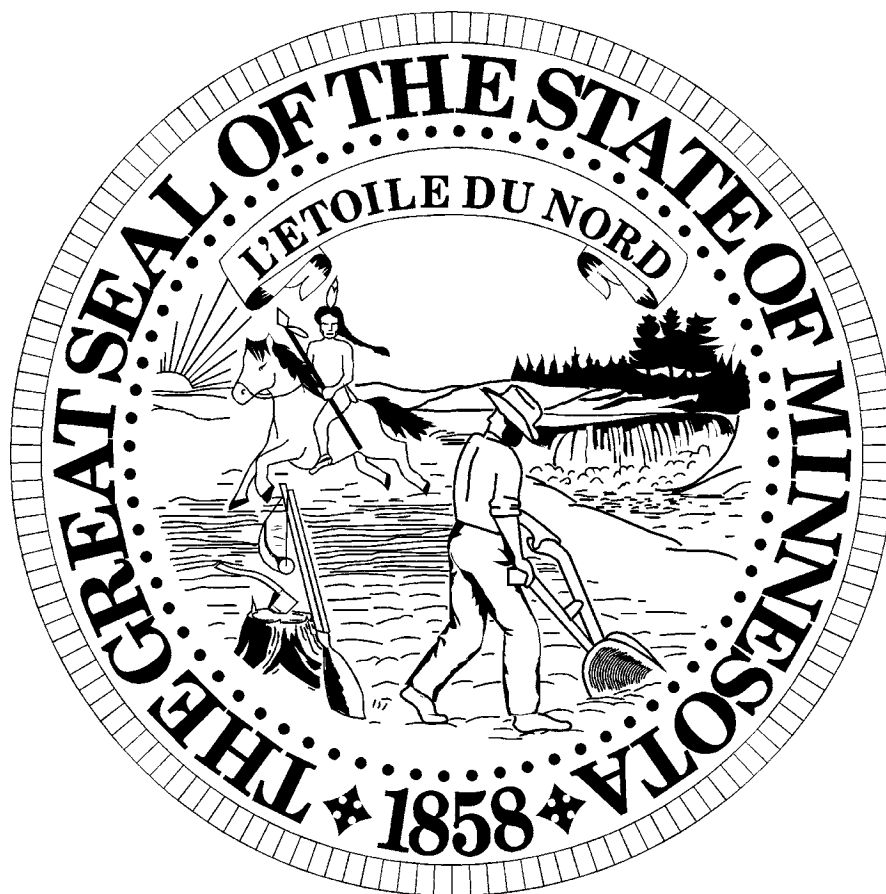
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Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;
Official Notices; State Grants & Loans; State Contracts; Non-State Public Bids,
Contracts and Grants**

**Tuesday 26 December 2023
Volume 48, Number 26
Pages 595 - 612**

Department of Labor and Industry
Notice of Certification of Commercial Prevailing Wage Rates

The Commissioner of the Department of Labor & Industry (DLI) will certify prevailing wage rates for commercial construction projects in all 87 counties on Tuesday, December 26, 2023. These rates were identified by annual survey of commercial construction projects in Minnesota collected by DLI.

Wage rate determinations are available online at:

<https://dli.mn.gov/business/employment-practices/prevailing-wage-information>

Questions regarding determinations may be directed to the following:

Division of Labor Standards

443 Lafayette Road N
St. Paul, MN 55155

Phone: 651-284-5192

Email: pwsurvey.dli@state.mn.us

Minnesota Pollution Control Agency (MPCA)**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**

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Official Notices

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.

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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/ecommments-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

Official Notices

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.

Date: December 15, 2023

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

State Law Library Notice of County Law Library Fees 1/1/2024

Pursuant to *Minnesota Statutes* 134A.09 and 134A.10, the following law library fees are to be in effect as of 1/1/2024.

County	Civil	Probate	Conc Crt	Fel G Misd	Misd	P Misd	Parking
Becker	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Rice	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$0.00

Minnesota Pollution Control Agency

CERTIFICATE OF MAILING THE REQUEST FOR COMMENTS IN COMPLIANCE
WITH MINNESOTA STATUTES § 14.101

**Proposed Rules Governing Waste Treated Seeds, Minnesota Rules, ch. 7035 and 7045;
Revisor's ID Number R-04806**

I certify that on December 22, 2023, at St. Paul, Ramsey County, Minnesota, I mailed the Request for Comments to thirteen persons without email addresses.

I accomplished this by depositing a copy in the State of Minnesota's central mail system for United States mail with postage prepaid. Copies of both the document and the mailing list are attached to this Certificate.

Y. Letnes

Yolanda Letnes, Rule Coordinator

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.

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Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

_December 15, 2023_____

Date

CORN PALACE AG CENTER INC
10902 205TH AVE
NEW RICHLAND, MN 56072-3405

NEW VISION COOP
412 EAST PEAVEY ST
JEFFERS, MN 56145

SOUTHERN MINNESOTA BEET SUGAR
COOPERATIVE
PO BOX 500
RENVILLE, MN 56284-0500

UNITED FARMERS COOPERATIVE
PO BOX 461
WINTHROP, MN 55396-0461

BACKMAN SEEDS, INC.
13045 310TH AVE
HERMAN, MN 56248

CRYSTAL VALLEY COOPERATIVE
1911 EXCEL DR
MANKATO, MN 56001

NUTRIEN AG SOLUTIONS INC
304 MAIN ST NW
SARGEANT, MN 55973

STEINER AG INC
13086 240TH STR NE
THIEF RIVER FALLS, MN 56701

VATTHAUER FARM SUPPLY INC
21975 HWY 32 S
RED LAKE FALLS, MN 56750

KOCH FAMILY FARMS INC
74757 110TH ST
LE ROY, MN 55951

SOLMA HARLAN
401 WEST CRAWFORD ST
LUVERNE, MN 56156

SYNGENTA CROP PROTECTION LLC
9497 HWY 10 W
GLYNDON, MN 56547

WEST CENTRAL AG SERVICES
PO BOX 368
ULEN, MN 56585-0368

- B. The Petition for Rule making, if the rule was proposed in response to it
 - a. Not Applicable

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Waste Treated Seeds

AGENCY: Minnesota Pollution Control Agency

REVISOR ID: R-4806

MINNESOTA RULES: Chapters 7035 and 7045

The attached rules are approved for
publication in the State Register

Cindy K. Maxwell

Cindy K. Maxwell
Assistant Deputy Revisor

1.1 **Minnesota Pollution Control Agency**1.2 **Proposed Permanent Rules Relating to Waste Treated Seeds**1.3 **7035.0300 DEFINITIONS.**

1.4 Subpart 1. **Scope.** As used in parts 7035.0300 to 7035.2915 and 7035.3700, the
1.5 following terms have the meanings given them in this part.

1.6 *[For text of subparts 2 and 3, see Minnesota Rules]*

1.7 Subp. 3a. **Agricultural products.** "Agricultural products" has the meaning given in
1.8 Minnesota Statutes, section 273.13, subdivision 23, paragraph (i).

1.9 *[For text of subparts 4 to 16, see Minnesota Rules]*

1.10 Subp. 17. **Community water supply.** "Community water supply" has the meaning
1.11 given it "community water system" in part 4720.0100 4725.0100, subpart 23a.

1.12 *[For text of subparts 18 to 37, see Minnesota Rules]*

1.13 Subp. 37a. **Farming.** "Farming" means producing agricultural products. Farming does
1.14 not include:

1.15 A. processing, refining, packaging, or transporting agricultural products; or

1.16 B. providing spraying or harvesting services for agricultural products.

1.17 *[For text of subparts 38 to 65, see Minnesota Rules]*

1.18 Subp. 66. **Monitoring well.** "Monitoring well" ~~has the meaning given it in part~~
1.19 ~~4725.0100, subpart 30a~~ means an excavation of any depth that otherwise meets the definition
1.20 given "environmental well" in Minnesota Statutes, section 103I.005, subdivision 8a.

1.21 *[For text of subparts 67 to 85, see Minnesota Rules]*

1.22 Subp. 86. **Public water supply.** "Public water supply" has the meaning given "public
1.23 water system" in part 4720.0100 4725.0100, subpart 37b.

[For text of subparts 87 to 98, see Minnesota Rules]

Subp. 98a. **Shoreland.** "Shoreland" has the meaning given in part 6120.2500, subpart 15.

[For text of subparts 99 to 105, see Minnesota Rules]

Subp. 105a. **Source-separated organic material.**

[For text of items A and B, see Minnesota Rules]

C. Source-separated organic material does not include:

(1) septage; ~~or~~

(2) sewage sludge, as defined in part 7041.0100, subpart 49; or

(3) waste treated seed.

[For text of subparts 105b to 108, see Minnesota Rules]

Subp. 108a. **Surface water or surface waters.** "Surface water" or "surface waters" has the meaning given "surface waters" in part 7050.0130, subpart 6.

[For text of subparts 109 to 111d, see Minnesota Rules]

Subp. 111e. **Treated seed.** "Treated seed" means seed that is treated, as defined in Minnesota Statutes, section 21.81, subdivision 28.

[For text of subparts 112 to 116, see Minnesota Rules]

Subp. 116a. **Waste treated seed.** "Waste treated seed" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 37a. Waste treated seed includes treated seed that will not be planted for the purpose of growing live plants in accordance with the instructions on the treated seed container label. Treated seed planted for the purpose of growing live plants in accordance with the instructions on the treated seed container label is not waste treated seed.

3.1 *[For text of subpart 117, see Minnesota Rules]*

3.2 Subp. 117a. **Water-supply well.** "Water-supply well" has the meaning given in part
3.3 4725.0100, subpart 50a.

3.4 *[For text of subparts 118 to 121, see Minnesota Rules]*

3.5 **7035.2525 SOLID WASTE MANAGEMENT FACILITIES GOVERNED.**

3.6 *[For text of subpart 1, see Minnesota Rules]*

3.7 Subp. 2. **Exceptions.** Parts 7035.2525 to 7035.2915 do not apply to the following
3.8 solid waste management facilities or persons, except as indicated:

3.9 A. backyard compost sites must comply with only part 7035.2836, subpart 5, item
3.10 M;

3.11 *[For text of items B to K, see Minnesota Rules]*

3.12 L. small compost sites must ~~only~~ comply with only parts 7035.2535, subpart 1,
3.13 items A to E; 7035.2555; ~~and~~ 7035.2565; and 7035.2836, subpart 5, item M.

3.14 **7035.2535 GENERAL SOLID WASTE MANAGEMENT FACILITY**
3.15 **REQUIREMENTS.**

3.16 *[For text of subparts 1 to 4, see Minnesota Rules]*

3.17 Subp. 5. **Industrial solid waste management.** All industrial solid waste delivered to
3.18 a solid waste management facility must be managed by the owner or operator to protect
3.19 human health and the environment. The industrial solid waste management plan required
3.20 under part 7001.3300 must address items A to C, except that the industrial solid waste
3.21 management plan for a municipal solid waste combustor ash land disposal facility need not
3.22 comply with items B and C.

3.23 *[For text of item A, see Minnesota Rules]*

B. The plan must address how the following categories of waste will be managed to comply with the requirements of item A, subitems (2) to (4), and, for waste treated seed under subitem (13), with part 7035.3700:

[For text of subitems (1) to (11), see Minnesota Rules]

(12) spent activated carbon filters; ~~and~~

(13) waste treated seed; and

~~(13)~~ (14) any other wastes that can be identified.

[For text of items C to E, see Minnesota Rules]

[For text of subpart 6, see Minnesota Rules]

7035.2815 MIXED MUNICIPAL SOLID WASTE LAND DISPOSAL FACILITIES.

[For text of subparts 1 to 5, see Minnesota Rules]

Subp. 6. **Intermittent, intermediate, and final cover system.** The owner or operator of a mixed municipal solid waste land disposal facility must design and maintain a cover system capable of minimizing infiltration of precipitation into the fill areas, preventing surface water ponding on fill areas, controlling gas movement, preventing erosion of surface and side slopes, reducing wind erosion and wind blown litter, minimizing the creation and movement of dust, retaining slope stability, reducing effects of freeze-thaw and other weather conditions, maintaining vegetative growth while minimizing root penetration of the low permeability cover layer, and discouraging vector and burrowing animal intrusion into the site. A complete cover system must consist of intermittent, intermediate, and final covers as outlined in items A to E.

A. The owner or operator must place an intermittent cover upon all exposed solid waste in accordance with the approved operation and maintenance manual for the site. The owner or operator shall submit to the commissioner for approval a proposed cover system

that addresses the frequency and depth of placement and the material to be used as cover. The frequency of placement may be no less than once per week, except that waste treated seed must be covered immediately after being placed on the working face. The cover depth must be sufficient to cover the waste completely and must be at least six inches if soil or similar material is used. The commissioner, in approving the proposed cover system, must consider the characteristics of the proposed cover material, the characteristics of the solid waste, the leaching potential of the solid waste, the design and operation of the facility, and the potential for nuisance conditions if other than daily cover is proposed.

[For text of items B to E, see Minnesota Rules]

[For text of subparts 7 to 10, see Minnesota Rules]

Subp. 11. **Gas monitoring, collection, and treatment system.** The concentration of any explosive gas must not exceed its lower explosion limit at the property boundary or 25 percent of its lower explosion limit in and around facility structures or any other on-site monitoring point. A gas monitoring, collection, and treatment system must be designed to meet the requirements of items A to G.

[For text of items A to E, see Minnesota Rules]

F. The size of the gas collection system must be based on the volume and type of waste to be received at the site.

(1) The owner or operator must determine the need for a gas collection system and discuss in the engineering report how the need was determined. The commissioner shall review the determination during the permit review process and again at closure. Approval of a gas monitoring system without collection at the time of permitting shall not limit future requirements determined necessary by the commissioner based on the volume of gas generated at the facility, the proximity to residential or business property, or problems

experienced at the facility in maintaining vegetative growth or accumulation of gas in site structures.

(2) If waste treated seed is accepted at the facility, the operator must determine the maximum volume of waste treated seed that the facility can accept daily based on the size of the gas collection system.

[For text of item G, see Minnesota Rules]

[For text of subpart 12, see Minnesota Rules]

Subp. 13. **Operation and maintenance requirements.** A mixed municipal solid waste land disposal facility must be operated by a certified operator, as defined in parts 7048.0100 to 7048.1300. A certified operator must be present during the time that the facility is open to accept waste. The facility operations must meet the requirements of items A to W, at a minimum.

A. Solid waste must be spread and compacted in layers two feet or less in depth. When waste treated seed is placed on the working face, the operator must spread the waste treated seed across the working face to maintain slope stability and minimize localized settlement.

[For text of items B to W, see Minnesota Rules]

[For text of subparts 14 to 16, see Minnesota Rules]

7035.2836 COMPOST FACILITIES.

[For text of subparts 1 to 4, see Minnesota Rules]

Subp. 5. **Operation requirements for solid waste compost facility.** The owner or operator of a compost facility shall submit an operation and maintenance manual to the commissioner for approval with the facility permit application. The manual must include a

personnel training program plan, a leachate management plan, and a compost sampling plan and must comply with the operation requirements in items A to ~~L~~ M.

[For text of items A to L, see Minnesota Rules]

M. Waste treated seed must not be composted.

[For text of subparts 6 to 11, see Minnesota Rules]

7035.3700 WASTE TREATED SEED.

Subpart 1. Scope. This part applies to any person managing waste treated seed, including persons who own or operate land used for farming, dealers and other sellers of treated seed, owners or operators of a solid waste management facility, and any other person disposing of waste treated seed.

Subp. 2. Status. Waste treated seed managed as specified in this part is industrial solid waste. When managed as specified in this part, waste treated seed is exempt from the requirements of chapter 7045. Discarded containers that held treated seed are mixed municipal solid waste.

Subp. 3. Requirements. Waste treated seed must be managed in compliance with this part and with:

A. Minnesota Statutes, section 18B.075, which relates to pesticide-treated seed;

B. Minnesota Statutes, section 21.86, subdivision 2, paragraph (h), which relates to seeds treated with neonicotinoid pesticide; and

C. Minnesota Statutes, section 115A.993, which relates to prohibited disposal methods.

Subp. 4. Prohibitions. Waste treated seed must not be:

A. disposed of by burial, except:

8.1 (1) at a mixed municipal solid waste land disposal facility under part

8.2 7035.2815;

8.3 (2) at a land disposal facility with a liner and a leachate management system

8.4 that has been approved by the commissioner to accept waste treated seed. Land disposal

8.5 facilities accepting waste treated seed under this subitem must comply with part 7035.2815,

8.6 subparts 6, 11, and 13; or

8.7 (3) by a person who owns or operates land used for farming, if the waste

8.8 treated seed is generated as part of that person's farming operation and is buried on the land

8.9 used for farming in a nuisance-free, pollution-free, and aesthetic manner. This subitem does

8.10 not apply if regularly scheduled pickup of solid waste is reasonably available at the person's

8.11 farm, as determined by resolution of the county board of the county where the land used

8.12 for farming is located. Burial under this subitem must:

8.13 (a) be located more than 200 feet from any water-supply well used for

8.14 human or animal drinking water and be more than 1,000 feet from any public water supply;

8.15 (b) not be on land that is karst;

8.16 (c) not be within a wetland, floodplain, or shoreland;

8.17 (d) be no deeper than five feet above the water table;

8.18 (e) be deep enough or sufficiently backfilled to provide final cover of at

8.19 least two feet of soil, with the top foot capable of sustaining vegetative growth; and

8.20 (f) have the final cover contoured and sloped consistent with the planned

8.21 ultimate use of the burial location, to divert surface water drainage around and away from

8.22 the burial location and to prevent erosion, with a minimum two percent and maximum 20

8.23 percent slope;

9.1 B. burned, except in an energy recovery facility that is issued an air quality permit
9.2 by the commissioner to burn:

9.3 (1) industrial solid waste that is explicitly identified in the permit to be or to
9.4 include waste treated seed;

9.5 (2) mixed municipal solid waste; or

9.6 (3) refused-derived fuel prepared from mixed municipal solid waste;

9.7 C. composted;

9.8 D. used, donated, sold, or offered for human food;

9.9 E. used, donated, sold, or offered for animal feed, such as feed for livestock,
9.10 poultry, or wildlife; or

9.11 F. used, donated, sold, or offered for oil processing or for fuel or fuel production,
9.12 except as allowed in item B.

9.13 Subp. 5. **Preemption.** Unless explicitly superseded by controlling federal law,
9.14 instructions on treated seed container labels relating to disposition or disposal of waste
9.15 treated seed or disposition or disposal of treated seed containers do not preempt the
9.16 requirements of this part.

9.17 Subp. 6. **Regulatory jurisdiction.**

9.18 A. The agency has jurisdiction to implement and enforce this part, chapter 7035,
9.19 and chapter 7045.

9.20 B. The Department of Agriculture has jurisdiction to implement and enforce
9.21 chapter 1505 and Minnesota Statutes, chapters 18B and 21, including requirements for
9.22 registration and use of pesticides used to treat seeds and labeling of treated seed containers.

C. Local units of government that have entered into delegation agreements with the Department of Agriculture under parts 1505.4000 to 1505.4130 have jurisdiction to enforce requirements of the Department of Agriculture that are specified in their respective delegation agreements.

D. Local units of government have jurisdiction to regulate management of industrial solid waste and mixed municipal solid waste as specified in their respective solid waste ordinances, as provided in Minnesota Statutes, chapters 115A, 400, and 473. Local regulation must be consistent with this part but may further restrict location or manner of waste treated seed burial.

7045.0020 DEFINITIONS.

[For text of subparts 1 to 58b, see Minnesota Rules]

Subp. 58c. **Monitoring well.** "Monitoring well" means an excavation of any depth that otherwise meets the definition given "environmental well" in Minnesota Statutes, section 103I.005, subdivision 8a.

[For text of subparts 59 to 82, see Minnesota Rules]

Subp. 83. **Shoreland.** "Shoreland" has the meaning given in Minnesota Statutes, section 103F.205, subdivision 4, and rules adopted pursuant to that section part 6120.2500, subpart 15.

[For text of subparts 84 to 88, see Minnesota Rules]

Subp. 88a. **Surface water or surface waters.** "Surface water" or "surface waters" has the meaning given "surface waters" in part 7050.0130, subpart 6.

[For text of subparts 89 to 96a, see Minnesota Rules]

Subp. 96b. **Treated seed.** "Treated seed" has the meaning given in part 7035.0300, subpart 111e.

11.1 [For text of subparts 97 to 102c, see Minnesota Rules]

11.2 Subp. 102d. **Waste treated seed.** "Waste treated seed" has the meaning given in part
11.3 7035.0300, subpart 116a.

11.4 [For text of subparts 103 to 105, see Minnesota Rules]

11.5 Subp. 105a. **Water-supply well.** "Water-supply well" has the meaning given in part
11.6 4725.0100, subpart 50a.

11.7 [For text of subparts 106 to 109, see Minnesota Rules]

11.8 **7045.0120 EXEMPTIONS AND SPECIAL REQUIREMENTS.**

11.9 [For text of subpart 1, see Minnesota Rules]

11.10 Subp. 2. **Special requirements.** The following waste is exempt from the general
11.11 requirements of this chapter if managed as specified:

11.12 [For text of items A to E, see Minnesota Rules]

11.13 F. universal waste managed under part 7045.1400; ~~and~~

11.14 G. hazardous waste containing radioactive waste when it meets the eligibility
11.15 criteria and conditions of Code of Federal Regulations, title 40, part 266, subpart N,
11.16 Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation
11.17 and Disposal, as amended. This exemption also pertains to:

11.18 (1) any mixture of a waste and an eligible radioactive mixed waste; and

11.19 (2) any waste generated from treating, storing, or disposing of an eligible
11.20 radioactive mixed waste.

11.21 Waste exempted under this item must meet the eligibility criteria and specified
11.22 conditions in Code of Federal Regulations, title 40, sections 266.225 and 266.230 (for
11.23 storage and treatment), as amended, and 266.310 and 266.315 (for transportation and

12.1 disposal), as amended. Waste that fails to satisfy these eligibility criteria and conditions is
12.2 regulated as hazardous waste~~;~~ and

12.3 H. waste treated seed and discarded containers that held treated seed, if the waste
12.4 treated seed and containers are managed under chapter 7035, including part 7035.3700.

12.5 **TERM CHANGE.** In Minnesota Rules, chapters 7035 and 7045, the terms "water supply
12.6 well" and "water supply wells" are changed to "water-supply well" and "water-supply wells,"
12.7 respectively.

12.8 **RENUMBERING INSTRUCTION.** In Minnesota Rules, part 7035.0300, the subparts
12.9 listed in column A are renumbered as the subparts listed in column B:

12.10	<u>Column A</u>	<u>Column B</u>
12.11	<u>Subpart 111a</u>	<u>Subpart 111f</u>
12.12	<u>Subpart 111b</u>	<u>Subpart 111g</u>
12.13	<u>Subpart 111c</u>	<u>Subpart 111h</u>
12.14	<u>Subpart 111d</u>	<u>Subpart 111i</u>

12.15 In Minnesota Rules, part 7045.0020, subpart 102c, is renumbered as subpart 102e.



STATEMENT OF NEED AND REASONABLENESS
In the Matter of Proposed Revisions of Minnesota
Rule Chapters 7035 and 7045; Revisor ID No. 04806

Resource Management Assistance Division and
Industrial Division

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <http://www.pca.state.mn.us/news/data/index.cfm?PN=1>.
2. View older rule records at: <https://www.revisor.mn.gov/rules/status/>
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Daniel Gonzalez, Rulemaking Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-582-8594; 1-800-657-3864; email daniel.gonzalez@state.mn.us; or use your preferred telecommunications relay service.
4. How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), Subi. (A).
5. How to read a sample Minnesota Rules citation: Minn. R. §, 7150.0205, Subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, Subi. (3), unit (b), subunit (i).

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Acronyms, abbreviations, and concepts

CFR – Code of Federal Regulations

EPA – United States Environmental Protection Agency

MDA – Minnesota Department of Agriculture

Minn. R. – Minnesota Rules

Minn. Stat. – Minnesota Statutes

MMB – Minnesota Management and Budget

MN – Minnesota

MPCA or Agency – Minnesota Pollution Control Agency

OSHA – U.S. Occupational Safety & Health Administration

PSEE – Pesticide Safety & Environmental Education Program

RCRA – Resource Conservation and Recovery Act of 1976

Revisor – Office of the Revisor of Statutes

§ – Section

SONAR – Statement of Need and Reasonableness

UofM Extension – University of Minnesota Extension

Introduction and overview

A. Introduction

The Minnesota Pollution Control Agency (MPCA or Agency) is proposing small, noncontroversial 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 seed in MPCA fact sheet #w-hw4-51, first published in April 2022, and revised in December 2023; available on the MPCA's website at <https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>. See S-1.

This rulemaking is mandated by [Laws of Minnesota 2023, chapter 60, article 3, section 28](#).

The proposed amendments make minor changes to Minnesota Rules Chapters 7035 and 7045. The MPCA notified the stakeholders of the proposed changes and used their feedback in the drafting of the proposed rule.

B. Statement of general need

The MPCA refers to the proposed amendments in this Statement of Need and Reasonableness (SONAR) as mandated. The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

For this rulemaking, the MPCA has conducted all the requirements of the state Administrative Procedures Act, plus provided additional notification and opportunities for public review as described in section 2 of the SONAR. The MPCA has established the need for and reasonableness of the proposed amendments and does not expect that they will result in any requests for hearing or obstacle to approval by the Minnesota Office of Administrative Hearings.

C. Scope of the proposed amendments:

Two chapters of Minnesota rules are being affected by the proposed changes.

- 1) Chapter 7035 establishes the requirements applicable to the management of solid waste.
- 2) Chapter 7045 establishes the requirements applicable to the management of hazardous waste.

In each of these chapters, the MPCA is proposing changes prompted by mandate of the Legislature and by the need to integrate those changes into already-existing requirements.

1. Background

The amendments proposed in this rulemaking are prompted by a legislative mandate. Laws of Minnesota 2023, chapter 60, article 3, section 28, requires that the MPCA adopt rules providing for the safe and lawful disposal of waste treated seed. The rules must also clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed.

2. Public participation and stakeholder involvement

The MPCA has provided the required notifications to the public and the entities identified in statute.

On August 28, 2023, the MPCA published a Request for Comments (RFC) on planned rule amendments

to Minnesota Rules Chapter 7035. After determining that greater flexibility was needed in the structuring of possible amendments, the MPCA published a second RFC on December 26, 2023. Comments received in response to both RFCs were considered in the development of the proposed rule.

The notices were placed on the MPCA's Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments> and the Waste Treated Seed rule webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seed>.

At the time the amendments are proposed, the notifications required under Minn. Stat. ch. 14 will be provided. The MPCA intends to publish a Dual Notice in the State Register and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice.

The proposed revisions will affect a narrow range of stakeholders. The following lists the chapters affected by the proposed amendments:

- 1) Chapter 7035 establishes the requirements applicable to the management of solid waste.
- 2) Chapter 7045 establishes the requirements applicable to the management of hazardous waste.

The MPCA conducted the following activities to notify potentially interested parties of the rule project:

- 1) The MPCA first posted information about its intent to undertake rulemaking for the Waste Treated Seed Rule in its July 2023 rulemaking docket.
- 2) Thereafter, the MPCA maintained information regarding the proposed rule project on its rulemaking docket, published as MPCA publication #mm-rule1-00, available at <https://www.pca.state.mn.us/sites/default/files/mm-rule1-00.pdf>. The Agency maintains the docket on a monthly basis and it is available online.
- 3) On July 13, 2023, the MPCA sent an electronic notification to subscribers of the New Rules GovDelivery list, encouraging them to subscribe to the Waste Treated Seeds Rules list to receive notification.
- 4) The MPCA established a rule specific Waste Treated Seeds webpage. The new webpage was referenced in the electronic notification to subscribers of the New Rules GovDelivery list.
- 5) The MPCA sent electronic notice to the list of tribal contacts who have indicated an interest in rulemaking for the August 28, 2023, and December 26, 2023, Requests for Comments. The electronic notices were also sent to self-subscribers of the GovDelivery list established for this rulemaking. Comments received in response to both RFCs are available on the agency's rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>
- 6) As mandated by the session law, the Agency worked in consultation with the University of Minnesota (UMN) Extension and the Minnesota Department of Agriculture (MDA) in the development of this rule. To that end, the agency solicited and received the following assistance:
 - a) UMN: The UMN conducted outreach to approximately 6,138 subscribers to its Pesticide Safety and Environmental Education (PSEE) program, which includes commercial, non commercial, private, and structural pesticide applicators, and other professionals.
 - September 29, 2023: UMN emailed PSEE subscribers informing them that the August 28, 2023, RFC was open for comment through October 27, 2023. A link to the OAH eComments webpage along with instructions was included. The Agency's estimated notice of rule draft release was projected as 12/31/24.

- October 24, 2023: UMN sent an additional email to PSEE subscribers informing them that the August 28, 2023, RFC was open for comment through October 27, 2023. A link to the OAH eComments webpage along with instructions was included. The Agency's estimated notice of rule draft release was projected as 12/31/24.

b) MDA –

- On November 8, 2023, MDA provided the MPCA with email and contact lists for seed treatment applicators, companies and agricultural groups. MPCA sent an email informing 17 MDA contacts that MPCA was working in consultation with MDA and UMN on legislatively mandated rulemaking and provided a link to rule webpage, which contains a self-subscribe link within the webpage.
- On November 9, 2023, MPCA sent additional emails informing MDA contacts of MPCA working in consultation with MDA and UofM Extension on legislatively mandated rulemaking with a link to the rule webpage. An invitation to self-subscribe to receive future notices on the rulemaking was included in 4 separate emails with recipient totals of 1,170, 170, 501, and 500 respectively, with assumptions of overlapping contacts.
- On November 27, 2023, MDA included the notice in their Pesticide and Fertilizer Update Newsletter GovDelivery bulletin which has 2,728 recipients.
- An email notice for an upcoming second RFC was sent by the MPCA to 6 email lists from MDA with a total of 2,431 recipients. The message references the mandate directing rulemaking, a link to where comments submitted to the first RFC are posted, and link to rule webpage. A link to self-subscribe to receive future rule-related notices is also included. There were an additional 13 notices sent in print form.

The MPCA established a self-subscribing rule specific mailing list (https://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_524); and the Agency used the list to disseminate rule related information to interested and affected parties.

3. Statutory authority

The MPCA has the statutory authority listed below to propose changes.

Table 1. Statutory Authorities

Chapter – Title	Statutory authorities (Minn. Stat. §)
7035 – Solid Waste	116.07, subd. 2(b); 116.07, subd. 4(b);
7045 – Hazardous Waste	116.07, subd. 2(d); 116.07, subd. 4(g)
Waste Treated Seed – Prohibited disposal methods	115A.06, subd. 2
Waste Treated Seed	Laws of Minnesota 2023, ch. 60, art. 3, sec. 28

Chapter 7035

In addition to the general authority granted to the MPCA to alter rules for the conduct of the agency, there is specific authority to adopt rules for the management of Solid Waste, including classifying solid wastes and requirements for facilities at which those solid wastes are disposed. Specific statutory authority for the MPCA to adopt rules for the management of solid waste is found in Minn. Stat. § 116.07, subd. 2(b) and the amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

In addition to the section 116.07, subdivision 2, authority for adoption of solid waste standards, the MPCA also has additional statutory authority to adopt, amend, and rescind rules for the collection, transportation, storage, processing, and disposal of solid waste Minn. Stat. § 116.07, subd. 4(b), and the amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 4. Rules and standards.

(b) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 18C.215.

Chapter 7045

The statutory authority for the MPCA to adopt rules for the management of hazardous waste, including identifying which wastes are subject to or exempt from hazardous waste standards, is found in Minn. Stat. § 116.07, subd. 2(d). The amendments to Chapter 7045 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

In addition to the section 116.07, subdivision 2, authority for adoption of hazardous waste standards, the MPCA also has additional statutory authority to adopt, amend, and rescind rules for the management and identification of hazardous waste Minn. Stat. § 116.07, subd. 4(g), and the amendments to Chapter 7045 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 4. Rules and standards.

(g) Pursuant to chapter 14, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the Pollution Control Agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

Waste Treated Seed – Prohibited disposal methods

The statutory authority for the MPCA to adopt rules for prohibited disposal methods for waste treated seed is found in Minn. Stat. § 115A.06, subd.2.

Minn. Stat. § 115A.06 POWERS OF POLLUTION CONTROL AGENCY.

Subd. 2. Rules.

Unless otherwise provided, the commissioner shall promulgate rules in accordance with chapter 14 to govern the agency's activities and implement this chapter.

The statutory authority for the MPCA to adopt rules to implement provisions of chapter 115A, including the new waste treated seed prohibited disposal methods found in Minn. Stat. § 115A.993, is found in Minn. Stat. § 115A.06, subd. 2. The amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Waste Treated Seed

The statutory authority and mandate for the MPCA to adopt rules for waste treated seed is found in Laws of Minnesota 2023, ch. 60, art. 3, sec. 28.

Laws of Minnesota 2023, ch. 60, art. 3, sec. 28

Sec. 28 TREATED SEED WASTE DISPOSAL RULEMAKING.

The commissioner of the Pollution Control Agency, in consultation with the commissioner of agriculture and the University of Minnesota, must adopt rules under Minnesota Statutes, chapter 14, providing 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. Additional Department of Agriculture staff will not be hired until rulemaking is completed.

The statutory authority and mandate for the MPCA to adopt rules to provide for the safe and lawful disposal of waste treated seed is found in Laws of Minnesota 2023, ch. 60, art. 3, sec. 28. The amendments to Minn. R. chs. 7035 and 7045 are being promulgated under that authority and the other authorities listed here.

4. Reasonableness of the amendments

A. General reasonableness

The proposed amendments are generally reasonable for the reasons discussed in this section.

1.) Analysis of present requirements

In response to reports of environmental contamination in the state of Nebraska caused by mismanagement of waste treated seed and of resultant actions by the United States Environmental Protection Agency (EPA), the Nebraska Department of Environment and Energy (NDEE) and the Nebraska Department of Agriculture (NDA) in 2021 and 2022, the MPCA carefully reviewed the existing Minnesota Statute and Rule requirements that would apply to waste treated seed and assessed awareness among the potentially regulated community and regulators of those requirements. The MPCA determined that it would be helpful to treated seed manufacturers, dealers, end users, waste management providers, land disposal facility operators, and state and local government agencies alike to clarify and raise awareness of those existing requirements for waste treated seed. Therefore, after consulting with the MDA, the MPCA compiled and published an educational document, referred to by the MPCA as a “fact sheet,” summarizing the existing Minnesota requirements for management of waste treated seed. The MPCA originally published fact sheet #w-hw4-51, Treated Seeds, in March, 2022. This fact sheet was posted on and accessible through the MPCA’s publicly available website, and was provided to the MDA for distribution to treated seed manufacturers, dealers, and end users due to MDA’s connection with those stakeholders. The MPCA republished this fact sheet again in April, 2022, after making minor formatting and content revisions.

Following the passage of Laws of Minnesota 2023, chapter 60, which contained both the mandate for this rulemaking as well as several specific new requirements and restrictions for waste treated seed, the MPCA once again carefully reviewed the now-existing Minnesota Statute and Rule requirements that

would apply to waste treated seed. To raise awareness of these new requirements enacted by the Legislature as well as the previously existing requirements, the MPCA revised and republished MPCA fact sheet #w-hw4-51, Treated Seed, in December, 2023. The MPCA again provided the fact sheet to the MDA and also to the UMN for distribution to businesses and farmers handling treated seed.

1.) Comments to August 28, 2023, RFC

The MPCA received three comments in response to the August 28, 2023, RFC. In reviewing the comments, the MPCA noted that a hyperlink to the then-presently posted version of MPCA fact sheet #w-hw4-51, which was April 2022, was included in the RFC. The MPCA assumes that comments that did not specify the date of a fact sheet are referring to the April 2022 fact sheet instead of the December, 2023 fact sheet.

One comment, from associations for agricultural seed and crop protection products manufacturers, expressed support for rules effectively restating the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; April 2022.

Another comment, from multiple crop growers associations and farm groups, incorrectly referred to the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; April, 2022, as 'recommended management practices' rather than as the explanation of actual requirements, however stated that all the crop growers associations and farm groups represented by the commenter supported the waste treated seed management practices published by the MPCA in the fact sheet and encouraged members of the associations and groups to implement them. However, the commenter stated that the represented associations and group did not support rulemaking by the MPCA, believing it unnecessary. This comment also provided citations and reference to several EPA regulations and how the commenter believed they applied to treated seed and waste treated seed. The MPCA discusses these regulations and their applicability and inapplicability to waste treated seed in the Specific Reasonableness justifications for Chapter 7035.3700, subpart 4, item D; and subpart 5. In addition to this rulemaking, the MPCA took this comment into consideration during the revision of explanatory text in MPCA fact sheet #w-hw4-51; December, 2023.

The final comment, from two conservation groups, urged the MPCA to use this rulemaking to require waste treated seed to be regulated as hazardous waste, or at a minimum to require landfills that received waste treated seed to require leachate management standards. The groups also proposed requiring extended producer responsibility (EPR), also known as "product stewardship," where treated seed manufacturers would be required to receive unwanted waste treated seed from downstream handlers and properly manage it. Additionally, the commenters encouraged the MPCA to require state reporting of treated seed product sales by sellers and of treated seed use and waste treated seed disposal by end users. The groups requested the MPCA prohibit planting of treated seed for wildlife forage. The groups also expressed support for the restrictions on use of waste treated seed for ethanol production and disposal by burial summarized in MPCA fact sheet #w-hw4-51; April, 2022, though the groups mischaracterized the restriction language as a flat prohibition. Finally, the groups requested the MPCA clarify the existing allowance for on-farm disposal of solid wastes from farming operations and how it applies to waste treated seed.

The MPCA considered these comments in drafting the proposed rules. The MPCA considered that two of the commenters expressed support for the reasonability of all the summarized existing requirements in MPCA fact sheet #w-hw4-51; April, 2022, and the third commenter expressed support for one provision described in that fact sheet. The MPCA therefore concluded that the existing management requirements for waste treated seed as of August, 2023, as summarized in MPCA fact sheet #w-hw4-51; April, 2022, were supported by most commenters to the first RFC as necessary and reasonable, and at least one

requirement was supported by all the commenters. Two of the commenters supported rulemaking to promulgate the requirements in one clear rule, while the third commenter opposed rulemaking as unnecessary, even though the commenter supported the underlying requirements that the rulemaking would codify.

The comments collectively also affirmed the MPCA's prior belief in the need and reasonableness in this rulemaking of clarification of the interaction of the EPA's Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulations and MDA pesticide and MPCA solid waste and hazardous waste Statutes and Rules.

In reviewing the comments, the MPCA also recognized the limits of the specific authority of the instant rulemaking and existing MPCA statutory authority. Specifically, the MPCA affirmed that it is required to perform rulemaking by express legislative mandate, and the MPCA may not decline to adopt rules providing for the safe and lawful disposal of waste treated seed as one of the commenters suggested.

The MPCA also considered the comment recommending a requirement that all waste treated seed be regulated as hazardous waste. The MPCA determined that in order to encompass the concentrations and types of the various seed treatment products found in waste treated seed, and to regulate them consistently with similar contaminants with similar potential environmental effect, the MPCA would have to drastically enlarge the scope of regulated hazardous wastes in Minnesota. This would subject extremely large volumes of commercially-generated wastes to hazardous waste regulation, such as many industrial byproducts and commercial chemical packaging. The MPCA determined that such an expansion of the scope and stringency of the existing Hazardous Waste Rules would exponentially increase the volume of regulated hazardous waste generated in the state, with commensurate steep increase of the regulatory burden on Minnesota businesses. This approach would require additional rules outside the scope of the specific rulemaking mandate adopted by the Legislature in Laws of Minnesota, ch. 60, art. 3, sec. 28. While the MPCA has, and in this rulemaking also relies on, additional existing and continuing rulemaking authority beyond that specific authority, the MPCA determined that such authority is for amendment and modification of existing Minnesota Rules. The information provided by the commenter supported a showing of some indeterminate level of risk from exposure to certain wastes. However, it did not show that management of waste treated seed as proposed in this rulemaking, and that has for the most part already been regulated under disparate existing requirements, has resulted or would result in the high risk that would drive such a major regulatory shift.

Also determined to be beyond the authorized scope of this rulemaking were suggestions that the MPCA mandate reporting of treated seed product sales and use or limit areas where treated seed products may be planted. Except where explicitly authorized by the Legislature, the MPCA's authority in this sector is limited to regulation of products that will not be used for their intended purpose; which are then wastes. As the intended purpose of treated seed products is planting to grow live plants, the MPCA does not currently understand its authority to extend to reporting of sales or use of treated seed or where treated seed may be planted for desired growth. Therefore, these requests also are understood to be outside the authorized scope of this rulemaking.

In sum, the MPCA believes the comments received to the first RFC generally support the need and reasonableness of the MPCA's rules as proposed.

1) Comments to December 26, 2023 RFC

The MPCA received 11 comments in response to the December 26, 2023, RFC. Similar to the first RFC, the MPCA notes that a hyperlink to the then-presently posted version of MPCA fact sheet #w-hw4-51, which was the revised December 2023, version, was included in the RFC. The MPCA will therefore

assume that all references in these comments to the MPCA's fact sheet are to this December 2023, version, unless otherwise specified in a comment.

Of the 11 comments received, seven of the commenters explicitly supported rulemaking by the MPCA for management of waste treated seed, and an additional commenter stated its support for one of the seven comments' organization and its respective stance, but did not directly support the rulemaking itself. Of the remaining three comments, two comments did not state an explicit support for MPCA rulemaking, but did request the MPCA to implement specific requirements for waste treated seed, which the MPCA interprets to be an inferred support of MPCA rulemaking for management of waste treated seed. The final comment requested codification of a specific requirement less stringent than the existing Rule and statutory requirements as summarized in MPCA fact sheet #w-sw4-51; December 2023. As the only method for the MPCA to make this change would be rulemaking, the MPCA also considers this comment as supportive of MPCA rulemaking for management of waste treated seed. Therefore, the MPCA believes the comments received to the second RFC generally support the need for MPCA rulemaking.

One commenter, who had previously submitted a comment to the first RFC, reiterated their prior comment that expressed strong support for rules effectively restating the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; however it was unclear to which version of the fact sheet this second comment referred. The commenter additionally discouraged any designation of waste treated seed as hazardous waste, however apparently incorrectly believed that hazardous waste definitions and determinations are bound solely by federal statutes and regulations. Though the MPCA is not in this rulemaking categorically designating waste treated seed as hazardous waste, and indeed is making no change to the definitions of hazardous waste in Minnesota that would increase its potential to be characterized as hazardous waste, the MPCA believes it important to clarify that hazardous wastes in Minnesota are defined and regulated under Minnesota Rules promulgated under the authority of Minnesota Statutes, and are not dependent on the federal definition of hazardous waste. Indeed, the federal law underlying the federal hazardous waste regulations, RCRA, explicitly allows states to implement hazardous waste regulatory programs that are both broader in scope and more stringent than the minimum federal regulations. Thus, it would not be "inconsistent with federal law," as asserted, for the MPCA to designate specific wastes as regulated hazardous waste under Minnesota-specific definitions, if the MPCA determines that to do so would best meet the intent of the Minnesota statutes requiring the MPCA to adopt standards for the identification and management of hazardous waste.

Conversely, two commenters requested that the MPCA categorically designate waste treated seed as hazardous waste, which a third commenter supported. The MPCA reviewed the substance of this request in the review of comments to the August 28, 2023, RFC, in 2) above.

Three comments explicitly stated support for a complete ban on use of waste treated seed for ethanol products, and two further requested application of a parallel ban on use of waste treated seed for any food, feed, or oil use.

As previously discussed in review of the comments to the August 28, 2023, RFC, the MPCA again recognized the limits of the specific authority of this rulemaking and existing MPCA statutory authority. Again, determined to be beyond the authorized scope of this rulemaking were three requests that the MPCA mandate reporting of treated seed product sales and use or limit areas where treated seed products may be planted, for the same reasons discussed in 2) above. Similarly, three comments asked the MPCA to impose extended producer responsibility (EPR), also commonly known as “product stewardship” requirements, on treated seed manufacturers or dealers to fund or directly collect and manage waste treated seed. The MPCA determined that these requested measures are beyond the narrow-authorized scope of this rulemaking.

Existing law also controls the allowance for on-farm disposal of solid waste to which two commenters objected. Waste treated seed would likely be considered “solid waste generated from the [...] farming operation” and must be allowed to be disposed on the farm site under Minnesota statutory law that the MPCA may not ignore.

One comment urged the MPCA to designate waste treated seed as a “restricted material”; however that designation is an action under California state law that is inapplicable in Minnesota and therefore cannot be considered by the MPCA in this rulemaking. This commenter also recommended that the legal definition of pesticides in Minnesota be expanded to include treated seed products, however that is the sole province of the Legislature and therefore also cannot be considered by the MPCA in this rulemaking.

One commenter effectively requested that the MPCA either designate waste treated seed as a minimally-regulated “biomass” suitable for incineration in facilities that currently burn trees, brush, and uncontaminated plant wastes like cornstalks, oat hulls, and grain byproducts, or alternatively allow such facilities to incinerate industrial solid wastes without the stringent waste composition and air emissions monitoring normally required of facilities that burn industrial solid wastes. The commenter incorrectly claimed that the MPCA had already authorized one such biomass-burning facility to incinerate waste treated seed. Any waste that is burned produces both airborne emissions, including vaporized constituents of the waste that is being burned as well as new chemicals created by combustion reactions, as well as residual ash that includes both unburned constituents of the waste as well as other new chemicals created by the combustion reactions. “Biomass”-type wastes, such as timber, brush, and uncontaminated plant wastes, when burned produce airborne emissions and ash that are well understood and present environmental risks relatively lower than incineration of other wastes such as industrial solid wastes and mixed municipal solid wastes. A wood “campfire” is a familiar example of biomass burning. Another familiar example are “corn stoves” which burn clean, harvested field corn. The permits issued by the MPCA for commercial burning of biomass address the resulting emissions and ash with simple testing, monitoring, and management requirements that are environmentally protective, but commensurate to the minimal risks presented by the biomass burning. Conversely, facilities that incinerate industrial solid wastes, such as waste treated seed, and mixed municipal solid waste, such as waste treated seed packaging, must obtain permits from the MPCA that mandate substantially more stringent testing, monitoring, and management requirements that also cover a much broader range of potential emissions to ensure sufficient environmental protection and protection of the public.

Waste treated seed, by definition, has been treated with, and contains, concentrated toxic pesticides and other chemicals. Waste treated seed is thus very different from “clean” wood, plants, and uncontaminated plant wastes, such as oat hulls. The MPCA does not believe it appropriate for the reasons discussed to consider waste treated seed to be a “biomass” that could be burned in a wide variety of facilities with relatively low oversight. Nor does the MPCA believe it protective of Minnesota’s

environment to allow permitted biomass burning facilities to accept industrial solid wastes that contain toxic pesticides such as waste treated seed. Therefore, the MPCA declined to implement this commenter's request. The MPCA determined that the biomass-burning facility referenced in the comment had not been authorized to burn waste treated seed. Separate from this rulemaking, the MPCA will ensure that the facility correctly understands its authorized biomass fuels and the complete process for authorization of new biomass fuels.

Finally, several commenters declared that it was important for the rules promulgated under this rulemaking be strong, rigorous, and protective, and that the MPCA be afforded the authority to implement and enforce those rules. Another commenter expressed concern that action by the MPCA not be unnecessary or impose additional burdens on farmers already subject to market forces. The MPCA's intent in this rulemaking is to ensure equitable, reasonable, and environmentally protective rules that can be fairly and consistently applied to best serve the citizens of Minnesota.

Balancing the comments received to the second RFC, the MPCA believes that as a whole they generally support the need and reasonableness of the MPCA's rules as proposed.

B. Specific Reasonableness

MPCA will discuss the specific reasonableness of each change below for Chapters 7035 (Solid Waste) and 7045 (Hazardous Waste).

1) Part 7035.0300

Justification for Minn. R. 7035.0300, Subp. 1

A reference to the new proposed part 7035.3700 is added. Because the new proposed part is outside the existing range of applicability of the solid waste definitions in part 7035.0300, this addition is necessary to preclude the otherwise necessary duplication of definition of all the relevant terms in the new part itself. This addition is needed and reasonable for this reason.

Justification for Minn. R. 7035.0300, Subp. 3a

A new definition of "agricultural products" is added to this chapter. This definition is necessary to support the new definition of "farming" in Subpart 37a of this Part. This definition is a reasonable meaning for this term as it includes all products commonly understood to be produced through farming, such as livestock, poultry, grains, and vegetables and fruit, but excludes products commonly considered outside the meaning of farming, such as lumbering and animal boarding with no pasture. [See Minn. Stat. 273.13, Subd. 23, Para. (i)]

Justification for Minn. R. 7035.0300, Subp. 17

The definition of "community water supply" is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988 and cross-referenced the MDH definition of this term. However, in 1991, MDH repealed this definition and replaced it at another location with an adoption of federal definitions at 40 CFR 141. Following, MDH promulgated a new term in 2008, "community water system" that took the place of the former term "community water supply" and extended and revised the original term definition, but placed it in Chapter 4725, a related chapter to the original Chapter 4720. Though the term "community water supply" is not referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking, the closely related term "public water supply" is, and shares a parallel need for correcting and updating from parallel MDH cross-references. Because the two terms are so closely related, and both currently have non-functional cross-references to parallel MDH definitions, it is reasonable to correct and update this term for MPCA's purposes in this chapter. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However,

because the term “community water supply” is used multiple times in this chapter, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 78; 15 SR 1842; and 33 SR 211]

Justification for Minn. R. 7035.0300, Subp. 37a

A new definition of “farming” is added to this chapter. This definition is necessary to correctly identify persons who own or operate land used for farming, who may be exempted from the prohibitions on burial of waste treated seed proposed in the new part 7037.3700, Subp. 4, Item A, Subi. (3). Minn. Stat. § 17.135, (a), conditionally exempts persons who own or operate land used for farming from state agency permitting of burial of solid waste generated from the person’s household or farming operation.

The MPCA believes that the definition of “farming” found in Minn. Stat. § 500.24, Subd. 2, (a), is instructive to this necessary definition. At the time of passage of Minn. Stat. § 17.135 in 1989, the definition contained in Minn. Stat. § 500.24, Subd. 2, (a), first established in 1973, was the only existing statutory definition for the term “farming.” That definition has twice been revised by the legislature, most recently in 1997, demonstrating the utility and currency of the MPCA’s reliance. The definition follows the generally understood meaning of the term “farming” as relating to plants grown in the soil for food and animal use, and animals raised on the soil or in water for food use. Similarly, the Merriam-Webster Dictionary defines “farming” as “...the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products; and the cultivation of aquatic organisms especially for food...”, and the American Heritage Dictionary defines “farming” as “...to cultivate or produce a crop on...”

The proposed definition defines “farming” as the production of agricultural products. A proposed definition of agricultural products is included in new subpart 3a of this same part. Though Minn. Stat. § 500.24 also then adds other included categories, the MPCA believes that these areas are already sufficiently addressed in the proposed definition of agricultural products, and are not necessary to differentiate in this rulemaking.

The proposed definition excludes the processing, refining, packaging, or transportation of agricultural products. This exclusion, mirrored in Minn. Stat. § 500.24, is reasonable as these activities are not unique to farming or the location where farming occurs, and often are performed in locations not associated with farming, such as processing plants in industrial areas. These excluded activities have more in common with manufacturing techniques and practices than with the common meaning of farming.

The proposed definition also excludes the provision of spraying or harvesting services. This exclusion, also mirrored in Minn. Stat. 500.24, is reasonable as these activities are often performed by persons not related to the farming operation and are a supportive service rather than the primary farming activity, similar to provision of other services supportive of farming, such as ditch excavation and maintenance, surveying, soil analysis, and farming equipment maintenance. People performing these services, while vitally supporting farming operations, would not commonly be understood to be farming themselves. [See 1989 Session Law, Ch. 131, Sec. 2; 1973 Session Law, Ch. 427, Sec. 1]

Justification for Minn. R. 7035.0300, Subp. 66

The definition of “monitoring well” is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988 and cross-referenced the MDH definition of this term. The MDH relocated its definition of this term in 1990, and then again in 1993. Finally, in 2008, the MDH repealed its own rule definition of this term and replaced it with a cross-

reference to a statutory definition at Minn. Stat. § 1031.005, Subd. 14, which was itself then repealed by the Legislature in 2017 and replaced with a new term, “environmental well,” which took the place of the former term “monitoring well” but also limited the scope of the new term to excavations of more than 15 feet in depth. Because the MPCA is aware of monitoring wells less than 15 feet in depth currently in operation at solid waste facilities regulated by the MPCA and believes consistent regulation of all monitoring wells irrespective of depth is appropriate. The MPCA adopts the meaning of this new statutory term, but modifies the meaning of “environmental well” to apply to excavations of any depth, not just those greater than 15 feet.

Though the term “monitoring well” is not referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking, the related term “public water supply” is, and shares a parallel need for correcting and updating from parallel MDH cross-references. Because the two terms are related, and both currently have non-functional cross-references to parallel MDH definitions, it is reasonable to correct and update this term for MPCA’s purposes in this chapter. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However, because the term “monitoring well” is used multiple times in this chapter and in parallel in Chapter 7045, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 78; 17 SR 2773; 33 SR 211; and 2017 Session Law, 1st Special, Ch. 6, Art. 10, Secs. 3 & 148]

Justification for Minn. R. 7035.0300, Subp. 86

The definition of “public water supply” is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988, and cross-referenced the MDH definition of this term. However, in 1991, MDH repealed this definition and replaced it at another location with an adoption of federal definitions at 40 CFR 141. Following, in 1993, the MDH redefined the term in Chapter 4725. Finally, MDH promulgated a new term in 2008, “public water system” that took the place of the former term “public water supply.” The term “public water supply” is referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However, because the term “public water supply” is used multiple times in this chapter, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 1842; and 33 SR 211]

Justification for Minn. R. 7035.0300, Subp. 98a

A new definition of “shoreland” is added to this chapter. This term is used three times in this chapter, but is not directly defined within Chapter 7035. Minn. R. 7035.2555, Subp. 2, Item A, references Minn. Rules Chapter 6120, where the term is defined at Minn. R. 6120.2500, Subp. 15. Minn. R. 7035.0300, Subp. 99a, references Minn. R. 7035.2555 and therefore also references Chapter 6120. Minn. R. 7035.2825, Subp. 2, does not reference Chapter 6120 by the text of the rule, however the use of the term in the context in this part, as well as the context when it is discussed in the relevant Statement of Need and Reasonableness for Minn. R. 7035.2825, clearly indicate that the intended meaning is the same.

Explicitly defining “shoreland” to have the meaning in Minn. R. 6120.2500, Subp. 15, will not change the intended meaning of the two existing uses of the term in this chapter already associated with Chapter 6120. However, defining this term will bring certainty to the remaining use, already reasonably read in

context and by intent to have the same meaning. The use of the term shoreland in the proposed Minn. R. 7035.3700, Subp. 4 is similar to the other instances of the term in Chapter 7035. Explicitly defining this term will result in clearer direction to waste treated seed handlers and promote consistency within the Chapter. Therefore, it is reasonable and necessary to adopt this definition. [See SONAR 13 SR 1150, February 23, 1988; Minn. Stat. § 103F.205; and Minn. R. 6120.2500]

Justification for Minn. R. 7035.0300, Subp. 105a

The MPCA revises the definition of “source-separated organic material” to exclude waste treated seed. The function of this definition is to identify organic wastes that are suitable for management by composting. The intended use of compost is to replenish, enrich, or add nutrients or beneficial characteristics to soil to support plant growth, usually agricultural or horticultural plantings. During the composting process, components of the composted materials that do not or will not readily biodegrade will be either concentrated into the finished compost or will be released into the environment. The majority of seed treatments borne by waste treated seed are pesticides, fungicides, or herbicides; substances intentionally designed to harm animal or plant life. When concentrated and applied in compost, or released during the composting process, all of these substances present a risk of endangering humans, food, livestock, fish, or wildlife. Such a result is contradictory to the Legislature’s explicit prohibition in Laws of Minnesota 2023, Ch. 60, Art. 9, Sec. 2, which prohibits use, handling, or disposition of waste treated seed in a manner that “...endangers humans, food, livestock, fish, or wildlife; or will cause unreasonable adverse effects on the environment....” It is therefore reasonable to exclude waste treated seed from the definition of source-separated organic materials suitable for management by composting.

Justification for Minn. R. 7035.0300, Subp. 108a

A new definition for “surface water” and “surface waters” is added to this chapter. These terms are currently used 110 times within the text and headings of this chapter, and are referenced by the Legislature in the mandate for the new provisions affecting waste treated seed proposed in this rulemaking, but have not previously been explicitly defined. Examined in context, each of these uses is consistent with the MPCA’s own general definition found in chapter 7050. Reliance by the MPCA on this general definition is consistent across many MPCA regulatory programs. Explicitly defining “surface water” and “surface waters” to have the meaning in part 7050.0130, subpart 6, will not change the intended meaning any existing use of the terms in this chapter, but will improve clarity and provide certainty of the intended meaning to these uses as well as to the newly proposed use. Therefore, it is reasonable and necessary to adopt this definition.

Justification for Minn. R. 7035.0300, Subp. 111e

The MPCA adds a definition of “treated seed” to this chapter. It is necessary to add this term to enable accurate reference to wastes potentially related to waste treated seed, such as packaging from treated seed, and to treated seed used for appropriate use and therefore not becoming waste treated seed.

The proposed definition is parallel to the definition of “waste treated seed” established by the Legislature in Laws of Minnesota 2023, ch. 60, Art. 3, Sec. 7, at Minn. Stat. § 115A.03, Subd. 37a, in that both definitions refer to seed that is treated, as defined in Minn. Stat. § 21.81, Subd. 28. It is reasonable for the MPCA to utilize the same definition root as the Legislature for the same purpose.

Justification for Minn. R. 7035.0300, Subp. 116a

A definition of “waste treated seed” is added. This definition is critical to the intended functioning of this entire rulemaking. Addition of this definition is therefore necessary and reasonable. The proposed definition is divided into three sentences, each supporting the final intended and functional meaning.

The first sentence of this definition adopts by reference the definition established by the Legislature in Laws of Minnesota 2023, ch. 60, Art. 3, Sec. 7.

The second sentence clarifies the scope of treated seed that is waste treated seed. The intended purpose of seed is to grow a live plant. Treated seed container label planting directions are, among other purposes, reasonably intended to maximize the seed's potential to grow properly. That is the reason that considerable time, effort, and expense is invested in developing, obtaining approval for, marketing, and applying treatments to seeds. Treated seed that is not planted for the purpose of growing live plants is not being used for its intended purpose, and is effectively discarded and a waste under the scope of materials intended by the Legislature to require regulation under this mandated rulemaking.

The third sentence clarifies that it is the intended purpose of planting that controls determination whether treated seed is a waste treated seed. Seed planted with all appropriate intention may still not germinate or grow properly for many reasons, thus the eventual growth or lack of growth of viable plants from seed does not automatically render treated seed from which live plants do not grow to be waste treated seed. Relatedly, placement of seeds in the ground is not necessarily planting, if not performed with a reasonable intent that live plants will grow or are likely to grow. Treated seed container label planting directions are, among other purposes, reasonably intended to maximize the seed's potential to grow properly. If the treated seed label directions for appropriate planting are not followed for such factors as temperature, depth, moisture, and other agronomic factors, the seed is reasonably not being planted as intended. Such placement would effectively be burial and thus disposal, rendering treated seed not planted for the purpose of growing live plants or not in accordance with the label directions as waste treated seed.

Additionally, Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, requires that treated seed label directions regarding disposal prohibitions be complied with. It is reasonable that this label compliance expectation apply to planting directions on the label as well.

Justification for Minn. R. 7035.0300, Subp. 117a

A new definition of "water-supply well" is added. This term is used two times in Chapter 7035 currently, and is used in the new provisions affecting waste treated seed proposed in this rulemaking, but has not previously been explicitly defined. Currently this term is found in Minn. R. 7035.2815, Subp. 3, Item E, (5); and Subp. 10, Item B, Subi. (3); and is proposed in Minn. R. 7035.3700, Subp. 4, Item A, Subi. (3), (a). Examined in context, each of these uses is consistent with the MDH's definition of this term in Chapters 4725, already referenced previously by other closely related definitions in this rulemaking for the same reasons. Explicitly defining "water-supply well" to have the meaning in Minn. R. 4725.0100, Subp. 50a, will not change the intended meaning of the two existing uses of the term in this Chapters, but will improve clarity, consistency, and understanding of the intended meaning to these uses as well as to the newly proposed use. Therefore, it is reasonable and necessary to adopt this definition.

2) Minn. R. 7035.2525

Justification for Minn. R. 7035.2525, Subp. 2, Items A & L

Two parallel new provisions prohibiting composting of waste treated seed at backyard compost sites and small compost sites are added. This prohibition applies the Legislature's directive in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, to these sites.

Composting facilities in Minnesota are regulated under Minn. R. 7035.2525 as one of five categories: backyard compost sites, small compost sites, solid waste compost facilities, source-separated organic material compost facilities, and yard waste compost facilities. In reverse order, waste treated seed does not meet the definition of yard waste under Minn. R. 7035.0300, Subp. 121, and is therefore

categorically ineligible for management in yard waste compost facilities. No change is needed to apply the Legislature's directive to such facilities. The proposed change already discussed to the definition of source-separated organic material in Minn. R. 7035.0300, Subp. 105a, to exclude waste treated seed from this definition will result in a similar categorical ineligibility for management of waste treated seed in source-separated organic material compost facilities. Solid waste compost facilities are directly addressed following in the revision to Minn. R. 7035.2836, Item M, which explicitly prohibits composting of waste treated seed. Rather than restate the prohibition multiple times effectively verbatim, it is more efficient to reference this clear, explicit prohibition from the remaining two types of compost sites in Minnesota. While the statutory prohibition would still apply in the absence of any rule statement, adding clear statements to the rule will enhance knowledge of the ban and increase understanding. It is necessary and reasonable to add clear statements that waste treated seed may not be composted at these sites.

3) Minn. R. 7035.2535

Justification for Minn. R. 7035.2535, Subp. 5, Item B; and Item B, Subis. (12), (13), and (14)

A reference to the new proposed Minn. R. 7035.3700 is added to ensure that industrial solid waste management facility operators are aware of its existence and requirements when preparing their industrial waste management plans if they will receive waste treated seed. Therefore, it is reasonable to add this reference.

Subi. (12) is altered grammatically to reflect the newly added Subi. (13), and existing Subi. (13) is renumbered to (14) to similarly reflect the addition. No change to the text or intended meanings of these subitems is made. It is reasonable and necessary to alter and renumber these subitems to maintain the structure of this rule.

4) Minn. R. 7035.2815

Justification for Minn. R. 7035.2815, Subp. 6, Item A

A new requirement to place immediate cover on waste treated seed is added to the mixed municipal solid waste land disposal facility standards. Currently, the standards for mixed municipal solid waste land disposal facilities only require weekly cover to the working face. A critical risk for waste treated seed is exposure to wildlife by foraging, such as at a land disposal facility. When planted for crops on land used for farming, treated seed is either drilled deep into the soil, or is immediately covered as an integral Minn. R. of the planting action. However, placement on the necessarily exposed working face of a land disposal facility would subject waste treated seed to foraging by wildlife commonly present at such facilities in Minnesota, including birds and deer. Immediate protection by covering is necessary and reasonable to minimize this risk as much as possible.

Justification for Minn. R. 7035.2815, Subp. 11, Item F, (1)

This subitem is numbered to improve readability in consequence of the addition of the text in proposed Subi. (2). No change to the text or intended meanings of this subitem is made. It is reasonable and necessary to number this subitem to add structure and maintain the readability of this Minn. R. .

Justification for Minn. R. 7035.2815, Subp. 11, Item F, (2)

A clarified requirement for mixed municipal solid waste land disposal facilities accepting waste treated seed is added to require the operator to determine the maximum volume of waste treated seed the facility can accept daily to ensure the capacity of the facility's decomposition gas management system is not exceeded. The MPCA considers that this requirement is already an inherent element of the body of Item F, but may be overlooked if the reader is not careful. Waste treated seed is also a nearly-entirely organic waste subject to substantial decomposition in many land disposal facility conditions. This decomposition may release more flammable gasses than many mixed municipal solid wastes. This

clarified expectation has been communicated to land disposal facility operators in published MPCA guidance documents for over two years with no objection by land disposal facility operators or observed burden to land disposal facility operations. It is reasonable to clearly and explicitly specify this requirement.

Justification for Minn. R. 7035.2815, Subp. 13, Item A

A new requirement for mixed municipal solid waste land disposal facilities accepting waste treated seed is added to require the operator to spread the waste treated seed to maintain working face slope stability and minimize localized settlement. These facilities already have a maximum spread depth of two feet on the working face under existing Item A. However, this depth may be too deep for the specific characteristics of waste treated seed, depending on all the facility and working face characteristics, such as slope, underlying waste composition, and cover material.

Waste treated seed is a relatively small, granular, round-shaped waste that in large quantities presents a significantly higher risk of slope slump and movement after deposition than most solid wastes. In addition, waste treated seed is also a nearly-entirely organic waste subject to substantial decomposition in many land disposal facility conditions. This decomposition will release flammable gasses, addressed elsewhere in this rulemaking, as well as result in substantial reduction in size and mass of the deposited waste. Significant reductions in waste volume after deposition and covering may result in localized settlement, hindering facility operations and posing safety risks for operators and vehicles traversing the area. One of the most effective methods to manage these risks is to limit the depth of deposition and compaction of the waste treated seed.

This clarified expectation has been communicated to land disposal facility operators in published MPCA guidance documents for over two years with no objection by land disposal facility operators or observed burden to land disposal facility operations. It is reasonable to codify this clarification. [See MPCA fact sheet #w-hw4-51, versions April 2022 & December 2023]

5) Minn. R. 7035.2836

Justification for Minn. R. 7035.2836, Subp. 5; and Subp. 5, Item M

A new provision prohibiting composting of waste treated seed at solid waste compost facilities is added. This prohibition applies the Legislature's directive in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, to these facilities.

Composting facilities in Minnesota are regulated under this Minn. R. as one of five categories: backyard compost sites, small compost sites, solid waste compost facilities, source-separated organic material compost facilities, and yard waste compost facilities. In reverse order, waste treated seed does not meet the definition of yard waste under Minn. R. 7035.0300, Subp. 121, and is therefore categorically ineligible for management in yard waste compost facilities. No change is needed to apply the Legislature's directive to such facilities. The proposed change already discussed to the definition of source-separated organic material in Minn. R. 7035.0300, Subp. 105a, to exclude waste treated seed from this definition will result in a similar categorical ineligibility for management of waste treated seed in source-separated organic material compost facilities. Small compost sites and backyard compost sites are subject to the Legislature's ban and are addressed above in the changes to Minn. R. 7035.2525, Subp. 2. Therefore, only this new provision in Minn. R. 7035.2836, Item M, is needed to complete application of the Legislature's mandate.

In addition to the need to apply the Legislature's clearly stated intent, it is necessary and reasonable to prohibit waste treated seed from being composted in Minnesota. The intended use of compost is to replenish, enrich, or add nutrients or beneficial characteristics to soil to support plant growth, usually agricultural or horticultural plantings. During the composting process, components of the composted

materials that do not or will not readily biodegrade will be either concentrated into the finished compost or will be released into the environment. The majority of seed treatments borne by waste treated seed are pesticides, fungicides, or herbicides; substances intentionally designed to harm animal or plant life. When concentrated and applied in compost, or released during the composting process, all of these substances present a significant risk of endangering humans, food, livestock, fish, or wildlife. Such a result is also contradictory to the Legislature's explicit prohibition in Laws of Minnesota 2023, Ch. 60, Art. 9, Sec. 2, which prohibits use, handling, or disposition of waste treated seed in a manner that "...endangers humans, food, livestock, fish, or wildlife; or will cause unreasonable adverse effects on the environment...". It is therefore reasonable to render waste treated seed ineligible for management by composting.

6) Minn. R. 7035.3700

Justification for Minn. R. 7035.3700, Subp. 1

The scope of the applicability of the new waste treated seed provisions are stated. It is necessary and reasonable to ensure that it is clear that the requirements and prohibitions apply to any person in Minnesota managing or otherwise disposing of waste treated seed. The general collection and transportation provisions of Minn. R. 7035.0800 already apply to all persons that own or occupy any premises in the state, which would include any location where waste treated seed is accumulated.

However, based on the MPCA's observations and the relative prevalence of treated seed in the agricultural sector and relative rarity in the household planting sector, the MPCA does expect that the majority of persons directly affected will be manufacturers, dealers, retailers, agricultural cooperatives, and farmers. All of these groups are already familiar with identifying treated seed and taking safety precautions when handling it. Additionally, the MPCA, the Minnesota Department of Agriculture (MDA), and the University of Minnesota (UMN) have implemented outreach and education efforts over the last two years to make these groups aware of the need and specific requirements for waste treated seed management. Therefore, the MPCA does not expect the scope of applicability of these provisions to be unforeseen nor controversial.

Justification for Minn. R. 7035.3700, Subp. 2

The regulated status of waste treated seed under Chapter 7035 and Chapter 7045 as an industrial solid waste is declared. Wastes in Minnesota that are not exempt from hazardous waste regulation under Minn. R. 7045.0120 must, under Minn. R. 7045.0214, Subp. 1, either be assumed to be a hazardous waste or be evaluated and determined to not meet the criteria for hazardous waste under Minn. R. 7045.0214, Subp. 2.

Wastes that are either exempt from hazardous waste regulation under Minn. R. 7045.0120, or that have been evaluated and determined to be non-hazardous under Minn. R. 7045.0214, then revert to regulation as solid waste under Chapter 7035.

Waste treated seed, if generated by manufacturers, dealers, retailers, agricultural cooperatives, or similar commercial enterprises or government entities, would not be exempt from hazardous waste regulation under the existing Minn. R. 7045.0120. However, the MPCA evaluated many example types of waste treated seed and determined that waste treated seed would likely not meet any of the definitions of listed wastes under Minn. R. 7045.0135, as referenced by Minn. R. 7045.0214, Subp. 2, Item A, when managed as proposed in this rulemaking. Similarly, the MPCA also found that waste treated seed managed as an industrial solid waste under the proposed provisions of this rulemaking would likely not meet any of the definitions of characteristic waste under Minn. R. 7045.0131, as referenced by Minn. R. 7045.0214, Subp. 2, Item B.

Waste treated seed is not a liquid nor compressed gas, so is categorically not Ignitable hazardous waste under Minn. R. 7045.0131, Subp. 2, Items A or C. Waste treated seed managed as an industrial solid waste would also not be likely expected, under standard temperature and pressure, of causing fire through friction, absorption of moisture, or spontaneous chemical changes, nor, when ignited, would it likely burn so vigorously and persistently that it creates a hazard. The treatments applied to treated seed, such as pesticides, fungicides, and herbicides, do not substantively alter the predominant combustion traits of corn, which burns similarly to other dense vegetative materials such as wood. Waste treated seed managed as an industrial solid waste would therefore likely not be an Ignitable hazardous waste under Minn. R. 7045.0131, Subp. 2, Item B.

Though some of the treatments applied to treated seed and thus found in waste treated seed may include chemical components that are oxidizers, such as oxides, organic and inorganic peroxides, permanganates, perhenates, chlorates, perchlorates, persulfates, nitric acid, organic and inorganic nitrates, iodates, periodates, bromates, perselenates, perbromates, chromates, dichromates, ozone, or perborates, the relative concentration of these components in ratio to the mass of each individual seed would render the waste treated seed when managed as an industrial solid waste to likely not be an oxidizer as defined in Code of Federal Regulations, title 49, section 173.127, as amended, nor would the waste treated seed likely readily supply oxygen to a reaction in the absence of air. Waste treated seed managed as an industrial solid waste would therefore likely not be an Oxidizer hazardous waste under Minn. R. 7045.0131, Subp. 3.

Waste treated seed is not aqueous nor a liquid. Therefore, waste treated seed managed as an industrial solid waste is categorically not a Corrosive hazardous waste under Minn. R. 7045.0131, Subp. 4.

Waste treated seed managed as an industrial solid waste not normally be expected to be unstable nor readily undergo violent change without detonating; react violently with water; or form potentially explosive mixtures or generate toxic gases, vapors, or fumes when mixed with water. Though some of the treatments applied to treated seed may contain cyanide or sulfides, in parallel to as found for the Oxidizer Characteristic, the relative concentration of such potential treatment components in ratio to the mass of each treated seed would likely not result in waste treated seed managed as an industrial solid waste generating toxic gases, vapors, or fumes nor being capable of detonation or explosive reaction. Waste treated seed is not a forbidden explosive as defined in Code of Federal Regulations, title 49, section 173.54, as amended, a Division 1.1 or 1.2 explosive as defined in Code of Federal Regulations, title 49, section 173.50, as amended, or a Division 1.2 or 1.3 explosive as defined in Code of Federal Regulations, title 49, section 173.50, as amended. However, waste treated seed managed by grinding or processing for industrial purposes could be capable of detonation or explosive reaction if strong initiating source or if heated under confinement. These management methods would not be allowed under industrial solid waste management plans reviewed and approved by the Agency. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a Reactive hazardous waste under Minn. R. 7045.0131, Subp. 5.

Though some of the treatments applied to treated seed and thus found in waste treated seed may independently display toxicological properties sufficient to render those treatments in original form as Lethal hazardous wastes, the relative concentration of such potential treatment components if not additionally concentrated by management methods proposed to be prohibited for waste treated seed as industrial solid waste, such as by composting or uncontrolled burning or use as feedstock, in ratio to the mass of each treated seed, would likely render the waste treated seed consistently non-Lethal by over two orders of magnitude for even the most poisonous modern treatment chemical. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a Lethal hazardous waste under Minn. R. 7045.0131, Subp. 6.

Historically, some heavy metals that could render a waste a Toxicity Characteristic hazardous waste, including arsenic, lead, and mercury, were used as pesticide components, potentially in some seed treatments. All potential seed treatment uses of arsenic were phased out nationally by 2013, mercury uses by 1993, and lead uses by 1988, though the MPCA believes that actual uses in pesticides and fungicides used for seed treatment of these particular heavy metals actually ceased earlier in almost all cases. While other Toxicity Characteristic heavy metals, including barium, cadmium, chromium, and silver, remain allowed components of some pesticides registered with the EPA, none of those pesticides are allowed for use in seed treatment. Selenium is a differential case, as this heavy metal also is a plant nutrient and potential antagonist of natural arsenic and other heavy metal exposure as well as being its own bioaccumulative toxin. However, the threshold concentration of selenium producing agricultural harm, and therefore the highest reasonably expected potential concentration found in waste treated seed managed as an industrial solid waste, would render the waste treated seed consistently non-Toxic by over an order of magnitude. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a D004, D005, D006, D007, D008, D009, D010, or D011 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Several historic pesticides, some of which could have been potentially used in seed treatments, could, if present, render a waste a Toxicity Characteristic hazardous waste. Use of 2,4,5-TP (Silvex) was banned by the EPA in 1983; 2,4,5-trichlorophenol in 1985; chlordane in 1988; toxaphene in 1990; methoxychlor in 2004; lindane in 2006; and hexachlorobutadiene in 2021. The use of pentachlorophenol was restricted from agriculture in 1987, and heptachlor in 1988. According to the U.S. Centers for Disease Control and Prevention's (CDC) Agency for Toxic Substances and Disease Prevention (ATSDR), endrin has not been sold in the United States since 1986, and 2,4,6-trichlorophenol since no later than 1989. Since treated seed has a relatively short usable life, limited to one to two years of viability, the MPCA reasonably expects that waste treated seed generated presently in Minnesota would not likely contain any of these pesticides. Finally, several pesticides, though still in active use in the United States, do not appear to be currently registered with the EPA for use as seed treatments or as ingredients in seed treatments, and therefore would be prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from this use, including m-cresol; 2,4-D; 1,4-dichlorobenzene; hexachloroethane; nitrobenzene, and pyridine. Therefore, waste treated seed would not reasonably be a D020, D024, D016, D027, D012, D031, D032, D033, D034, D013, D014, D036, D037, D038, D015, D041, D042, or D017 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subp.s 7 and 8.

Some solvents, including chlorobenzene, still in active use in the United States in pesticide formulations are, as part of the seed treatment process, intended to help carry the pesticide active ingredient and then evaporate during the treatment and finishing process to leave a solid or granular treatment coat on the seeds. Under expected treated seed manufacturing and storage conditions, the physical character and intended use of these solvents, as well as reduction by oxidation and evaporation upon exposure to air and decomposition upon exposure to light, results in significant reduction of the solvent content to residual level similar to evaporation of aqueous solutions. The residual of such solvent would reasonably be expected to render the waste treated seed non-Toxic by at least several orders of magnitude. Therefore, waste treated seed, when managed as an industrial solid waste as proposed in this rulemaking, would not reasonably be a D021 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Several industrial chemicals and solvents have historically not been used, would not reasonably have an expected use, nor have been approved for use in seed treatments, including benzene; carbon tetrachloride; chloroform; o-cresol; p-cresol; 1,2-dichloroethane; 1,1-dichloroethylene; 2,4-dinitrotoluene; methyl ethyl ketone; tetrachloroethylene; trichloroethylene; and vinyl chloride.

Therefore, waste treated seed would not likely be a D018, D019, D022, D023, D025, D026, D028, D029, D030, D035, D039, D040, or D043 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

In conclusion, though the treatments applied to waste treated seed do still present risk to human health and the environment when the waste treated seed is disposed, necessitating the reasonable requirements proposed in this rulemaking, waste treated seed managed properly as an industrial solid waste as proposed in this rulemaking would not likely be a regulated hazardous waste in Minnesota.

Under Chapter 7045, it is the generator of a waste that has a non-delegable responsibility for properly and sufficiently evaluating its waste. Historically, the MPCA does not remove the duty upon generators for performing an evaluation. In this limited case of waste treated seed, the MPCA has decided that it is appropriate to exempt waste treated seed from the requirements of Chapter 7045 if it is managed according to standards proposed in this rulemaking. In reaching this conclusion, the MPCA has considered that:

- The regulated groups that would otherwise be required to evaluate waste treated seed, including farmers and seed dealers and retailers, are relatively unfamiliar with the Hazardous Waste Program, both generally and regarding the specific requirements of evaluation;
- Since no alteration of treated seed between manufacture as product and generation as waste treated seed is expected, and the universe of treated seed is limited in allowed treatments and concentrations by the existing FIFRA regulations administered by the EPA and parallel pesticide regulations administered by the MDA, the MPCA reasonably expects that the evaluations it performed under the expected allowed disposal methods are likely representative of waste treated seed as a category;
- As a consequence of this consistency, waste evaluations otherwise performed by each individual waste treated seed generator who is compliant with the proposed requirements in this rulemaking to manage the waste treated seed as an industrial solid waste would be duplicative and would not increase environmental or human health protection in Minnesota.

In sum, the MPCA concluded that requiring compliance with the evaluation requirements by each individual waste treated seed generator that is compliant with the proposed disposal requirements in this Minn. R. would be unnecessarily burdensome and inappropriate. Therefore, the proposed directed status of waste treated seed as industrial waste without individual evaluation by each generator, explicitly conditioned on managed of the waste treated seed as proposed in this rulemaking, is necessary and reasonable.

Waste treated seed does meet the existing definition of an industrial solid waste under Minn. R. 7035.0300, Subp. 45, as *“...solid waste generated from an industrial or manufacturing process and solid waste generated from nonmanufacturing activities such as service and commercial establishments...”* Distributing, retailing, warehousing, and farming are nonmanufacturing activities. Waste treated seed also does not meet any of the exclusions from industrial solid waste as *“...office materials, restaurant and food preparation waste, discarded machinery, demolition debris, municipal solid waste combustor ash, or household refuse...”*.

However, the MPCA cannot determine that waste treated seed that were to be improperly managed, such as if buried, burned, or composted through methods other than those proposed to be allowed under this rulemaking and that have been studied by the MPCA, would consistently and reliably not meet any of the hazardous waste characteristics. Therefore, the proposed exclusion from Chapter 7045 is limited only to waste treated seed and containers that held treated seed that are managed in compliance with this proposed rulemaking. Waste treated seed not managed in compliance with the

provisions proposed in this rulemaking would remain fully subject to evaluation under Chapter 7045 and management according to the results thereof, or management as a hazardous waste if not so evaluated.

In contrast to the waste treated seed itself, waste containers from treated seed, such as plastic or coated paper bags, buckets, or totes are more varied than the treated seed itself and are instead similar to other mixed municipal solid waste. The proportion of treatment constituents from the treated seed that are the sources of primary environmental and human health risk concern is also reasonably expected to be significantly lower as residual in containers than on the treated seed itself. Such containers are expected to present similar environmental and human health risks as other similar mixed municipal solid wastes and do not present the decomposition, settling, gas generation, or wildlife foraging risks of waste treated seed, so the waste-specific management required for industrial solid waste would be unnecessarily burdensome.

Therefore, it is necessary and reasonable to declare that waste treated seed managed under the provisions proposed in this rulemaking is industrial solid waste and that waste containers that held treated seed are mixed municipal solid waste.

Justification for Minn. R. 7035.3700, Subp. 3, Items A to C

Cross-references to each of the applicable new statutory provisions enacted by Laws of Minnesota 2023, chapter 60, are made. These cross-references do not themselves create any new requirements or burden, but effectively serve as a pointer to each of the specific provisions. These cross-references will improve accessibility and knowledge of the new provisions and reduce confusion for the reader. It is reasonable to improve readability and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A

This Item clarifies the already-existing limitations and conditions for disposal of waste treated seed. Under existing rules and statutes, such disposal would only be allowed at mixed municipal solid waste land disposal facilities, at industrial solid waste disposal facilities, and, for certain generators, on land used for farming. Restating and clarifying these existing limitations and conditions will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, Subi. (1)

The MPCA has already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. This subitem restates and clarifies the already existing requirement that industrial solid waste, in the form of waste treated seed, may only be disposed of at a mixed municipal solid waste land disposal facility, in compliance with the Minn. R. 7035.2815. It is reasonable to improve clarity and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, Subi. (2)

The MPCA has already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. In addition to disposal of industrial solid waste at mixed municipal land disposal facilities, which is already allowed, the MPCA considers that disposal with equivalent environmental protection requirements may be feasible at other land disposal facilities in the state. For instance, some industrial solid waste land disposal facilities and some demolition debris land disposal facilities are already equipped with liners and leachate management systems equivalent to those required for mixed municipal land disposal facilities. One of the primary concerns regarding waste treated seed disposal at land disposal facilities is potential leaching and migration of concentrated pesticides from the waste treated seed into soil and groundwater under the facility. Liners and leachate management systems are the primary protective measures to mitigate this risk. Facilities that are equipped with liners and leachate management systems and that demonstrate to the Agency that they

can safely manage waste treated seed would, for the purposes of waste treated seed management, then be effectively equivalent to a mixed municipal solid waste land disposal facility already allowed to accept waste treated seed, as long as they also followed the management and operational standards required for waste treated seed at mixed municipal solid waste land disposal facilities. It is reasonable to not unnecessarily restrict land disposal facilities that can safely management waste treated seed and prevent release of harmful constituents from the waste treated seed into the environment from receiving and properly managing this waste. Clearly allowing such management will continue to protect human health and the environment, while also providing the maximum number and variety of land disposal facilities to receive this waste stream to ensure available and convenient proper disposal is available to waste treated seed generators and haulers. It is reasonable to clearly identify the minimum land disposal facility requirements necessary to accept waste treated seed and to identify the management and operational standards such facilities must meet.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, subItem (3)

The MPCA already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. Previously existing Minn. Stat. § 17.135, (a), conditionally exempts a person who owns or operates land used for farming from being required to obtain a permit from a state agency to bury solid waste generated as a part of that person's farming operation. Absent this exemption, burial of industrial solid waste by any person in Minnesota would require a permit from the MPCA, such as are required for mixed municipal solid waste disposal facilities, industrial solid waste disposal facilities, and composting facilities. Waste treated seed generated by a person who owns or operates land used for farming would reasonably be considered waste generated as a part of that person's farming operation, and eligible for the permit exemption. The exemption is subject to conditions that such burial be performed "on the land used for farming" and "in a nuisance-free, pollution-free, and aesthetic manner". The first condition is restated in the body text of this subitem.

Newly enacted Minnesota Statute § 115A.993 further requires that any burial of waste treated seed not be "*...near a drinking water source or any creek, stream, river, lake, or other surface water...*" The Legislature's clear statement that burial not be "near" these waters reasonably necessitates the MPCA to establish in this rulemaking specific minimum setback distances to these waters from a burial location. Additionally, the MPCA must determine in this rulemaking the applicable meaning of the condition "pollution-free" as it relates to setback distances from and protections for surface water and underground waters, both at the time of burial and foreseeable future. These distances and protections are specified in paragraphs (a) through (f).

The MPCA first considered the appropriate setback distances for water-supply wells. The historical solid waste rules for sites at which industrial solid waste will be buried for disposal did not specify minimum setbacks to water-supply wells, since identification of all potentially-impacted wells is an inherent part of the preliminary planning process for solid waste land disposal facilities. For industrial solid waste land disposal facilities, prior to this rulemaking, this would involve defining the hydrogeology, including use of all water resources, in the potential zone of influence of the proposed facility under Minn. R. 7035.1800. This standard would be prohibitively burdensome for a person operating land used for farming who would be burying only waste treated seed from their farming operation under this proposed subitem.

Considering the normal intended use of treated seed, and the relative expected volume and risks of waste treated seed that may be buried for disposal on land use for farming, the MPCA believes that it is instructive to consider the setbacks established by the MPCA for land treatment of contaminated soils under existing Minn. R. 7037.0900, Item D, of at least 200 feet from a water-supply well. The most likely proximal water-supply well would be the farm's own water-supply well. The risks to the farm's own water-supply well, reasonably expected to be used by the same persons responsible for the burial of

waste treated seed regulated under this provision, are real, but limited in scope. The risks from treatment of contaminated soil, including release of relatively small amounts of contaminants to a water-supply well of relatively limited use, are comparable to burial of the volumes and frequencies of waste treated seed reasonably expected under this provision. Therefore, it is reasonable to apply a similar minimum setback distance from any water-supply well. However, because the definition of this term includes water-supply wells used for other than human or animal drinking water, such as irrigation or heating and cooling, which would not reasonably be affected by potential releases from burial of waste treated seed, and because of the Legislature's explicit restriction on "...burial near a drinking water source...", it is appropriate to clarify that this restriction applies to water-supply wells used for human or animal drinking water.

Similarly, because of the substantially higher risk presented by potential contamination of public water supplies, which serve many people, and which include both wells and surface waters, it is reasonable to require a substantially larger setback distance from public water supplies. Again, the MPCA believes it is instructive to consider the setbacks established by the MPCA for land treatment of contaminated soils under existing Minn. R. 7037.0900, Item D, of at least 1000 feet from a public water-supply well. The risks from treatment of contaminated soil, including release of relatively small amounts of contaminants to a water-supply well of relatively limited use, are again comparable to burial of the volumes and frequencies of waste treated seed reasonably expected under this provision. Because public water supplies include both wells and surface waters, which may be inter-related and feed each other, it is reasonable to apply the setback to all public water supplies, not just those provided from wells. Therefore, it is again reasonable to apply a similar setback distance for burial of waste treated seed from public water supplies.

The MPCA believes that a person owning or operating land used for farming would most often already know, or easily be able to identify, water-supply wells used for drinking water within 200 feet of their intended waste treated seed burial site, particularly since the majority of such water-supply wells would most likely be on the land used for farming itself, and thus within the personal knowledge of the person performing the burial. Similarly, public water supplies, since they serve multiple users, are recorded and if not already known to persons owning or operating land used for farming, may be identified through public agencies including counties and the MDH. Avoiding the need for persons operating land used for farming to prepare complete hydrogeological profiles of the areas potentially impacted by burial for disposal of only their waste treated seed by establishing specific minimum setback distances from water-supply wells and public water supplies is necessary and reasonable.

The MPCA next considered the appropriate setback distances for surface waters also required by the Legislature's explicit restriction on "...burial near...any creek, stream, river, lake, or other surface water...." Surface waters are more easily contaminated and may carry contamination some distance by the free flow afforded surface waters from gravity or wind rather than the restricted flow exhibited by underground waters from hydrological pressure and through various ground media, raising risk. Applying this restriction and risk, adjusted for the reasonably expected risk from the relatively small volumes and frequency of waste treated seed burial likely by persons owning or operating land used for farming, the MPCA believes it is instructive to consider the minimum setback distances historically required for sites at which limited solid wastes were buried for disposal without site-specific review by the MPCA, under Minn. R. 7035.2825, Subp. 2.

Though that allowance for burial of limited solid wastes without MPCA review itself is currently being revised for other reasons, the MPCA believes that the water protection standards it applied remain valid and informative to the MPCA in derivation of geology and landform limitations, water table separation, backfill depth, and final surface contouring of waste treated seed burial sites to be allowed under this limited conditional exemption.

The considered setbacks restrict burial on land that is karst and that is within a wetland, floodplain, or shoreland. The MPCA believes that these setbacks are consistent with both the Legislature's intent and with establishment of reasonable and necessary environmental protection. The MPCA also believes that a person owning or operating land used for farming would most often already be familiar with that land's designation relative to wetlands, floodplains, and shorelands, since these designations may substantially affect the farming operation and when and how the land is used for farming under other state and federal regulations and guidelines, such as crop insurance and wetland protection. Similarly, the land's identification as karst would be expected to substantially affect water management and thus planting and irrigation, essential factors for a person owning or operating land used for farming to consider. Therefore, it is reasonable and necessary to apply these conditions to burial of waste treated seed on land used for farming.

Regarding vertical setback from the water table, the MPCA believes that the majority of persons owning or operating land used for farming are already aware of the depth of their local water table, as that depth can affect planting, drainage, irrigation, and other farming-related factors, and thus such persons would have the knowledge needed to comply with this protective requirement without imposing an unreasonable burden or additional effort. However, this minimum depth, five feet, is large enough that this exception would remain available for most land used for farming in the state. The MPCA believes that this precautionary measure is consistent with and meets the intended purpose of the Legislature that solid waste generated as part of the person's farming operation be buried in a "pollution-free" manner as required by the Legislature, because it will reduce the likelihood of buried waste treated seed from impacting groundwater.

Regarding drainage, appropriate site slope and cover, and forethought given to the intended future use of the site following burial of waste treated seed, the MPCA believes these expectations are reasonable and necessary and consistent with the Legislature's conditions for burial of waste generated as part of a farming operation discussed generally above.

Finally, the body text of Subi. (3) restates the statutory ineligibility of this exception for a farm where scheduled pickup of solid waste is reasonably available, under the final paragraph of Minn. Stat. § 17.135, (a) This exception is limited by the explicit statutory language, and the MPCA has not been extended authority by the Legislature to alter this ineligibility by rule.

Justification for Minn. R. 7035.3700, Subp. 4, Item B

This Item clarifies the already-existing limitations and conditions for burning waste treated seed for disposal or energy recovery. The MPCA already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. Waste burning is considered as taking place either in a burning or combustion unit, or in the open.

Any unit or facility used to burn, otherwise referred to in applicable Minnesota Rules as to combust, solid waste is a waste combustor under Minn. R. 7011.1201, Subp. 46. Waste combustors are classified as Class I through Class IV for recently constructed waste combustors and classes A and C for older waste combustors. Burning waste in Class I through III, and Class A and C waste combustors requires an air quality permit issued by the MPCA or EPA. Functionally, all waste combustors burning waste in Minnesota are energy recovery facilities, also known as Waste-To-Energy (WTE) facilities and are issued

an air quality permit by the EPA or MPCA. The conditional exemption from state agency permitting of burning on the land used for farming of waste generated as part of a person's farming operation in Minn. Stat. § 17.135, (a), does not and cannot exempt any waste combustors from any applicable federal EPA permitting.

Class IV waste combustors, meaning those with a design capacity of less than three million British thermal units (Btu) per hour, are nearly all prohibited in Minnesota under Minn. R. 7011.1220, with exceptions only for hospitals, human or animal crematoria, and metals recovery incinerators. None of these excepted combustors may burn industrial solid waste. These relatively flatly prohibited small Class IV waste combustors are the most likely to be operated without emissions controls or monitoring systems, and produce significantly more toxic emissions per volume of waste burned than the larger waste combustors that are allowed and subject to state or federal permitting in Minnesota.

The conditional exemption from state agency permitting in Minn. Stat. § 17.135, (a) of burning on the land used for farming of waste generated as part of a person's farming operation does not exempt such burning from any other applicable statutory restrictions or prohibitions. Minn. Stat. § 88.171, Subd. 2, prohibits the open burning of "chemically treated materials". Waste treated seeds by definition would be considered a "chemically treated material" subject to this burning prohibition. The new prohibition in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, located in Minn. Stat. § 115A.993, to burning waste treated seed within a home or dwelling adds to these preexisting burning restrictions and conditions, but does not obviate nor limit them.

Together, these existing restrictions, as well as the new restriction, result in waste treated seeds being eligible to be burned for disposal or energy recovery only in an energy recovery facility knowingly issued an air quality permit by the MPCA or EPA to burn mixed municipal solid waste or industrial solid waste explicitly identified as including waste treated seed. These strictly regulated energy recovery facilities are required to take measures to plan for, identify, and control air emissions, including likely toxic emissions. Burning of waste treated seed by such facilities after explicit review and approval by the MPCA would be subject to close oversight and continuing assessment and review of the environmental and human health risks of such burning. Restating and clarifying these existing restrictions will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension of the existing restrictions.

Justification for Minn. R. 7035.3700, Subp. 4, Item C

This Item restates the restrictions from disposal by composting of waste treated seed enacted in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, located in Minn. Stat. § 115A.993; and also implemented in the proposed Minn. R. s 7035.0300, Subp. 105a; and 7035.2836, Subp. 5, Item M. The justification for those Minn. R. s is stated in the justification narratives for each respectively. Restating and clarifying this restriction will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension.

Justification for Minn. R. 7035.3700, Subp. 4, Items D, E, and F

The MPCA lists non-legitimate uses of waste treated seed expected to cause significant harm to human health or the environment, or to cause substantial risk of significant harm to human health or the environment, yet would still be expected to be attempted without these prohibitions. Existing Minn. R. 7035.0800 already requires satisfactory collection and transportation of solid waste, such as waste treated seed, to a facility that is authorized to accept the waste. Because waste treated seed is considered an industrial solid waste, the use, donation, sale, and offers of waste treated seed for human food, animal feed, and oil processing, would already be effectively prohibited. As further discussed below, it is needed and reasonable to expressly prohibit these activities due to the risk to human health and the environment and the reasonably foreseeable risk that waste treated seed generators may

attempt to effectively dispose of waste treated seed through one of these illegitimate uses.

Waste treated seed has already in Minn. R. 7035.3700, Subp. 2, been clarified to be a solid waste regulated by the MPCA. Delineation of proper and improper solid waste management methods is a necessary and critical core responsibility of the MPCA. The Legislature has long directed the MPCA in Minn. Stat. 115A.02, (b), to apply a hierarchy of waste management methods, in order, with the first preferred approach being waste reduction and reuse. Inherent economic motivators also commonly drive waste generators to consider possible reuses of wastes as alternatives to standard waste disposal, if only to avoid otherwise incurred potentially significant disposal costs, even if the possible reuse results in little to no inherent economic benefit. Such waste reuse, when appropriate and safe for human health and the environment, can result in benefits to human health and the environment.

However, these economic pressures to avoid waste disposal costs can also, in the absence of clear guidelines from and oversight by the MPCA, result in reuses that directly or indirectly harm human health and the environment, both immediately and long-term. The MPCA is aware of a history of effectively sham reuses of wastes that have caused harm, ranging from toxic heavy metal-containing paint wastes being sprayed on the underside of automobiles as ostensible “rustproofing,” to toxic fire retardant-bearing kitchen utensils made from recycled electronics casings, to, particularly relevant to this rulemaking, treated wood scraps allegedly sold for firewood.

Therefore, it is reasonable for the MPCA to clearly prohibit reuses of waste treated seed that might otherwise be possible, or even likely in some situations, to prevent harm to human health and the environment. In doing so, the MPCA finds instructive the directives and cautions of other agencies with experience dealing with treated seeds, including the U.S Food & Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the EPA, and the MDA, as well as the reasoning of the Legislature.

In an explanatory discussion in the body of the actual federal regulation relating to treated seed coloration, the FDA at 21 CFR 2.25 describes instances where treated seed has been used for human food and animal feed preparation. While common sense would suggest that such reuse would not be directly contemplated by reasonable handlers of waste treated seed, the highly segregated nature of both the human food and animal feed processing chains in today’s industry may obscure the original producer or the ultimate use from both each other as well as intermediate handlers unless extremely clear communication of what methods can and cannot be used for waste treated seed are made from the outset. While the coloration required for certain treated seed, and generally utilized by the industry for nearly all treated seed, even when not explicitly required, is intended to be a visual warning that the seed is treated, it does not and cannot prohibit use of waste treated seed for those cautioned uses, since the users and thus handlers of any resulting waste treated seed are not regulated by the FDA for this respect; it is the need and responsibility of the MPCA in this rulemaking to directly regulate waste treated seed management as the solid waste it is, including prohibited reuse.

Similarly, USDA federal regulation relating to treated seed labeling at 7 CFR 201.31 requires that any treated seed that could be harmful to humans or other animals be labeled with cautions not to use the treated seed for food, feed, or oil purposes. However, again, these labels are intended to be textual warnings to the user, but do not and cannot prohibit use of waste treated seed for those cautioned uses, since the users and thus handlers of any resulting waste treated seed are not regulated by the USDA for this respect; it is the need and responsibility of the MPCA in this rulemaking to directly regulate waste treated seed management as the solid waste it is, including reasonably foreseeable but illegitimate uses.

The EPA’s federal regulation relating to use of pesticides in accordance with their EPA-approved label instructions required under FIFRA at 40 CFR 170.9, while technically a requirement, was determined by

the EPA in 2022, and confirmed in 2023, at 88 FR 70628, to be “...not generally enforceable under FIFRA...”. It is therefore again the need and responsibility of the MPCA in this rulemaking to directly regulate, waste treated seed management as the solid waste it is, including prohibited reuse.

In the same Session Law that mandated this rulemaking, the Legislature enacted a new MDA restriction on use of seed treated with neonicotinoid pesticides from ethanol feedstock use at Minn. Stat. 21.86, Subd. 2. While this direct restriction is the province of the MDA, not the MPCA, the MPCA has consulted with the MDA. MPCA finds that the potential reuse of waste treated seed for fuel use, including biodiesel produced from waste treated soybeans or other oil-bearing waste treated seed, biomass, or sustainable aviation fuel made from a potential variety of waste treated seed, that involve other toxic pesticides that are not neonicotinoids, raises similar and parallel human health and environmental risks as the already-seen ethanol made from waste treated seed corn that was addressed in the new MDA statute. This infamous example of widespread and severe pollution caused by the AltEn ethanol refinery in Mead, Nebraska’s use of waste treated seed for fuel-production feedstock, was pointed to by the sponsor of the bill that was passed as 2023 Session Law, Ch. 60, as a stark warning. The MPCA finds this warning instructive and believes it is necessary to ensure that this rulemaking in parallel also clearly state the MPCA’s determination that fuel use is not an allowed solid waste management method for waste treated seed.

In promulgating these safeguards, the MPCA clarifies that the exchange of value or actual sale is not controlling, as the same human health risk or environmental damage would come from waste treated seed that is sold for processing into, for instance, wildlife feed, as waste treated seed that is offered free for such use, i.e. donated. Indeed, in cases of sham reuse of solid wastes, it is often the avoided disposal cost that is of far higher value to the offeror than any compensation from a receiver they may expect to obtain. The MPCA’s primary concern is the ultimate prohibited end use of the waste treated seed, not the parameters of the agreement by which the waste treated seed came to be in the possession of a handler intending or attempting to reuse the waste treated seed for the prohibited end use. However, the MPCA’s experience has historically been that some parties may have a mistaken belief that a transaction prohibited to prevent an ultimate harm is exempted or forgiven if no money or other value changes hands during the transaction. Therefore, the MPCA explicitly includes donation as well as sale of waste treated seed for prohibited reuses as a disallowed act, to head off this potential misunderstanding.

In part 7035.3700 Waste Treated Seed, Items D and E uses the undefined terms “food” and “feed.” The term “food” is used extensively and consistently throughout the Minnesota Statutes to mean nutritive material eaten by humans. Similarly, “feed” consistently is used throughout the Minnesota Statutes to mean nutritive material given to animals, including livestock, poultry, domestic pets, and wildlife. The MPCA believes that “food” is common enough that nearly all readers will readily understand its meaning, but “feed” could potentially be misconstrued to mean feed either for only one category of animal, or readers might easily not automatically consider all potential uses of “feed,” and might therefore misinterpret that use of waste treated seed for wildlife, for example, was not banned. It is reasonable to attempt to ensure readers understand the intended application of the ban by including the examples of livestock, poultry, and wildlife.

Finally, the MPCA applies the restrictions addressed in Item B regarding burning waste treated seed for disposal or energy recovery to the concept of using waste treated seed directly for fuel. The restriction in Item B explicitly addressed only the first-person burning of waste treated seed, but would not prohibit sale or other transfer of waste treated seed to another person, even if that person intended to burn it for disposal or energy recovery, effectively as fuel. The MPCA notes that this loophole could result in a person who was aware of and understood the applicable burning prohibitions remaining compliant

while still passing along waste treated seed, possible to an unknowing, innocent Minnesota citizen or business. It is reasonable to ensure that innocent third parties are not exposed to contact with or emissions from burning of waste treated seed.

Justification for Minn. R. 7035.3700, Subp. 5

As discussed in the justification for Subp. 4, Item D, instructions on treated seed container labels are considered effectively only “right to know” and not as enforceable requirements or prohibitions under long-standing USDA and EPA interpretation of existing federal law. Indeed, some treated seed labels even explicitly title the directions as “...Hazard Communication Data...,” a phrase typically used under the U.S. Occupational Safety & Health Administration’s (OSHA) Hazard Communication Standard which has as its paradigm the employee’s “Right To Know” about risks. These interpretations were reaffirmed as recently as October of 2023, and the MPCA does not expect they will change absent changes in federal statute or regulation that explicitly render the directions as mandatory, enforceable requirements. While the EPA is in the very early information-gathering stages of potential future regulatory changes that could affect the enforceability of treated seed label directions, actual regulatory changes are neither ultimately guaranteed nor expected in the next several years.

In addition, these label directions are prepared by pesticide manufacturers from the perspective of protection of agricultural production and the effectiveness of use of their product treated seed. Proposed labels are reviewed and approved by the EPA, but crucially only by the EPA FIFRA program, not by the EPA RCRA program nor delegated state RCRA programs with knowledge and experience in waste risk identification and management. The EPA’s FIFRA program, while knowledgeable and experienced in considerations for pesticide use and application from an agronomic perspective and public exposure risks arising from pesticide use and application, is not knowledgeable nor experienced in waste management practices nor risk identification and management arising from waste management. Even regarding pesticides directly, the EPA FIFRA program does not regulate risk identification and management of pesticide wastes, including waste pesticides themselves, containers, or packaging. Federally, this regulation is the purview of the EPA RCRA program. Further, because the majority of environmental and human health impacts from waste management are relatively local, the RCRA program is substantively delegated to the states, which are considered to have the most knowledge regarding local waste management resources, risks, and best management.

As a result, treated seed label directions have previously, and may in many instances still, include statements that are functionally incomplete or that can easily be misread to potentially conflict with existing Minnesota requirements and restrictions regarding waste management, including those clarified and restated in this rulemaking. Phrases such as: “...incorporate any remaining seed in the soil to prevent feeding by wildlife...”, or “...If treated seed is spilled outdoors or in areas accessible to birds, promptly clean up or bury to prevent ingestion. Dispose of all excess treated seed. ...” with no other direction; or “...Dispose of all excess treated seed by burying seed away from bodies of water....” Again, presented alone, the instructions appear to allow or even direct simple burial for disposal with only vague limits, with no explanation or reference of the existing Minnesota requirements and restrictions that apply to solid wastes, including waste treated seed.

Even when treated seed label directions do contain more guidance or a reference, it may be of little actual help, such as “...Dispose of all excess treated seed. Do not contaminate bodies of water when disposing of excess treated seed or wash waters of planting equipment. Dispose of them in accordance with local requirements....” While this statement is technically correct, it is left to the reader’s imagination what method of disposal might not contaminate water.

Unless the EPA may at some time in the future render compliance with treated seed label directions as compulsory and enforceable, and simultaneously both requires a printed direction that any local

requirements control and a mandate that waste treated seed generators actively determine what those local requirements are, it is critically necessary and reasonable for the MPCA to specify and explicitly clarify those requirements.

Justification for Minn. R. 7035.3700, Subp. 6

As Minn. R. of this rulemaking, the MPCA is explicitly required by the Legislature to, in rule “...clearly identify the regulatory jurisdiction of state agencies and local governments...” with regard to waste treated seed management. It is necessary and reasonable to promulgate rules identifying the regulatory jurisdictions as directed by the Legislature.

Justification for Minn. R. 7035.3700, Subp. 6, Item A

The Legislature authorized the MPCA to adopt rules for the safe and lawful disposal of waste treated seed. While the MPCA was directed to consult with the MDA and the University of Minnesota, an executive agency is considered to be the primary implementation and enforcement agency of the rules it promulgates unless explicitly otherwise specified. Additionally, the MPCA has previously been charged by the Legislature under the statutes cited in section 3 of this SONAR, Statutory Authority, with responsibility for statewide oversight of management of solid waste. As determined under already existing statutes and rules, and as clarified under these proposed rules, waste treated seed is solid waste. Implementing and enforcing the provisions of these proposed rules will not contradict or hinder any other existing rules promulgated by the MPCA nor conflict with any existing statutes. These proposed rules are being placed within Chapter 7035, a chapter of rules which the MPCA has jurisdiction to implement and enforce completely. It is reasonable for the MPCA to affirm its jurisdiction over all of the proposed provisions.

Justification for Minn. R. 7035.3700, Subp. 6, Item B

The MDA has previously been charged by the Legislature under Minnesota Statutes § 18B.03 and 21.85 with responsibility for statewide oversight of registration and use of the pesticides used to treat seed and with the specifications and labeling of treated seed. Treatment of seed with a registered pesticide is considered to be the ultimate intended use of that pesticide; under current USDA and EPA interpretation of federal statutes and regulations related to pesticides, and MDA interpretation of Minnesota statutes and rules related to pesticides, seed treated with a pesticide is considered a treated article, similar to treated wood or treated soil, not itself a pesticide subject to direct EPA or MDA regulation. However, requirements for treated seed labels are considered an extension of the labeling requirements for the pesticides used to treat them. Statutes 18B and 21 provide for MDA regulation of pesticides and pesticide labeling, including treated seed labeling.

Justification for Minn. R. 7035.3700, Subp. 6, Items C and D

Local units of government have two effective fields of regulation regarding waste treated seeds. First, Chapter 1505 allows for partial delegation of certain MDA responsibilities to local units of government who enter into individual delegation agreements with the MDA. The scope of regulation of each local unit of government is negotiated with MDA and then specified in their respective delegation agreement. Second, all local units of government in Minnesota have both regulatory authority over solid waste as it relates to land use and zoning, areas of regulation primarily regulated by local units of government, as well as over solid waste management under ordinances under the authority of statutes 115A, 400, and 473.

7) Minn. R. 7045.0020

Justification for Minn. R. 7035.0300, Subp. 58c

A new definition of “monitoring well” is added to maintain consistency with the corrected term in Chapter 7035 and to improve clarity and certainty in this chapter. The term “monitoring well” is used 33

times in this chapter but has not previously been defined. Altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to maintain the same meaning clarified in Chapter 7035. No change in the meaning of this term in any use in this chapter is intended or expected by this addition. It is reasonable and necessary to maintain consistency where possible between terminology in Chapters 7035 and 7045, to the significant overlap in regulation and waste management between the solid waste and hazardous waste programs. [See proposed Minn. R. 7035.0300, Subp. 66]

Justification for Minn. R. 7045.0020, Subp. 83

The definition of this term is revised to concord with the clear definition added to Chapter 7035 in Minn. R. 7035.0300, Subp. 98a. This term is used once in Chapter 7045, for the same purpose as used in Chapters 7035. The current statutory reference for the definition of this term in Chapter 7045 is the basis for the rule to which the Chapter 7035 uses all currently refer. Because of the close relationship between the solid waste and hazardous waste rules and regulatory programs in Minnesota, the MPCA has observed that comprehension and utility for regulated parties and regulators alike are improved when these Chapters can share identical definitions for like terms. No change to the effective meaning to the single use of this term in this chapter will result from this change, however potential confusion about whether the intended meanings of the term in either of the associated chapters will be removed. Therefore, it is reasonable and necessary to revise the definition of this term in this chapter. [See Minn. R. 7035.0300, Subp. 98a; Minn. Stat. § 103F.205, Subd. 4; Minn. Stat. § 105.485, Subd. 2, renumbered by 1990 Session Law, Ch. 391, Art. 10, Sec. 4]

Justification for Minn. R. 7045.0020, Subp. 88a

A new definition for “surface water” and “surface waters” is added to this chapter. These terms are used 100 times in this Chapter currently, but have not previously been explicitly defined. Examined in context, each of these uses is consistent with the MPCA’s own general definition found in Chapter 7050. Reliance by the MPCA on this general definition is consistent across many MPCA regulatory programs. Explicitly defining “surface water” and “surface waters” to have the meaning in Minn. R. 7050.0130, Subp. 6, will not change the intended meaning any existing use of the terms in this Chapter, but will improve clarity and provide certainty of the intended meaning to these uses as well as to the newly proposed use. In addition, it is reasonable to maintain parity and consistency in terminology and term definitions in the regulation of hazardous waste similarly to the regulation of solid waste wherever possible, due to the close relationship between these programs and overlapping regulation and oversight provided them by the MPCA. A new definition of these terms is proposed for addition to Chapter 7035. Therefore, it is reasonable and necessary to adopt this definition.

Justification for Minn. R. 7045.0020, Subp. 96b

A new cross-reference to the detailed definition of treated seed in Chapter 7035 is added. The Hazardous Waste Rules in Chapter 7045 do not currently include a definition of treated seed. Adding this definition is necessary to clarify the meaning of treated seed in the conditional exemption for waste treated seeds from hazardous waste regulation to be effected in 7045.0120, Subp. 2. It is reasonable to ensure that both Minnesota rule chapters apply the same definition of treated seed to prevent confusion by regulated parties.

Justification for Minn. R. 7045.0020, Subp. 102d

A new cross-reference to the detailed definition of waste treated seed in Chapter 7035 is added. The Hazardous Waste Rules in Chapter 7045 do not currently include a definition of waste treated seed. Adding this definition is necessary to accurately reference this waste stream in the conditional exemption for waste treated seeds from hazardous waste regulation to be effected in 7045.0120, Subp.

2. It is reasonable to ensure that both chapters apply the same definition of waste treated seed to prevent confusion by regulated parties.

Justification for Minn. R. 7035.0300, Subp. 105a

A new definition of “water-supply well” is added to this chapter. This term is used three times in this chapter currently, but has not previously been explicitly defined. Currently this term is found in Minn. R. 7045.0590, Subp. 3; and Subp. 3, Item B. Examined in context, each of these uses is consistent with the MDH’s definition of this term in Chapter 4725, already referenced previously by other closely related definitions in this rulemaking for the same reasons. Explicitly defining “water-supply well” to have the meaning in Minn. R. 4725.0100, Subp. 50a, will not change the intended meaning of the three existing uses of the term in this chapter, but will improve clarity and understanding of the intended meaning to these uses as well as maintain consistency with Chapter 7035. Therefore, it is reasonable and necessary to adopt this definition.

8) Minn. R. 7045.0120

Justification for Minn. R. 7045.0120, Subp. 2, Item F

The conjunction at the end of this Item is removed and relocated to Item G to maintain correct grammar in the list of Items in the addition of new Item H.

Justification for Minn. R. 7045.0120, Subp. 2, Item G

A conjunction is relocated from Item F and added to the end of this Item to maintain correct grammar in the list of Items in the addition of new Item H.

Justification for Minn. R. 7045.0120, Subp. 2, Item H

A conditional exemption for waste treated seeds and discarded containers that held treated seed from the hazardous waste requirements is added for the same reasons discussed under Minn. R. 7035.3700, Subp. 2. It is necessary to add this exemption to this chapter because without it, generators of waste treated seed that did not cross-reference Chapter 7035 would automatically be required to individually evaluate their waste treated seed to determine if it is hazardous waste under this chapter. Though many businesses generate some amounts of both solid waste and hazardous waste, and thus are subject to both the solid waste Chapter 7035 and hazardous waste Chapter 7045, these chapters are most commonly read and applied separately, and the MPCA does not expect most readers considering hazardous waste requirements to by default also study the solid waste requirements nor vice versa. Including this explicit conditional exemption will make it clear to businesses and other readers what the actual regulatory requirements for waste treated seeds are and will help prevent inadvertent regulatory compliance duplication. It is reasonable to reduce confusion and the regulatory study burden on waste treated seed generators.

5. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131, which require state agencies to address a number of questions in the SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the MPCA’s response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The majority of persons affected by this rule will be persons dealing regularly with treated seed,

including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers. Because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions, the MPCA does not expect the proposed rule to significantly increase costs or regulatory burdens. Because this proposed rule is intended to improve clarity and understanding of proper management of waste treated seed across the state, reducing the risk of harm to human health and the environment from mismanagement of waste treated seed, the MPCA expects that all Minnesota citizens will benefit from the proposed rule.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

In general, the MPCA does not anticipate that any of the proposed amendments will have any direct effect on State revenue other than the overall value of maintaining rules that are accurate and up to date and that reflect current requirements. The MPCA also does not anticipate additional costs to the MPCA or other state agencies to implement or enforce the proposed amendments.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Because the proposed rule is intended to primarily bring together and clarify already-existing requirements, the MPCA considers it the least costly method to achieve the purpose mandated by the Legislature. Additionally, because this is an explicitly mandated rulemaking, the MPCA must accept that the Legislature has already considered this question and has determined that rulemaking is most appropriate.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The MPCA reviewed existing requirements and collated, presented, and explained them in MPCA fact sheet #w-hw4-51 in April of 2022. The Legislature enacted the mandate for this rulemaking in May of 2023. The MPCA has therefore concluded that the Agency's originally implemented alternative method for achieving the purpose of the proposed rule was considered insufficient by the Legislature. Because the Legislature has mandated this rulemaking, the Agency must reject additional alternative methods.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The majority of persons affected by this rule will be persons dealing regularly with treated seed, including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers. Because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions, the MPCA does not expect the proposed rule to significantly increase costs.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The Legislature has mandated this rulemaking. The cost or consequences of not adopting the proposed rule would thus be at the discretion of the Legislature to achieve its intended purpose. Regardless, the costs of not adopting the proposed rule would not be expected to significantly change because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions. Not adopting the rule would result in failing to comply with the legislature's mandate.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

While the EPA has recently requested comment from the public on potential future changes in federal regulation of treated seed, including possible management of waste treated seed, at the time of this rulemaking there are currently no enforceable federal regulations directly applicable to management of waste treated seed, as stated by the EPA in 2023. The MPCA is aware of federal regulations of the EPA and U.S. Department of Agriculture that regulate some aspects of treated seed handling, including manufacture and proper intended use, however these standards do not directly regulate disposal of waste treated seed.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as *“the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”*

The proposed amendments for the most part bring together and clarify existing state rule and statutory requirements. Therefore, the proposed amendments are not expected to have significant cumulative effect.

6. Environmental Justice

MPCA publication #p-gen5-05, May, 2022, available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf>, describes the MPCA’s vision, strategies, and implementation for integrating environmental justice principles into the Agency’s work.

The MPCA operates under a policy for environmental justice that closely mirrors the EPA policy. The MPCA’s policy states:

The Minnesota Pollution Control Agency expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.

When undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development. This review of the impacts and meaningful involvement are provided in this SONAR, though these analyses are not required under the Administrative Procedures Act (Minn. Stat. ch. 14).

A. Equity Analysis

To implement the “fair treatment” aspect of the EJ Framework policy, the MPCA would generally complete an equity analysis considering and documenting how the proposed rule may affect low-income populations and communities of color. The MPCA does not expect the proposed rules to have any negative environmental consequences; as stated previously, the intent of the rules is to compile and clarify already-existing regulatory requirements.

B. Meaningful Involvement

In order to meet the directive to strive for “meaningful involvement,” the MPCA works to seek out and facilitate the involvement of those potentially affected by the proposed rule, particularly those populations that have historically not been as engaged in the public process. Because the proposed revisions compile and clarify already-existing regulatory requirements, the MPCA does not expect the proposed rules to have any negative environmental consequences. The proposed rules will apply statewide, with no particular effect on any community over another. Thus, no additional outreach is necessary.

As described in Section 2 of the SONAR, Public participation and stakeholder involvement, there has been stakeholder involvement during the development of the proposed rules. While there was no specific plan developed to reach out to low-income populations and communities of color, we believe our stakeholder outreach has ensured that most affected communities are aware of the rule. Additionally, during the formal public comment period, all interested and affected parties may submit comments on the proposed rulemaking.

7. Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The MPCA utilizes a self-subscription service for interested and affected to register to receive rule related notices. Request for US Mail service is available. Rule projects are listed on the Agency’s Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription list for that specific rule is established and an electronic notice is sent to individuals who have self-subscribed to receive notice for all rulemakings. The Agency also purchases the League of Minnesota Cities’ email address list to reach out to new government officials that may not be familiar with the electronic delivery system used by the MPCA to send rule notices, public notices and other information. Examples of the government officials are: MN Cities, County Chairs, Zoning and Planning, Commissioners and Solid Waste Officers. An electronic message is sent inviting individuals to subscribe to topics that interest them. The MPCA sent an electronic message to the government officials on March 4, 2024.

A. Notice:

On August 28, 2023, the MPCA published notice requesting comments on planned rule amendments to Minnesota Rules Chapter 7035, and on December 26, 2023, the MPCA published an additional notice requesting comments on additional planned rule amendments in Minnesota Rules Chapters 7035 and 7045.

The notices were placed on the MPCA’s Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments> and the Waste Treated Seed rule webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seed>.

- 1) Minn. Stat. § 14.14, subd. 1a. On the date the Dual Notice is published in the State Register, the MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings. Parties within this group that have requested non-electronic notice will receive copies of the Dual Notice and the proposed rule amendments in hard copy via U.S. Mail.

- 2) Minn. Stat. § 14.116. The MPCA intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This applies because a bill was authored within the past two years granting rulemaking authority.
- 3) Minn. Stat. §14.111. If the rule affects agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the State Register. The Commissioner of Agriculture will be notified of potential rule changes. As requested, the rule changes will be submitted via email with a cover letter notifying the Commissioner of Agriculture of the changes. The following individuals will receive the information:

- Thom Petersen, Commissioner
- Doug Spanier, General Counsel

The Agency would also like to note that it worked in consultation with MDA and UofM Extension staff, as mandated, in the development of the preliminary draft rule. The following is a list of MDA and UofM Extension staff involved in consultation for this rule:

- Jane Boerboom, Pesticide and Fertilizer Mgmt. (MDA)
 - Rajinder Mann, Pesticide and Fertilizer Mgmt. (MDA)
 - Theresa Cira, Pesticide and Fertilizer Mgmt. (MDA)
 - Michael Merriman, Plant Protection (MDA)
 - Jolene Warnke, Pesticide Safety Environmental Education (PSEE) Program Mgr. (UofM Extension)
 - Tana Haugen-Brown, Educator & Co-Coordinator, PSEE (UofM Extension)
 - Linda Johns, Associate Director & Coordinator, PSEE (UofM Extension)
- 4) Minn. Stat. § 115.44, subd. 7. Under Minn. Stat. § 115.44, subd. 7, the MPCA is required to send notice to the governing body of each municipality touching the waters for which standards (authorized under Minn. Stat. § 115.44) are sought to be adopted. The proposed amendments do not involve standards authorized under Minn. Stat. § 115.44.
 - 5) Minn. Stat. § 116.07, subd. 7(j). Under Minn. Stat. § 116.07, subd. 7(i), the MPCA is required to send notice to the members of legislative policy and finance committees with jurisdiction over agriculture and the environment before final adoption of any new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7. The proposed amendments do not involve new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7.

In addition, a copy of the Notice, proposed rule amendments and SONAR will be posted on the MPCA's MPCA's Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments>.

B. Additional notice:

The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to:

- 1) Association of MN Counties; Brian Martinson, Environment & Natural Resources;
- 2) Association of Metropolitan Municipalities; Michael Lund, Government Relations Specialist;
- 3) League of MN Cities; Craig Johnson, Intergovernmental Relations Representative;
- 4) MN Association of Townships; Jeff Krueger, Executive Director;
- 5) MN City/County Management Association; Richard Fursman, President;
- 6) MN Center for Environmental Advocacy; Kathryn Hoffman, Chief Executive Officer;
- 7) Izaak Walton League of America, MN Division; John Rust, Executive Committee President;
- 8) MN Chamber of Commerce; Tony Kwilas, Director Environmental Policy;
- 9) MN Resource Recovery Association; Chris McConn, Executive Director;
- 10) National Waste & Recycling Association (NWRA), Amber Backhaus, Vice President of Government Affairs; Bill Keegan, President;
- 11) Solid Waste Association of North America – MN Chapter (SWANA); Matthew Evans;
- 12) MN Solid Waste Administrators Association (SWAA); Rebecca Rice, Executive Director;
- 13) MN Waste Wise; Doug Loon, President and CEO, MN Chamber of Commerce;
- 14) Recycling Association of MN (RAM); Paul Gardner, Board Chair;
- 15) Solid Waste Permitting GovDelivery List. The MPCA established the Solid Waste Permitting GovDelivery list to distribute notifications and updates for owners and operators of solid waste management facilities. The MPCA created the list using the most recent facility contact information (owners, operators, and land owners) stored in Tempo (Agency permitting software) for all facilities required to submit annual reports. To supplement the list, the MPCA invited consultants associated with the permitted facilities, via email, the option to sign up for the GovDelivery list. In addition, the Agency sent notifications to the RAM/SWANA, NWRA and SWAA organizations along with sign up information. As of May 3, 2021, this list contained approximately 733 subscribers (May 21).

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's webpage will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

8. Performance-based rules

Minnesota Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives.

The MPCA believes that the consideration of performance-based alternatives has already been conducted at the time the varying already-existing requirements were adopted. The proposed amendments are not making any fundamental changes to the regulatory systems that are governed by the existing rules. The intent of the proposed rules is to compile and clarify already-existing regulatory requirements, not to modify how prescriptive or flexible the rules are.

9. Consideration of economic factors

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subdivision 6 and Minn. Stat. § 115.43, subdivision 1 to give due consideration to:

...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The MPCA considered the required economic factors and determined that, because the proposed rules effectively collate and clarify already-existing requirements, the standards should not present a burden on any municipality. The MPCA does not anticipate that the proposed rules will significantly affect the establishment, maintenance, operation and expansion of business, commerce, trade, industry, or traffic. Therefore, under the circumstances no actions described in the above sections are warranted.

10. Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearings (OAH) at the hearing or with the documents it submits for Administrative Law Judge review.

11. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. Local units of government may choose to adopt or amend their local ordinances, but they are not required to do so as a result of the proposed amendments.

12. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

Because the proposed rules effectively collate and clarify already-existing requirements, the MPCA does not believe that small businesses or cities will face significant new costs in complying with the standards.

13. Differences with federal and other state standards

Minn. Stat. § 116.07, subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar

standards in states bordering Minnesota; and similar standards in states within the US Environmental Protection Agency (EPA) Region 5; and a specific analysis of the need and reasonableness of each difference.

Non-hazardous solid waste is regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA). Regulations established under Subtitle D ban open dumping of waste and set minimum federal criteria for the operation of municipal waste and industrial waste landfills, including design criteria, location restrictions, financial assurance, corrective action (cleanup), and closure requirement. Under existing standards in force in Minnesota, waste treated seed is an industrial solid waste and may be managed in municipal waste or industrial waste landfills. The rules proposed in this rulemaking comport with and do not alter the applicable federal requirements for municipal solid waste or industrial waste landfills.

This rule revision does not affect air quality or water quality standards promulgated by the federal government. As required, a review was conducted of solid waste and hazardous waste regulations from EPA Region 5 states and the states surrounding Minnesota. The states reviewed were: Wisconsin, Illinois, Indiana, Michigan, Ohio, Iowa, North Dakota, and South Dakota.

Table 2: Differences Amongst Specific States

State	Findings regarding specific waste treated seed standards
Wisconsin	General waste treated seed standard [ATCP 29.57(5)]. The standard generically requires disposal 'in a manner that does not pose a risk to persons, property, or the environment'. MPCA analysis: Equivalent to Minn. Stat. § 18B.075.
Illinois	No apparent specific waste treated seed standards.
Indiana	No apparent specific waste treated seed standards.
Michigan	No apparent specific waste treated seed standards.
Ohio	Specific waste treated seed standards [OAC Rule 901:5-11-11(D)(2)]. The standards require management as solid waste or hazardous waste, dependent on the evaluation of the waste. MPCA review indicates that waste treated seed would be evaluated as solid waste under the applicable Ohio state hazardous waste standards. MPCA analysis: Equivalent to proposed Minn. R. 7035.3700.
Iowa	No apparent specific waste treated seed standards. Guidance published jointly by Iowa Department of Natural Resources and Department of Agriculture at: https://iowaagriculture.gov/sites/default/files/pesticides/Updates/Treated%20Seed%20Disposal%207-8-2022.pdf https://www.iowadnr.gov/Portals/idnr/uploads/waste/swfact_treatedseeddisposal.pdf
North Dakota	No apparent specific waste treated seed standards.
South Dakota	No apparent specific waste treated seed standards currently, though the Department of Agriculture and Natural Resources has received explicit authorization to establish specific standards [SD Stat. 38-12A-20(18)]

14. Authors, witnesses and SONAR exhibits

A. Authors

- 1) Joshua Burman, Pollution Control Specialist, Senior, Industrial Division, MPCA. Mr. Burman is the Hazardous Waste Compliance & Enforcement Unit contact staff for regulatory citation and rule interpretation.

B. Witnesses and other staff

- 1) The MPCA expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the MPCA anticipates having the listed authors, current staff, testify as witnesses in support of the need for and reasonableness of the rules.
- 2) David Stellmach, MPCA. Mr. Stellmach is a staff attorney to the MPCA and will introduce the required jurisdictional documents into the record.
- 3) Daniel Gonzalez, MPCA. Mr. Gonzalez is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.

C. SONAR exhibits

- 1) S-1. MPCA Treated Seed fact sheet; December, 2023.
<https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>
- 2) S-2. MPCA Treated Seeds fact sheet; April, 2022.
- 3) S-3. MPCA Treated Seeds fact sheet; March, 2022.

15. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. Chs. 7035 and 7045. The MPCA has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

Katrina Kessler

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

November 20, 2024

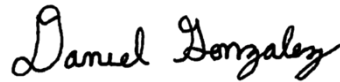
Date

Minnesota Pollution Control Agency

**CERTIFICATE OF MAILING THE STATEMENT OF NEED AND
REASONABLENESS TO THE LEGISLATIVE REFERENCE LIBRARY**

**Proposed Rules Governing Waste Treated Seed, Minnesota Rules, Chapter 7035
and 7045; Revisor's ID Number 04806**

I certify that on December 30, 2024, when the Dual Notice of Intent to Adopt Rule Without a Hearing was mailed, I submitted an electronic copy of the Statement of Need and Reasonableness to the Legislative Reference Library via email to sonars@lrl.leg.mn. I mailed this copy to comply with Minnesota Statutes, sections 14.131 and 14.23. A copy of the electronic letter is attached to this Certificate.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style with a horizontal line underneath it.

Daniel Gonzalez

Rule Coordinator

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: sonars@lrl.leg.mn
Subject: In the Matter of the Proposed Rules Relating to Waste Treated Seed; Revisor's ID Number 04806
Date: Monday, December 30, 2024 1:50:00 PM
Attachments: [image001.png](#)
[Legislative Reference Library Email.docx](#)
[sw-rule3-02g.pdf](#)

VIA EMAIL

December 30th, 2024

Legislative Reference Library
sonars@lrl.leg.mn

In the Matter of the Proposed Rules Relating to Waste Treated Seed; Revisor's ID Number 04806

Dear Legislative Reference Library:

The Minnesota Pollution Control Agency intends to adopt rules relating to Waste Treated Seed. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing in the December 31st, *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness at the same time that we are sending our Notice of Intent to Adopt Rules.

If you have any questions or concerns, please contact me at Daniel.gonzalez@state.mn.us/651-757-2267.

Sincerely,

Daniel Gonzalez
Rule Coordinator

Enclosure: Statement of Need and Reasonableness

Daniel Gonzalez (he/him/his)
Rule Coordinator
daniel.gonzalez@state.mn.us
651-757-2267



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STATEMENT OF NEED AND REASONABLENESS
In the Matter of Proposed Revisions of Minnesota
Rule Chapters 7035 and 7045; Revisor ID No. 04806

Resource Management Assistance Division and
Industrial Division

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <http://www.pca.state.mn.us/news/data/index.cfm?PN=1>.
2. View older rule records at: <https://www.revisor.mn.gov/rules/status/>
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Daniel Gonzalez, Rulemaking Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-582-8594; 1-800-657-3864; email daniel.gonzalez@state.mn.us; or use your preferred telecommunications relay service.
4. How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), Subi. (A).
5. How to read a sample Minnesota Rules citation: Minn. R. §, 7150.0205, Subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, Subi. (3), unit (b), subunit (i).

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Acronyms, abbreviations, and concepts

CFR – Code of Federal Regulations

EPA – United States Environmental Protection Agency

MDA – Minnesota Department of Agriculture

Minn. R. – Minnesota Rules

Minn. Stat. – Minnesota Statutes

MMB – Minnesota Management and Budget

MN – Minnesota

MPCA or Agency – Minnesota Pollution Control Agency

OSHA – U.S. Occupational Safety & Health Administration

PSEE – Pesticide Safety & Environmental Education Program

RCRA – Resource Conservation and Recovery Act of 1976

Revisor – Office of the Revisor of Statutes

§ – Section

SONAR – Statement of Need and Reasonableness

UofM Extension – University of Minnesota Extension

Introduction and overview

A. Introduction

The Minnesota Pollution Control Agency (MPCA or Agency) is proposing small, noncontroversial 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 seed in MPCA fact sheet #w-hw4-51, first published in April 2022, and revised in December 2023; available on the MPCA's website at <https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>. See S-1.

This rulemaking is mandated by [Laws of Minnesota 2023, chapter 60, article 3, section 28](#).

The proposed amendments make minor changes to Minnesota Rules Chapters 7035 and 7045. The MPCA notified the stakeholders of the proposed changes and used their feedback in the drafting of the proposed rule.

B. Statement of general need

The MPCA refers to the proposed amendments in this Statement of Need and Reasonableness (SONAR) as mandated. The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

For this rulemaking, the MPCA has conducted all the requirements of the state Administrative Procedures Act, plus provided additional notification and opportunities for public review as described in section 2 of the SONAR. The MPCA has established the need for and reasonableness of the proposed amendments and does not expect that they will result in any requests for hearing or obstacle to approval by the Minnesota Office of Administrative Hearings.

C. Scope of the proposed amendments:

Two chapters of Minnesota rules are being affected by the proposed changes.

- 1) Chapter 7035 establishes the requirements applicable to the management of solid waste.
- 2) Chapter 7045 establishes the requirements applicable to the management of hazardous waste.

In each of these chapters, the MPCA is proposing changes prompted by mandate of the Legislature and by the need to integrate those changes into already-existing requirements.

1. Background

The amendments proposed in this rulemaking are prompted by a legislative mandate. Laws of Minnesota 2023, chapter 60, article 3, section 28, requires that the MPCA adopt rules providing for the safe and lawful disposal of waste treated seed. The rules must also clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed.

2. Public participation and stakeholder involvement

The MPCA has provided the required notifications to the public and the entities identified in statute.

On August 28, 2023, the MPCA published a Request for Comments (RFC) on planned rule amendments

to Minnesota Rules Chapter 7035. After determining that greater flexibility was needed in the structuring of possible amendments, the MPCA published a second RFC on December 26, 2023. Comments received in response to both RFCs were considered in the development of the proposed rule.

The notices were placed on the MPCA's Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments> and the Waste Treated Seed rule webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seed>.

At the time the amendments are proposed, the notifications required under Minn. Stat. ch. 14 will be provided. The MPCA intends to publish a Dual Notice in the State Register and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice.

The proposed revisions will affect a narrow range of stakeholders. The following lists the chapters affected by the proposed amendments:

- 1) Chapter 7035 establishes the requirements applicable to the management of solid waste.
- 2) Chapter 7045 establishes the requirements applicable to the management of hazardous waste.

The MPCA conducted the following activities to notify potentially interested parties of the rule project:

- 1) The MPCA first posted information about its intent to undertake rulemaking for the Waste Treated Seed Rule in its July 2023 rulemaking docket.
- 2) Thereafter, the MPCA maintained information regarding the proposed rule project on its rulemaking docket, published as MPCA publication #mm-rule1-00, available at <https://www.pca.state.mn.us/sites/default/files/mm-rule1-00.pdf>. The Agency maintains the docket on a monthly basis and it is available online.
- 3) On July 13, 2023, the MPCA sent an electronic notification to subscribers of the New Rules GovDelivery list, encouraging them to subscribe to the Waste Treated Seeds Rules list to receive notification.
- 4) The MPCA established a rule specific Waste Treated Seeds webpage. The new webpage was referenced in the electronic notification to subscribers of the New Rules GovDelivery list.
- 5) The MPCA sent electronic notice to the list of tribal contacts who have indicated an interest in rulemaking for the August 28, 2023, and December 26, 2023, Requests for Comments. The electronic notices were also sent to self-subscribers of the GovDelivery list established for this rulemaking. Comments received in response to both RFCs are available on the agency's rule webpage at: <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>
- 6) As mandated by the session law, the Agency worked in consultation with the University of Minnesota (UMN) Extension and the Minnesota Department of Agriculture (MDA) in the development of this rule. To that end, the agency solicited and received the following assistance:
 - a) UMN: The UMN conducted outreach to approximately 6,138 subscribers to its Pesticide Safety and Environmental Education (PSEE) program, which includes commercial, non commercial, private, and structural pesticide applicators, and other professionals.
 - September 29, 2023: UMN emailed PSEE subscribers informing them that the August 28, 2023, RFC was open for comment through October 27, 2023. A link to the OAH eComments webpage along with instructions was included. The Agency's estimated notice of rule draft release was projected as 12/31/24.

- October 24, 2023: UMN sent an additional email to PSEE subscribers informing them that the August 28, 2023, RFC was open for comment through October 27, 2023. A link to the OAH eComments webpage along with instructions was included. The Agency's estimated notice of rule draft release was projected as 12/31/24.

b) MDA –

- On November 8, 2023, MDA provided the MPCA with email and contact lists for seed treatment applicators, companies and agricultural groups. MPCA sent an email informing 17 MDA contacts that MPCA was working in consultation with MDA and UMN on legislatively mandated rulemaking and provided a link to rule webpage, which contains a self-subscribe link within the webpage.
- On November 9, 2023, MPCA sent additional emails informing MDA contacts of MPCA working in consultation with MDA and UofM Extension on legislatively mandated rulemaking with a link to the rule webpage. An invitation to self-subscribe to receive future notices on the rulemaking was included in 4 separate emails with recipient totals of 1,170, 170, 501, and 500 respectively, with assumptions of overlapping contacts.
- On November 27, 2023, MDA included the notice in their Pesticide and Fertilizer Update Newsletter GovDelivery bulletin which has 2,728 recipients.
- An email notice for an upcoming second RFC was sent by the MPCA to 6 email lists from MDA with a total of 2,431 recipients. The message references the mandate directing rulemaking, a link to where comments submitted to the first RFC are posted, and link to rule webpage. A link to self-subscribe to receive future rule-related notices is also included. There were an additional 13 notices sent in print form.

The MPCA established a self-subscribing rule specific mailing list (https://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_524); and the Agency used the list to disseminate rule related information to interested and affected parties.

3. Statutory authority

The MPCA has the statutory authority listed below to propose changes.

Table 1. Statutory Authorities

Chapter – Title	Statutory authorities (Minn. Stat. §)
7035 – Solid Waste	116.07, subd. 2(b); 116.07, subd. 4(b);
7045 – Hazardous Waste	116.07, subd. 2(d); 116.07, subd. 4(g)
Waste Treated Seed – Prohibited disposal methods	115A.06, subd. 2
Waste Treated Seed	Laws of Minnesota 2023, ch. 60, art. 3, sec. 28

Chapter 7035

In addition to the general authority granted to the MPCA to alter rules for the conduct of the agency, there is specific authority to adopt rules for the management of Solid Waste, including classifying solid wastes and requirements for facilities at which those solid wastes are disposed. Specific statutory authority for the MPCA to adopt rules for the management of solid waste is found in Minn. Stat. § 116.07, subd. 2(b) and the amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

In addition to the section 116.07, subdivision 2, authority for adoption of solid waste standards, the MPCA also has additional statutory authority to adopt, amend, and rescind rules for the collection, transportation, storage, processing, and disposal of solid waste Minn. Stat. § 116.07, subd. 4(b), and the amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 4. Rules and standards.

(b) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 18C.215.

Chapter 7045

The statutory authority for the MPCA to adopt rules for the management of hazardous waste, including identifying which wastes are subject to or exempt from hazardous waste standards, is found in Minn. Stat. § 116.07, subd. 2(d). The amendments to Chapter 7045 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

In addition to the section 116.07, subdivision 2, authority for adoption of hazardous waste standards, the MPCA also has additional statutory authority to adopt, amend, and rescind rules for the management and identification of hazardous waste Minn. Stat. § 116.07, subd. 4(g), and the amendments to Chapter 7045 are being promulgated under that authority and the other authorities listed here.

Minn. Stat. § 116.07 POWERS AND DUTIES.

Subd. 4. Rules and standards.

(g) Pursuant to chapter 14, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the Pollution Control Agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

Waste Treated Seed – Prohibited disposal methods

The statutory authority for the MPCA to adopt rules for prohibited disposal methods for waste treated seed is found in Minn. Stat. § 115A.06, subd.2.

Minn. Stat. § 115A.06 POWERS OF POLLUTION CONTROL AGENCY.

Subd. 2. Rules.

Unless otherwise provided, the commissioner shall promulgate rules in accordance with chapter 14 to govern the agency's activities and implement this chapter.

The statutory authority for the MPCA to adopt rules to implement provisions of chapter 115A, including the new waste treated seed prohibited disposal methods found in Minn. Stat. § 115A.993, is found in Minn. Stat. § 115A.06, subd. 2. The amendments to Chapter 7035 are being promulgated under that authority and the other authorities listed here.

Waste Treated Seed

The statutory authority and mandate for the MPCA to adopt rules for waste treated seed is found in Laws of Minnesota 2023, ch. 60, art. 3, sec. 28.

Laws of Minnesota 2023, ch. 60, art. 3, sec. 28

Sec. 28 TREATED SEED WASTE DISPOSAL RULEMAKING.

The commissioner of the Pollution Control Agency, in consultation with the commissioner of agriculture and the University of Minnesota, must adopt rules under Minnesota Statutes, chapter 14, providing 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. Additional Department of Agriculture staff will not be hired until rulemaking is completed.

The statutory authority and mandate for the MPCA to adopt rules to provide for the safe and lawful disposal of waste treated seed is found in Laws of Minnesota 2023, ch. 60, art. 3, sec. 28. The amendments to Minn. R. chs. 7035 and 7045 are being promulgated under that authority and the other authorities listed here.

4. Reasonableness of the amendments

A. General reasonableness

The proposed amendments are generally reasonable for the reasons discussed in this section.

1.) Analysis of present requirements

In response to reports of environmental contamination in the state of Nebraska caused by mismanagement of waste treated seed and of resultant actions by the United States Environmental Protection Agency (EPA), the Nebraska Department of Environment and Energy (NDEE) and the Nebraska Department of Agriculture (NDA) in 2021 and 2022, the MPCA carefully reviewed the existing Minnesota Statute and Rule requirements that would apply to waste treated seed and assessed awareness among the potentially regulated community and regulators of those requirements. The MPCA determined that it would be helpful to treated seed manufacturers, dealers, end users, waste management providers, land disposal facility operators, and state and local government agencies alike to clarify and raise awareness of those existing requirements for waste treated seed. Therefore, after consulting with the MDA, the MPCA compiled and published an educational document, referred to by the MPCA as a “fact sheet,” summarizing the existing Minnesota requirements for management of waste treated seed. The MPCA originally published fact sheet #w-hw4-51, Treated Seeds, in March, 2022. This fact sheet was posted on and accessible through the MPCA’s publicly available website, and was provided to the MDA for distribution to treated seed manufacturers, dealers, and end users due to MDA’s connection with those stakeholders. The MPCA republished this fact sheet again in April, 2022, after making minor formatting and content revisions.

Following the passage of Laws of Minnesota 2023, chapter 60, which contained both the mandate for this rulemaking as well as several specific new requirements and restrictions for waste treated seed, the MPCA once again carefully reviewed the now-existing Minnesota Statute and Rule requirements that

would apply to waste treated seed. To raise awareness of these new requirements enacted by the Legislature as well as the previously existing requirements, the MPCA revised and republished MPCA fact sheet #w-hw4-51, Treated Seed, in December, 2023. The MPCA again provided the fact sheet to the MDA and also to the UMN for distribution to businesses and farmers handling treated seed.

1.) Comments to August 28, 2023, RFC

The MPCA received three comments in response to the August 28, 2023, RFC. In reviewing the comments, the MPCA noted that a hyperlink to the then-presently posted version of MPCA fact sheet #w-hw4-51, which was April 2022, was included in the RFC. The MPCA assumes that comments that did not specify the date of a fact sheet are referring to the April 2022 fact sheet instead of the December, 2023 fact sheet.

One comment, from associations for agricultural seed and crop protection products manufacturers, expressed support for rules effectively restating the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; April 2022.

Another comment, from multiple crop growers associations and farm groups, incorrectly referred to the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; April, 2022, as 'recommended management practices' rather than as the explanation of actual requirements, however stated that all the crop growers associations and farm groups represented by the commenter supported the waste treated seed management practices published by the MPCA in the fact sheet and encouraged members of the associations and groups to implement them. However, the commenter stated that the represented associations and group did not support rulemaking by the MPCA, believing it unnecessary. This comment also provided citations and reference to several EPA regulations and how the commenter believed they applied to treated seed and waste treated seed. The MPCA discusses these regulations and their applicability and inapplicability to waste treated seed in the Specific Reasonableness justifications for Chapter 7035.3700, subpart 4, item D; and subpart 5. In addition to this rulemaking, the MPCA took this comment into consideration during the revision of explanatory text in MPCA fact sheet #w-hw4-51; December, 2023.

The final comment, from two conservation groups, urged the MPCA to use this rulemaking to require waste treated seed to be regulated as hazardous waste, or at a minimum to require landfills that received waste treated seed to require leachate management standards. The groups also proposed requiring extended producer responsibility (EPR), also known as "product stewardship," where treated seed manufacturers would be required to receive unwanted waste treated seed from downstream handlers and properly manage it. Additionally, the commenters encouraged the MPCA to require state reporting of treated seed product sales by sellers and of treated seed use and waste treated seed disposal by end users. The groups requested the MPCA prohibit planting of treated seed for wildlife forage. The groups also expressed support for the restrictions on use of waste treated seed for ethanol production and disposal by burial summarized in MPCA fact sheet #w-hw4-51; April, 2022, though the groups mischaracterized the restriction language as a flat prohibition. Finally, the groups requested the MPCA clarify the existing allowance for on-farm disposal of solid wastes from farming operations and how it applies to waste treated seed.

The MPCA considered these comments in drafting the proposed rules. The MPCA considered that two of the commenters expressed support for the reasonability of all the summarized existing requirements in MPCA fact sheet #w-hw4-51; April, 2022, and the third commenter expressed support for one provision described in that fact sheet. The MPCA therefore concluded that the existing management requirements for waste treated seed as of August, 2023, as summarized in MPCA fact sheet #w-hw4-51; April, 2022, were supported by most commenters to the first RFC as necessary and reasonable, and at least one

requirement was supported by all the commenters. Two of the commenters supported rulemaking to promulgate the requirements in one clear rule, while the third commenter opposed rulemaking as unnecessary, even though the commenter supported the underlying requirements that the rulemaking would codify.

The comments collectively also affirmed the MPCA's prior belief in the need and reasonableness in this rulemaking of clarification of the interaction of the EPA's Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulations and MDA pesticide and MPCA solid waste and hazardous waste Statutes and Rules.

In reviewing the comments, the MPCA also recognized the limits of the specific authority of the instant rulemaking and existing MPCA statutory authority. Specifically, the MPCA affirmed that it is required to perform rulemaking by express legislative mandate, and the MPCA may not decline to adopt rules providing for the safe and lawful disposal of waste treated seed as one of the commenters suggested.

The MPCA also considered the comment recommending a requirement that all waste treated seed be regulated as hazardous waste. The MPCA determined that in order to encompass the concentrations and types of the various seed treatment products found in waste treated seed, and to regulate them consistently with similar contaminants with similar potential environmental effect, the MPCA would have to drastically enlarge the scope of regulated hazardous wastes in Minnesota. This would subject extremely large volumes of commercially-generated wastes to hazardous waste regulation, such as many industrial byproducts and commercial chemical packaging. The MPCA determined that such an expansion of the scope and stringency of the existing Hazardous Waste Rules would exponentially increase the volume of regulated hazardous waste generated in the state, with commensurate steep increase of the regulatory burden on Minnesota businesses. This approach would require additional rules outside the scope of the specific rulemaking mandate adopted by the Legislature in Laws of Minnesota, ch. 60, art. 3, sec. 28. While the MPCA has, and in this rulemaking also relies on, additional existing and continuing rulemaking authority beyond that specific authority, the MPCA determined that such authority is for amendment and modification of existing Minnesota Rules. The information provided by the commenter supported a showing of some indeterminate level of risk from exposure to certain wastes. However, it did not show that management of waste treated seed as proposed in this rulemaking, and that has for the most part already been regulated under disparate existing requirements, has resulted or would result in the high risk that would drive such a major regulatory shift.

Also determined to be beyond the authorized scope of this rulemaking were suggestions that the MPCA mandate reporting of treated seed product sales and use or limit areas where treated seed products may be planted. Except where explicitly authorized by the Legislature, the MPCA's authority in this sector is limited to regulation of products that will not be used for their intended purpose; which are then wastes. As the intended purpose of treated seed products is planting to grow live plants, the MPCA does not currently understand its authority to extend to reporting of sales or use of treated seed or where treated seed may be planted for desired growth. Therefore, these requests also are understood to be outside the authorized scope of this rulemaking.

In sum, the MPCA believes the comments received to the first RFC generally support the need and reasonableness of the MPCA's rules as proposed.

1) Comments to December 26, 2023 RFC

The MPCA received 11 comments in response to the December 26, 2023, RFC. Similar to the first RFC, the MPCA notes that a hyperlink to the then-presently posted version of MPCA fact sheet #w-hw4-51, which was the revised December 2023, version, was included in the RFC. The MPCA will therefore

assume that all references in these comments to the MPCA's fact sheet are to this December 2023, version, unless otherwise specified in a comment.

Of the 11 comments received, seven of the commenters explicitly supported rulemaking by the MPCA for management of waste treated seed, and an additional commenter stated its support for one of the seven comments' organization and its respective stance, but did not directly support the rulemaking itself. Of the remaining three comments, two comments did not state an explicit support for MPCA rulemaking, but did request the MPCA to implement specific requirements for waste treated seed, which the MPCA interprets to be an inferred support of MPCA rulemaking for management of waste treated seed. The final comment requested codification of a specific requirement less stringent than the existing Rule and statutory requirements as summarized in MPCA fact sheet #w-sw4-51; December 2023. As the only method for the MPCA to make this change would be rulemaking, the MPCA also considers this comment as supportive of MPCA rulemaking for management of waste treated seed. Therefore, the MPCA believes the comments received to the second RFC generally support the need for MPCA rulemaking.

One commenter, who had previously submitted a comment to the first RFC, reiterated their prior comment that expressed strong support for rules effectively restating the summary of existing requirements applicable to waste treated seed presented in MPCA fact sheet #w-hw4-51; however it was unclear to which version of the fact sheet this second comment referred. The commenter additionally discouraged any designation of waste treated seed as hazardous waste, however apparently incorrectly believed that hazardous waste definitions and determinations are bound solely by federal statutes and regulations. Though the MPCA is not in this rulemaking categorically designating waste treated seed as hazardous waste, and indeed is making no change to the definitions of hazardous waste in Minnesota that would increase its potential to be characterized as hazardous waste, the MPCA believes it important to clarify that hazardous wastes in Minnesota are defined and regulated under Minnesota Rules promulgated under the authority of Minnesota Statutes, and are not dependent on the federal definition of hazardous waste. Indeed, the federal law underlying the federal hazardous waste regulations, RCRA, explicitly allows states to implement hazardous waste regulatory programs that are both broader in scope and more stringent than the minimum federal regulations. Thus, it would not be "inconsistent with federal law," as asserted, for the MPCA to designate specific wastes as regulated hazardous waste under Minnesota-specific definitions, if the MPCA determines that to do so would best meet the intent of the Minnesota statutes requiring the MPCA to adopt standards for the identification and management of hazardous waste.

Conversely, two commenters requested that the MPCA categorically designate waste treated seed as hazardous waste, which a third commenter supported. The MPCA reviewed the substance of this request in the review of comments to the August 28, 2023, RFC, in 2) above.

Three comments explicitly stated support for a complete ban on use of waste treated seed for ethanol products, and two further requested application of a parallel ban on use of waste treated seed for any food, feed, or oil use.

As previously discussed in review of the comments to the August 28, 2023, RFC, the MPCA again recognized the limits of the specific authority of this rulemaking and existing MPCA statutory authority. Again, determined to be beyond the authorized scope of this rulemaking were three requests that the MPCA mandate reporting of treated seed product sales and use or limit areas where treated seed products may be planted, for the same reasons discussed in 2) above. Similarly, three comments asked the MPCA to impose extended producer responsibility (EPR), also commonly known as “product stewardship” requirements, on treated seed manufacturers or dealers to fund or directly collect and manage waste treated seed. The MPCA determined that these requested measures are beyond the narrow-authorized scope of this rulemaking.

Existing law also controls the allowance for on-farm disposal of solid waste to which two commenters objected. Waste treated seed would likely be considered “solid waste generated from the [...] farming operation” and must be allowed to be disposed on the farm site under Minnesota statutory law that the MPCA may not ignore.

One comment urged the MPCA to designate waste treated seed as a “restricted material”; however that designation is an action under California state law that is inapplicable in Minnesota and therefore cannot be considered by the MPCA in this rulemaking. This commenter also recommended that the legal definition of pesticides in Minnesota be expanded to include treated seed products, however that is the sole province of the Legislature and therefore also cannot be considered by the MPCA in this rulemaking.

One commenter effectively requested that the MPCA either designate waste treated seed as a minimally-regulated “biomass” suitable for incineration in facilities that currently burn trees, brush, and uncontaminated plant wastes like cornstalks, oat hulls, and grain byproducts, or alternatively allow such facilities to incinerate industrial solid wastes without the stringent waste composition and air emissions monitoring normally required of facilities that burn industrial solid wastes. The commenter incorrectly claimed that the MPCA had already authorized one such biomass-burning facility to incinerate waste treated seed. Any waste that is burned produces both airborne emissions, including vaporized constituents of the waste that is being burned as well as new chemicals created by combustion reactions, as well as residual ash that includes both unburned constituents of the waste as well as other new chemicals created by the combustion reactions. “Biomass”-type wastes, such as timber, brush, and uncontaminated plant wastes, when burned produce airborne emissions and ash that are well understood and present environmental risks relatively lower than incineration of other wastes such as industrial solid wastes and mixed municipal solid wastes. A wood “campfire” is a familiar example of biomass burning. Another familiar example are “corn stoves” which burn clean, harvested field corn. The permits issued by the MPCA for commercial burning of biomass address the resulting emissions and ash with simple testing, monitoring, and management requirements that are environmentally protective, but commensurate to the minimal risks presented by the biomass burning. Conversely, facilities that incinerate industrial solid wastes, such as waste treated seed, and mixed municipal solid waste, such as waste treated seed packaging, must obtain permits from the MPCA that mandate substantially more stringent testing, monitoring, and management requirements that also cover a much broader range of potential emissions to ensure sufficient environmental protection and protection of the public.

Waste treated seed, by definition, has been treated with, and contains, concentrated toxic pesticides and other chemicals. Waste treated seed is thus very different from “clean” wood, plants, and uncontaminated plant wastes, such as oat hulls. The MPCA does not believe it appropriate for the reasons discussed to consider waste treated seed to be a “biomass” that could be burned in a wide variety of facilities with relatively low oversight. Nor does the MPCA believe it protective of Minnesota’s

environment to allow permitted biomass burning facilities to accept industrial solid wastes that contain toxic pesticides such as waste treated seed. Therefore, the MPCA declined to implement this commenter's request. The MPCA determined that the biomass-burning facility referenced in the comment had not been authorized to burn waste treated seed. Separate from this rulemaking, the MPCA will ensure that the facility correctly understands its authorized biomass fuels and the complete process for authorization of new biomass fuels.

Finally, several commenters declared that it was important for the rules promulgated under this rulemaking be strong, rigorous, and protective, and that the MPCA be afforded the authority to implement and enforce those rules. Another commenter expressed concern that action by the MPCA not be unnecessary or impose additional burdens on farmers already subject to market forces. The MPCA's intent in this rulemaking is to ensure equitable, reasonable, and environmentally protective rules that can be fairly and consistently applied to best serve the citizens of Minnesota.

Balancing the comments received to the second RFC, the MPCA believes that as a whole they generally support the need and reasonableness of the MPCA's rules as proposed.

B. Specific Reasonableness

MPCA will discuss the specific reasonableness of each change below for Chapters 7035 (Solid Waste) and 7045 (Hazardous Waste).

1) Part 7035.0300

Justification for Minn. R. 7035.0300, Subp. 1

A reference to the new proposed part 7035.3700 is added. Because the new proposed part is outside the existing range of applicability of the solid waste definitions in part 7035.0300, this addition is necessary to preclude the otherwise necessary duplication of definition of all the relevant terms in the new part itself. This addition is needed and reasonable for this reason.

Justification for Minn. R. 7035.0300, Subp. 3a

A new definition of "agricultural products" is added to this chapter. This definition is necessary to support the new definition of "farming" in Subpart 37a of this Part. This definition is a reasonable meaning for this term as it includes all products commonly understood to be produced through farming, such as livestock, poultry, grains, and vegetables and fruit, but excludes products commonly considered outside the meaning of farming, such as lumbering and animal boarding with no pasture. [See Minn. Stat. 273.13, Subd. 23, Para. (i)]

Justification for Minn. R. 7035.0300, Subp. 17

The definition of "community water supply" is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988 and cross-referenced the MDH definition of this term. However, in 1991, MDH repealed this definition and replaced it at another location with an adoption of federal definitions at 40 CFR 141. Following, MDH promulgated a new term in 2008, "community water system" that took the place of the former term "community water supply" and extended and revised the original term definition, but placed it in Chapter 4725, a related chapter to the original Chapter 4720. Though the term "community water supply" is not referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking, the closely related term "public water supply" is, and shares a parallel need for correcting and updating from parallel MDH cross-references. Because the two terms are so closely related, and both currently have non-functional cross-references to parallel MDH definitions, it is reasonable to correct and update this term for MPCA's purposes in this chapter. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However,

because the term “community water supply” is used multiple times in this chapter, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 78; 15 SR 1842; and 33 SR 211]

Justification for Minn. R. 7035.0300, Subp. 37a

A new definition of “farming” is added to this chapter. This definition is necessary to correctly identify persons who own or operate land used for farming, who may be exempted from the prohibitions on burial of waste treated seed proposed in the new part 7037.3700, Subp. 4, Item A, Subi. (3). Minn. Stat. § 17.135, (a), conditionally exempts persons who own or operate land used for farming from state agency permitting of burial of solid waste generated from the person’s household or farming operation.

The MPCA believes that the definition of “farming” found in Minn. Stat. § 500.24, Subd. 2, (a), is instructive to this necessary definition. At the time of passage of Minn. Stat. § 17.135 in 1989, the definition contained in Minn. Stat. § 500.24, Subd. 2, (a), first established in 1973, was the only existing statutory definition for the term “farming.” That definition has twice been revised by the legislature, most recently in 1997, demonstrating the utility and currency of the MPCA’s reliance. The definition follows the generally understood meaning of the term “farming” as relating to plants grown in the soil for food and animal use, and animals raised on the soil or in water for food use. Similarly, the Merriam-Webster Dictionary defines “farming” as “...the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products; and the cultivation of aquatic organisms especially for food...”, and the American Heritage Dictionary defines “farming” as “...to cultivate or produce a crop on...”

The proposed definition defines “farming” as the production of agricultural products. A proposed definition of agricultural products is included in new subpart 3a of this same part. Though Minn. Stat. § 500.24 also then adds other included categories, the MPCA believes that these areas are already sufficiently addressed in the proposed definition of agricultural products, and are not necessary to differentiate in this rulemaking.

The proposed definition excludes the processing, refining, packaging, or transportation of agricultural products. This exclusion, mirrored in Minn. Stat. § 500.24, is reasonable as these activities are not unique to farming or the location where farming occurs, and often are performed in locations not associated with farming, such as processing plants in industrial areas. These excluded activities have more in common with manufacturing techniques and practices than with the common meaning of farming.

The proposed definition also excludes the provision of spraying or harvesting services. This exclusion, also mirrored in Minn. Stat. 500.24, is reasonable as these activities are often performed by persons not related to the farming operation and are a supportive service rather than the primary farming activity, similar to provision of other services supportive of farming, such as ditch excavation and maintenance, surveying, soil analysis, and farming equipment maintenance. People performing these services, while vitally supporting farming operations, would not commonly be understood to be farming themselves. [See 1989 Session Law, Ch. 131, Sec. 2; 1973 Session Law, Ch. 427, Sec. 1]

Justification for Minn. R. 7035.0300, Subp. 66

The definition of “monitoring well” is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988 and cross-referenced the MDH definition of this term. The MDH relocated its definition of this term in 1990, and then again in 1993. Finally, in 2008, the MDH repealed its own rule definition of this term and replaced it with a cross-

reference to a statutory definition at Minn. Stat. § 1031.005, Subd. 14, which was itself then repealed by the Legislature in 2017 and replaced with a new term, “environmental well,” which took the place of the former term “monitoring well” but also limited the scope of the new term to excavations of more than 15 feet in depth. Because the MPCA is aware of monitoring wells less than 15 feet in depth currently in operation at solid waste facilities regulated by the MPCA and believes consistent regulation of all monitoring wells irrespective of depth is appropriate. The MPCA adopts the meaning of this new statutory term, but modifies the meaning of “environmental well” to apply to excavations of any depth, not just those greater than 15 feet.

Though the term “monitoring well” is not referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking, the related term “public water supply” is, and shares a parallel need for correcting and updating from parallel MDH cross-references. Because the two terms are related, and both currently have non-functional cross-references to parallel MDH definitions, it is reasonable to correct and update this term for MPCA’s purposes in this chapter. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However, because the term “monitoring well” is used multiple times in this chapter and in parallel in Chapter 7045, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 78; 17 SR 2773; 33 SR 211; and 2017 Session Law, 1st Special, Ch. 6, Art. 10, Secs. 3 & 148]

Justification for Minn. R. 7035.0300, Subp. 86

The definition of “public water supply” is corrected to reflect intervening rule changes by the Minnesota Department of Health (MDH). The current definition was promulgated in 1988, and cross-referenced the MDH definition of this term. However, in 1991, MDH repealed this definition and replaced it at another location with an adoption of federal definitions at 40 CFR 141. Following, in 1993, the MDH redefined the term in Chapter 4725. Finally, MDH promulgated a new term in 2008, “public water system” that took the place of the former term “public water supply.” The term “public water supply” is referenced directly in the new provisions affecting waste treated seed proposed in this rulemaking. Because the current MPCA provision cross-references to a repealed MDH provision, it is necessary to correct this reference. However, because the term “public water supply” is used multiple times in this chapter, altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to reflect the correct current MDH term. [See 13 SR 1150; 15 SR 1842; and 33 SR 211]

Justification for Minn. R. 7035.0300, Subp. 98a

A new definition of “shoreland” is added to this chapter. This term is used three times in this chapter, but is not directly defined within Chapter 7035. Minn. R. 7035.2555, Subp. 2, Item A, references Minn. Rules Chapter 6120, where the term is defined at Minn. R. 6120.2500, Subp. 15. Minn. R. 7035.0300, Subp. 99a, references Minn. R. 7035.2555 and therefore also references Chapter 6120. Minn. R. 7035.2825, Subp. 2, does not reference Chapter 6120 by the text of the rule, however the use of the term in the context in this part, as well as the context when it is discussed in the relevant Statement of Need and Reasonableness for Minn. R. 7035.2825, clearly indicate that the intended meaning is the same.

Explicitly defining “shoreland” to have the meaning in Minn. R. 6120.2500, Subp. 15, will not change the intended meaning of the two existing uses of the term in this chapter already associated with Chapter 6120. However, defining this term will bring certainty to the remaining use, already reasonably read in

context and by intent to have the same meaning. The use of the term shoreland in the proposed Minn. R. 7035.3700, Subp. 4 is similar to the other instances of the term in Chapter 7035. Explicitly defining this term will result in clearer direction to waste treated seed handlers and promote consistency within the Chapter. Therefore, it is reasonable and necessary to adopt this definition. [See SONAR 13 SR 1150, February 23, 1988; Minn. Stat. § 103F.205; and Minn. R. 6120.2500]

Justification for Minn. R. 7035.0300, Subp. 105a

The MPCA revises the definition of “source-separated organic material” to exclude waste treated seed. The function of this definition is to identify organic wastes that are suitable for management by composting. The intended use of compost is to replenish, enrich, or add nutrients or beneficial characteristics to soil to support plant growth, usually agricultural or horticultural plantings. During the composting process, components of the composted materials that do not or will not readily biodegrade will be either concentrated into the finished compost or will be released into the environment. The majority of seed treatments borne by waste treated seed are pesticides, fungicides, or herbicides; substances intentionally designed to harm animal or plant life. When concentrated and applied in compost, or released during the composting process, all of these substances present a risk of endangering humans, food, livestock, fish, or wildlife. Such a result is contradictory to the Legislature’s explicit prohibition in Laws of Minnesota 2023, Ch. 60, Art. 9, Sec. 2, which prohibits use, handling, or disposition of waste treated seed in a manner that “...endangers humans, food, livestock, fish, or wildlife; or will cause unreasonable adverse effects on the environment....” It is therefore reasonable to exclude waste treated seed from the definition of source-separated organic materials suitable for management by composting.

Justification for Minn. R. 7035.0300, Subp. 108a

A new definition for “surface water” and “surface waters” is added to this chapter. These terms are currently used 110 times within the text and headings of this chapter, and are referenced by the Legislature in the mandate for the new provisions affecting waste treated seed proposed in this rulemaking, but have not previously been explicitly defined. Examined in context, each of these uses is consistent with the MPCA’s own general definition found in chapter 7050. Reliance by the MPCA on this general definition is consistent across many MPCA regulatory programs. Explicitly defining “surface water” and “surface waters” to have the meaning in part 7050.0130, subpart 6, will not change the intended meaning any existing use of the terms in this chapter, but will improve clarity and provide certainty of the intended meaning to these uses as well as to the newly proposed use. Therefore, it is reasonable and necessary to adopt this definition.

Justification for Minn. R. 7035.0300, Subp. 111e

The MPCA adds a definition of “treated seed” to this chapter. It is necessary to add this term to enable accurate reference to wastes potentially related to waste treated seed, such as packaging from treated seed, and to treated seed used for appropriate use and therefore not becoming waste treated seed.

The proposed definition is parallel to the definition of “waste treated seed” established by the Legislature in Laws of Minnesota 2023, ch. 60, Art. 3, Sec. 7, at Minn. Stat. § 115A.03, Subd. 37a, in that both definitions refer to seed that is treated, as defined in Minn. Stat. § 21.81, Subd. 28. It is reasonable for the MPCA to utilize the same definition root as the Legislature for the same purpose.

Justification for Minn. R. 7035.0300, Subp. 116a

A definition of “waste treated seed” is added. This definition is critical to the intended functioning of this entire rulemaking. Addition of this definition is therefore necessary and reasonable. The proposed definition is divided into three sentences, each supporting the final intended and functional meaning.

The first sentence of this definition adopts by reference the definition established by the Legislature in Laws of Minnesota 2023, ch. 60, Art. 3, Sec. 7.

The second sentence clarifies the scope of treated seed that is waste treated seed. The intended purpose of seed is to grow a live plant. Treated seed container label planting directions are, among other purposes, reasonably intended to maximize the seed's potential to grow properly. That is the reason that considerable time, effort, and expense is invested in developing, obtaining approval for, marketing, and applying treatments to seeds. Treated seed that is not planted for the purpose of growing live plants is not being used for its intended purpose, and is effectively discarded and a waste under the scope of materials intended by the Legislature to require regulation under this mandated rulemaking.

The third sentence clarifies that it is the intended purpose of planting that controls determination whether treated seed is a waste treated seed. Seed planted with all appropriate intention may still not germinate or grow properly for many reasons, thus the eventual growth or lack of growth of viable plants from seed does not automatically render treated seed from which live plants do not grow to be waste treated seed. Relatedly, placement of seeds in the ground is not necessarily planting, if not performed with a reasonable intent that live plants will grow or are likely to grow. Treated seed container label planting directions are, among other purposes, reasonably intended to maximize the seed's potential to grow properly. If the treated seed label directions for appropriate planting are not followed for such factors as temperature, depth, moisture, and other agronomic factors, the seed is reasonably not being planted as intended. Such placement would effectively be burial and thus disposal, rendering treated seed not planted for the purpose of growing live plants or not in accordance with the label directions as waste treated seed.

Additionally, Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, requires that treated seed label directions regarding disposal prohibitions be complied with. It is reasonable that this label compliance expectation apply to planting directions on the label as well.

Justification for Minn. R. 7035.0300, Subp. 117a

A new definition of "water-supply well" is added. This term is used two times in Chapter 7035 currently, and is used in the new provisions affecting waste treated seed proposed in this rulemaking, but has not previously been explicitly defined. Currently this term is found in Minn. R. 7035.2815, Subp. 3, Item E, (5); and Subp. 10, Item B, Subi. (3); and is proposed in Minn. R. 7035.3700, Subp. 4, Item A, Subi. (3), (a). Examined in context, each of these uses is consistent with the MDH's definition of this term in Chapters 4725, already referenced previously by other closely related definitions in this rulemaking for the same reasons. Explicitly defining "water-supply well" to have the meaning in Minn. R. 4725.0100, Subp. 50a, will not change the intended meaning of the two existing uses of the term in this Chapters, but will improve clarity, consistency, and understanding of the intended meaning to these uses as well as to the newly proposed use. Therefore, it is reasonable and necessary to adopt this definition.

2) Minn. R. 7035.2525

Justification for Minn. R. 7035.2525, Subp. 2, Items A & L

Two parallel new provisions prohibiting composting of waste treated seed at backyard compost sites and small compost sites are added. This prohibition applies the Legislature's directive in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, to these sites.

Composting facilities in Minnesota are regulated under Minn. R. 7035.2525 as one of five categories: backyard compost sites, small compost sites, solid waste compost facilities, source-separated organic material compost facilities, and yard waste compost facilities. In reverse order, waste treated seed does not meet the definition of yard waste under Minn. R. 7035.0300, Subp. 121, and is therefore

categorically ineligible for management in yard waste compost facilities. No change is needed to apply the Legislature's directive to such facilities. The proposed change already discussed to the definition of source-separated organic material in Minn. R. 7035.0300, Subp. 105a, to exclude waste treated seed from this definition will result in a similar categorical ineligibility for management of waste treated seed in source-separated organic material compost facilities. Solid waste compost facilities are directly addressed following in the revision to Minn. R. 7035.2836, Item M, which explicitly prohibits composting of waste treated seed. Rather than restate the prohibition multiple times effectively verbatim, it is more efficient to reference this clear, explicit prohibition from the remaining two types of compost sites in Minnesota. While the statutory prohibition would still apply in the absence of any rule statement, adding clear statements to the rule will enhance knowledge of the ban and increase understanding. It is necessary and reasonable to add clear statements that waste treated seed may not be composted at these sites.

3) Minn. R. 7035.2535

Justification for Minn. R. 7035.2535, Subp. 5, Item B; and Item B, Subis. (12), (13), and (14)

A reference to the new proposed Minn. R. 7035.3700 is added to ensure that industrial solid waste management facility operators are aware of its existence and requirements when preparing their industrial waste management plans if they will receive waste treated seed. Therefore, it is reasonable to add this reference.

Subi. (12) is altered grammatically to reflect the newly added Subi. (13), and existing Subi. (13) is renumbered to (14) to similarly reflect the addition. No change to the text or intended meanings of these subitems is made. It is reasonable and necessary to alter and renumber these subitems to maintain the structure of this rule.

4) Minn. R. 7035.2815

Justification for Minn. R. 7035.2815, Subp. 6, Item A

A new requirement to place immediate cover on waste treated seed is added to the mixed municipal solid waste land disposal facility standards. Currently, the standards for mixed municipal solid waste land disposal facilities only require weekly cover to the working face. A critical risk for waste treated seed is exposure to wildlife by foraging, such as at a land disposal facility. When planted for crops on land used for farming, treated seed is either drilled deep into the soil, or is immediately covered as an integral Minn. R. of the planting action. However, placement on the necessarily exposed working face of a land disposal facility would subject waste treated seed to foraging by wildlife commonly present at such facilities in Minnesota, including birds and deer. Immediate protection by covering is necessary and reasonable to minimize this risk as much as possible.

Justification for Minn. R. 7035.2815, Subp. 11, Item F, (1)

This subitem is numbered to improve readability in consequence of the addition of the text in proposed Subi. (2). No change to the text or intended meanings of this subitem is made. It is reasonable and necessary to number this subitem to add structure and maintain the readability of this Minn. R. .

Justification for Minn. R. 7035.2815, Subp. 11, Item F, (2)

A clarified requirement for mixed municipal solid waste land disposal facilities accepting waste treated seed is added to require the operator to determine the maximum volume of waste treated seed the facility can accept daily to ensure the capacity of the facility's decomposition gas management system is not exceeded. The MPCA considers that this requirement is already an inherent element of the body of Item F, but may be overlooked if the reader is not careful. Waste treated seed is also a nearly-entirely organic waste subject to substantial decomposition in many land disposal facility conditions. This decomposition may release more flammable gasses than many mixed municipal solid wastes. This

clarified expectation has been communicated to land disposal facility operators in published MPCA guidance documents for over two years with no objection by land disposal facility operators or observed burden to land disposal facility operations. It is reasonable to clearly and explicitly specify this requirement.

Justification for Minn. R. 7035.2815, Subp. 13, Item A

A new requirement for mixed municipal solid waste land disposal facilities accepting waste treated seed is added to require the operator to spread the waste treated seed to maintain working face slope stability and minimize localized settlement. These facilities already have a maximum spread depth of two feet on the working face under existing Item A. However, this depth may be too deep for the specific characteristics of waste treated seed, depending on all the facility and working face characteristics, such as slope, underlying waste composition, and cover material.

Waste treated seed is a relatively small, granular, round-shaped waste that in large quantities presents a significantly higher risk of slope slump and movement after deposition than most solid wastes. In addition, waste treated seed is also a nearly-entirely organic waste subject to substantial decomposition in many land disposal facility conditions. This decomposition will release flammable gasses, addressed elsewhere in this rulemaking, as well as result in substantial reduction in size and mass of the deposited waste. Significant reductions in waste volume after deposition and covering may result in localized settlement, hindering facility operations and posing safety risks for operators and vehicles traversing the area. One of the most effective methods to manage these risks is to limit the depth of deposition and compaction of the waste treated seed.

This clarified expectation has been communicated to land disposal facility operators in published MPCA guidance documents for over two years with no objection by land disposal facility operators or observed burden to land disposal facility operations. It is reasonable to codify this clarification. [See MPCA fact sheet #w-hw4-51, versions April 2022 & December 2023]

5) Minn. R. 7035.2836

Justification for Minn. R. 7035.2836, Subp. 5; and Subp. 5, Item M

A new provision prohibiting composting of waste treated seed at solid waste compost facilities is added. This prohibition applies the Legislature's directive in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, to these facilities.

Composting facilities in Minnesota are regulated under this Minn. R. as one of five categories: backyard compost sites, small compost sites, solid waste compost facilities, source-separated organic material compost facilities, and yard waste compost facilities. In reverse order, waste treated seed does not meet the definition of yard waste under Minn. R. 7035.0300, Subp. 121, and is therefore categorically ineligible for management in yard waste compost facilities. No change is needed to apply the Legislature's directive to such facilities. The proposed change already discussed to the definition of source-separated organic material in Minn. R. 7035.0300, Subp. 105a, to exclude waste treated seed from this definition will result in a similar categorical ineligibility for management of waste treated seed in source-separated organic material compost facilities. Small compost sites and backyard compost sites are subject to the Legislature's ban and are addressed above in the changes to Minn. R. 7035.2525, Subp. 2. Therefore, only this new provision in Minn. R. 7035.2836, Item M, is needed to complete application of the Legislature's mandate.

In addition to the need to apply the Legislature's clearly stated intent, it is necessary and reasonable to prohibit waste treated seed from being composted in Minnesota. The intended use of compost is to replenish, enrich, or add nutrients or beneficial characteristics to soil to support plant growth, usually agricultural or horticultural plantings. During the composting process, components of the composted

materials that do not or will not readily biodegrade will be either concentrated into the finished compost or will be released into the environment. The majority of seed treatments borne by waste treated seed are pesticides, fungicides, or herbicides; substances intentionally designed to harm animal or plant life. When concentrated and applied in compost, or released during the composting process, all of these substances present a significant risk of endangering humans, food, livestock, fish, or wildlife. Such a result is also contradictory to the Legislature's explicit prohibition in Laws of Minnesota 2023, Ch. 60, Art. 9, Sec. 2, which prohibits use, handling, or disposition of waste treated seed in a manner that "...endangers humans, food, livestock, fish, or wildlife; or will cause unreasonable adverse effects on the environment...". It is therefore reasonable to render waste treated seed ineligible for management by composting.

6) Minn. R. 7035.3700

Justification for Minn. R. 7035.3700, Subp. 1

The scope of the applicability of the new waste treated seed provisions are stated. It is necessary and reasonable to ensure that it is clear that the requirements and prohibitions apply to any person in Minnesota managing or otherwise disposing of waste treated seed. The general collection and transportation provisions of Minn. R. 7035.0800 already apply to all persons that own or occupy any premises in the state, which would include any location where waste treated seed is accumulated.

However, based on the MPCA's observations and the relative prevalence of treated seed in the agricultural sector and relative rarity in the household planting sector, the MPCA does expect that the majority of persons directly affected will be manufacturers, dealers, retailers, agricultural cooperatives, and farmers. All of these groups are already familiar with identifying treated seed and taking safety precautions when handling it. Additionally, the MPCA, the Minnesota Department of Agriculture (MDA), and the University of Minnesota (UMN) have implemented outreach and education efforts over the last two years to make these groups aware of the need and specific requirements for waste treated seed management. Therefore, the MPCA does not expect the scope of applicability of these provisions to be unforeseen nor controversial.

Justification for Minn. R. 7035.3700, Subp. 2

The regulated status of waste treated seed under Chapter 7035 and Chapter 7045 as an industrial solid waste is declared. Wastes in Minnesota that are not exempt from hazardous waste regulation under Minn. R. 7045.0120 must, under Minn. R. 7045.0214, Subp. 1, either be assumed to be a hazardous waste or be evaluated and determined to not meet the criteria for hazardous waste under Minn. R. 7045.0214, Subp. 2.

Wastes that are either exempt from hazardous waste regulation under Minn. R. 7045.0120, or that have been evaluated and determined to be non-hazardous under Minn. R. 7045.0214, then revert to regulation as solid waste under Chapter 7035.

Waste treated seed, if generated by manufacturers, dealers, retailers, agricultural cooperatives, or similar commercial enterprises or government entities, would not be exempt from hazardous waste regulation under the existing Minn. R. 7045.0120. However, the MPCA evaluated many example types of waste treated seed and determined that waste treated seed would likely not meet any of the definitions of listed wastes under Minn. R. 7045.0135, as referenced by Minn. R. 7045.0214, Subp. 2, Item A, when managed as proposed in this rulemaking. Similarly, the MPCA also found that waste treated seed managed as an industrial solid waste under the proposed provisions of this rulemaking would likely not meet any of the definitions of characteristic waste under Minn. R. 7045.0131, as referenced by Minn. R. 7045.0214, Subp. 2, Item B.

Waste treated seed is not a liquid nor compressed gas, so is categorically not Ignitable hazardous waste under Minn. R. 7045.0131, Subp. 2, Items A or C. Waste treated seed managed as an industrial solid waste would also not be likely expected, under standard temperature and pressure, of causing fire through friction, absorption of moisture, or spontaneous chemical changes, nor, when ignited, would it likely burn so vigorously and persistently that it creates a hazard. The treatments applied to treated seed, such as pesticides, fungicides, and herbicides, do not substantively alter the predominant combustion traits of corn, which burns similarly to other dense vegetative materials such as wood. Waste treated seed managed as an industrial solid waste would therefore likely not be an Ignitable hazardous waste under Minn. R. 7045.0131, Subp. 2, Item B.

Though some of the treatments applied to treated seed and thus found in waste treated seed may include chemical components that are oxidizers, such as oxides, organic and inorganic peroxides, permanganates, perhenates, chlorates, perchlorates, persulfates, nitric acid, organic and inorganic nitrates, iodates, periodates, bromates, perselenates, perbromates, chromates, dichromates, ozone, or perborates, the relative concentration of these components in ratio to the mass of each individual seed would render the waste treated seed when managed as an industrial solid waste to likely not be an oxidizer as defined in Code of Federal Regulations, title 49, section 173.127, as amended, nor would the waste treated seed likely readily supply oxygen to a reaction in the absence of air. Waste treated seed managed as an industrial solid waste would therefore likely not be an Oxidizer hazardous waste under Minn. R. 7045.0131, Subp. 3.

Waste treated seed is not aqueous nor a liquid. Therefore, waste treated seed managed as an industrial solid waste is categorically not a Corrosive hazardous waste under Minn. R. 7045.0131, Subp. 4.

Waste treated seed managed as an industrial solid waste not normally be expected to be unstable nor readily undergo violent change without detonating; react violently with water; or form potentially explosive mixtures or generate toxic gases, vapors, or fumes when mixed with water. Though some of the treatments applied to treated seed may contain cyanide or sulfides, in parallel to as found for the Oxidizer Characteristic, the relative concentration of such potential treatment components in ratio to the mass of each treated seed would likely not result in waste treated seed managed as an industrial solid waste generating toxic gases, vapors, or fumes nor being capable of detonation or explosive reaction. Waste treated seed is not a forbidden explosive as defined in Code of Federal Regulations, title 49, section 173.54, as amended, a Division 1.1 or 1.2 explosive as defined in Code of Federal Regulations, title 49, section 173.50, as amended, or a Division 1.2 or 1.3 explosive as defined in Code of Federal Regulations, title 49, section 173.50, as amended. However, waste treated seed managed by grinding or processing for industrial purposes could be capable of detonation or explosive reaction if strong initiating source or if heated under confinement. These management methods would not be allowed under industrial solid waste management plans reviewed and approved by the Agency. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a Reactive hazardous waste under Minn. R. 7045.0131, Subp. 5.

Though some of the treatments applied to treated seed and thus found in waste treated seed may independently display toxicological properties sufficient to render those treatments in original form as Lethal hazardous wastes, the relative concentration of such potential treatment components if not additionally concentrated by management methods proposed to be prohibited for waste treated seed as industrial solid waste, such as by composting or uncontrolled burning or use as feedstock, in ratio to the mass of each treated seed, would likely render the waste treated seed consistently non-Lethal by over two orders of magnitude for even the most poisonous modern treatment chemical. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a Lethal hazardous waste under Minn. R. 7045.0131, Subp. 6.

Historically, some heavy metals that could render a waste a Toxicity Characteristic hazardous waste, including arsenic, lead, and mercury, were used as pesticide components, potentially in some seed treatments. All potential seed treatment uses of arsenic were phased out nationally by 2013, mercury uses by 1993, and lead uses by 1988, though the MPCA believes that actual uses in pesticides and fungicides used for seed treatment of these particular heavy metals actually ceased earlier in almost all cases. While other Toxicity Characteristic heavy metals, including barium, cadmium, chromium, and silver, remain allowed components of some pesticides registered with the EPA, none of those pesticides are allowed for use in seed treatment. Selenium is a differential case, as this heavy metal also is a plant nutrient and potential antagonist of natural arsenic and other heavy metal exposure as well as being its own bioaccumulative toxin. However, the threshold concentration of selenium producing agricultural harm, and therefore the highest reasonably expected potential concentration found in waste treated seed managed as an industrial solid waste, would render the waste treated seed consistently non-Toxic by over an order of magnitude. Therefore, waste treated seed managed as an industrial solid waste as proposed in this rulemaking would likely not be a D004, D005, D006, D007, D008, D009, D010, or D011 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Several historic pesticides, some of which could have been potentially used in seed treatments, could, if present, render a waste a Toxicity Characteristic hazardous waste. Use of 2,4,5-TP (Silvex) was banned by the EPA in 1983; 2,4,5-trichlorophenol in 1985; chlordane in 1988; toxaphene in 1990; methoxychlor in 2004; lindane in 2006; and hexachlorobutadiene in 2021. The use of pentachlorophenol was restricted from agriculture in 1987, and heptachlor in 1988. According to the U.S. Centers for Disease Control and Prevention's (CDC) Agency for Toxic Substances and Disease Prevention (ATSDR), endrin has not been sold in the United States since 1986, and 2,4,6-trichlorophenol since no later than 1989. Since treated seed has a relatively short usable life, limited to one to two years of viability, the MPCA reasonably expects that waste treated seed generated presently in Minnesota would not likely contain any of these pesticides. Finally, several pesticides, though still in active use in the United States, do not appear to be currently registered with the EPA for use as seed treatments or as ingredients in seed treatments, and therefore would be prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from this use, including m-cresol; 2,4-D; 1,4-dichlorobenzene; hexachloroethane; nitrobenzene, and pyridine. Therefore, waste treated seed would not reasonably be a D020, D024, D016, D027, D012, D031, D032, D033, D034, D013, D014, D036, D037, D038, D015, D041, D042, or D017 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subp.s 7 and 8.

Some solvents, including chlorobenzene, still in active use in the United States in pesticide formulations are, as part of the seed treatment process, intended to help carry the pesticide active ingredient and then evaporate during the treatment and finishing process to leave a solid or granular treatment coat on the seeds. Under expected treated seed manufacturing and storage conditions, the physical character and intended use of these solvents, as well as reduction by oxidation and evaporation upon exposure to air and decomposition upon exposure to light, results in significant reduction of the solvent content to residual level similar to evaporation of aqueous solutions. The residual of such solvent would reasonably be expected to render the waste treated seed non-Toxic by at least several orders of magnitude. Therefore, waste treated seed, when managed as an industrial solid waste as proposed in this rulemaking, would not reasonably be a D021 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

Several industrial chemicals and solvents have historically not been used, would not reasonably have an expected use, nor have been approved for use in seed treatments, including benzene; carbon tetrachloride; chloroform; o-cresol; p-cresol; 1,2-dichloroethane; 1,1-dichloroethylene; 2,4-dinitrotoluene; methyl ethyl ketone; tetrachloroethylene; trichloroethylene; and vinyl chloride.

Therefore, waste treated seed would not likely be a D018, D019, D022, D023, D025, D026, D028, D029, D030, D035, D039, D040, or D043 Toxicity Characteristic hazardous waste under Minn. R. 7045.0131, Subps. 7 and 8.

In conclusion, though the treatments applied to waste treated seed do still present risk to human health and the environment when the waste treated seed is disposed, necessitating the reasonable requirements proposed in this rulemaking, waste treated seed managed properly as an industrial solid waste as proposed in this rulemaking would not likely be a regulated hazardous waste in Minnesota.

Under Chapter 7045, it is the generator of a waste that has a non-delegable responsibility for properly and sufficiently evaluating its waste. Historically, the MPCA does not remove the duty upon generators for performing an evaluation. In this limited case of waste treated seed, the MPCA has decided that it is appropriate to exempt waste treated seed from the requirements of Chapter 7045 if it is managed according to standards proposed in this rulemaking. In reaching this conclusion, the MPCA has considered that:

- The regulated groups that would otherwise be required to evaluate waste treated seed, including farmers and seed dealers and retailers, are relatively unfamiliar with the Hazardous Waste Program, both generally and regarding the specific requirements of evaluation;
- Since no alteration of treated seed between manufacture as product and generation as waste treated seed is expected, and the universe of treated seed is limited in allowed treatments and concentrations by the existing FIFRA regulations administered by the EPA and parallel pesticide regulations administered by the MDA, the MPCA reasonably expects that the evaluations it performed under the expected allowed disposal methods are likely representative of waste treated seed as a category;
- As a consequence of this consistency, waste evaluations otherwise performed by each individual waste treated seed generator who is compliant with the proposed requirements in this rulemaking to manage the waste treated seed as an industrial solid waste would be duplicative and would not increase environmental or human health protection in Minnesota.

In sum, the MPCA concluded that requiring compliance with the evaluation requirements by each individual waste treated seed generator that is compliant with the proposed disposal requirements in this Minn. R. would be unnecessarily burdensome and inappropriate. Therefore, the proposed directed status of waste treated seed as industrial waste without individual evaluation by each generator, explicitly conditioned on managed of the waste treated seed as proposed in this rulemaking, is necessary and reasonable.

Waste treated seed does meet the existing definition of an industrial solid waste under Minn. R. 7035.0300, Subp. 45, as *“...solid waste generated from an industrial or manufacturing process and solid waste generated from nonmanufacturing activities such as service and commercial establishments....”* Distributing, retailing, warehousing, and farming are nonmanufacturing activities. Waste treated seed also does not meet any of the exclusions from industrial solid waste as *“...office materials, restaurant and food preparation waste, discarded machinery, demolition debris, municipal solid waste combustor ash, or household refuse...”*.

However, the MPCA cannot determine that waste treated seed that were to be improperly managed, such as if buried, burned, or composted through methods other than those proposed to be allowed under this rulemaking and that have been studied by the MPCA, would consistently and reliably not meet any of the hazardous waste characteristics. Therefore, the proposed exclusion from Chapter 7045 is limited only to waste treated seed and containers that held treated seed that are managed in compliance with this proposed rulemaking. Waste treated seed not managed in compliance with the

provisions proposed in this rulemaking would remain fully subject to evaluation under Chapter 7045 and management according to the results thereof, or management as a hazardous waste if not so evaluated.

In contrast to the waste treated seed itself, waste containers from treated seed, such as plastic or coated paper bags, buckets, or totes are more varied than the treated seed itself and are instead similar to other mixed municipal solid waste. The proportion of treatment constituents from the treated seed that are the sources of primary environmental and human health risk concern is also reasonably expected to be significantly lower as residual in containers than on the treated seed itself. Such containers are expected to present similar environmental and human health risks as other similar mixed municipal solid wastes and do not present the decomposition, settling, gas generation, or wildlife foraging risks of waste treated seed, so the waste-specific management required for industrial solid waste would be unnecessarily burdensome.

Therefore, it is necessary and reasonable to declare that waste treated seed managed under the provisions proposed in this rulemaking is industrial solid waste and that waste containers that held treated seed are mixed municipal solid waste.

Justification for Minn. R. 7035.3700, Subp. 3, Items A to C

Cross-references to each of the applicable new statutory provisions enacted by Laws of Minnesota 2023, chapter 60, are made. These cross-references do not themselves create any new requirements or burden, but effectively serve as a pointer to each of the specific provisions. These cross-references will improve accessibility and knowledge of the new provisions and reduce confusion for the reader. It is reasonable to improve readability and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A

This Item clarifies the already-existing limitations and conditions for disposal of waste treated seed. Under existing rules and statutes, such disposal would only be allowed at mixed municipal solid waste land disposal facilities, at industrial solid waste disposal facilities, and, for certain generators, on land used for farming. Restating and clarifying these existing limitations and conditions will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, Subi. (1)

The MPCA has already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. This subitem restates and clarifies the already existing requirement that industrial solid waste, in the form of waste treated seed, may only be disposed of at a mixed municipal solid waste land disposal facility, in compliance with the Minn. R. 7035.2815. It is reasonable to improve clarity and comprehension of the proposed requirements.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, Subi. (2)

The MPCA has already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. In addition to disposal of industrial solid waste at mixed municipal land disposal facilities, which is already allowed, the MPCA considers that disposal with equivalent environmental protection requirements may be feasible at other land disposal facilities in the state. For instance, some industrial solid waste land disposal facilities and some demolition debris land disposal facilities are already equipped with liners and leachate management systems equivalent to those required for mixed municipal land disposal facilities. One of the primary concerns regarding waste treated seed disposal at land disposal facilities is potential leaching and migration of concentrated pesticides from the waste treated seed into soil and groundwater under the facility. Liners and leachate management systems are the primary protective measures to mitigate this risk. Facilities that are equipped with liners and leachate management systems and that demonstrate to the Agency that they

can safely manage waste treated seed would, for the purposes of waste treated seed management, then be effectively equivalent to a mixed municipal solid waste land disposal facility already allowed to accept waste treated seed, as long as they also followed the management and operational standards required for waste treated seed at mixed municipal solid waste land disposal facilities. It is reasonable to not unnecessarily restrict land disposal facilities that can safely management waste treated seed and prevent release of harmful constituents from the waste treated seed into the environment from receiving and properly managing this waste. Clearly allowing such management will continue to protect human health and the environment, while also providing the maximum number and variety of land disposal facilities to receive this waste stream to ensure available and convenient proper disposal is available to waste treated seed generators and haulers. It is reasonable to clearly identify the minimum land disposal facility requirements necessary to accept waste treated seed and to identify the management and operational standards such facilities must meet.

Justification for Minn. R. 7035.3700, Subp. 4, Item A, subItem (3)

The MPCA already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. Previously existing Minn. Stat. § 17.135, (a), conditionally exempts a person who owns or operates land used for farming from being required to obtain a permit from a state agency to bury solid waste generated as a part of that person's farming operation. Absent this exemption, burial of industrial solid waste by any person in Minnesota would require a permit from the MPCA, such as are required for mixed municipal solid waste disposal facilities, industrial solid waste disposal facilities, and composting facilities. Waste treated seed generated by a person who owns or operates land used for farming would reasonably be considered waste generated as a part of that person's farming operation, and eligible for the permit exemption. The exemption is subject to conditions that such burial be performed "on the land used for farming" and "in a nuisance-free, pollution-free, and aesthetic manner". The first condition is restated in the body text of this subitem.

Newly enacted Minnesota Statute § 115A.993 further requires that any burial of waste treated seed not be "*...near a drinking water source or any creek, stream, river, lake, or other surface water...*" The Legislature's clear statement that burial not be "near" these waters reasonably necessitates the MPCA to establish in this rulemaking specific minimum setback distances to these waters from a burial location. Additionally, the MPCA must determine in this rulemaking the applicable meaning of the condition "pollution-free" as it relates to setback distances from and protections for surface water and underground waters, both at the time of burial and foreseeable future. These distances and protections are specified in paragraphs (a) through (f).

The MPCA first considered the appropriate setback distances for water-supply wells. The historical solid waste rules for sites at which industrial solid waste will be buried for disposal did not specify minimum setbacks to water-supply wells, since identification of all potentially-impacted wells is an inherent part of the preliminary planning process for solid waste land disposal facilities. For industrial solid waste land disposal facilities, prior to this rulemaking, this would involve defining the hydrogeology, including use of all water resources, in the potential zone of influence of the proposed facility under Minn. R. 7035.1800. This standard would be prohibitively burdensome for a person operating land used for farming who would be burying only waste treated seed from their farming operation under this proposed subitem.

Considering the normal intended use of treated seed, and the relative expected volume and risks of waste treated seed that may be buried for disposal on land use for farming, the MPCA believes that it is instructive to consider the setbacks established by the MPCA for land treatment of contaminated soils under existing Minn. R. 7037.0900, Item D, of at least 200 feet from a water-supply well. The most likely proximal water-supply well would be the farm's own water-supply well. The risks to the farm's own water-supply well, reasonably expected to be used by the same persons responsible for the burial of

waste treated seed regulated under this provision, are real, but limited in scope. The risks from treatment of contaminated soil, including release of relatively small amounts of contaminants to a water-supply well of relatively limited use, are comparable to burial of the volumes and frequencies of waste treated seed reasonably expected under this provision. Therefore, it is reasonable to apply a similar minimum setback distance from any water-supply well. However, because the definition of this term includes water-supply wells used for other than human or animal drinking water, such as irrigation or heating and cooling, which would not reasonably be affected by potential releases from burial of waste treated seed, and because of the Legislature's explicit restriction on "...burial near a drinking water source...", it is appropriate to clarify that this restriction applies to water-supply wells used for human or animal drinking water.

Similarly, because of the substantially higher risk presented by potential contamination of public water supplies, which serve many people, and which include both wells and surface waters, it is reasonable to require a substantially larger setback distance from public water supplies. Again, the MPCA believes it is instructive to consider the setbacks established by the MPCA for land treatment of contaminated soils under existing Minn. R. 7037.0900, Item D, of at least 1000 feet from a public water-supply well. The risks from treatment of contaminated soil, including release of relatively small amounts of contaminants to a water-supply well of relatively limited use, are again comparable to burial of the volumes and frequencies of waste treated seed reasonably expected under this provision. Because public water supplies include both wells and surface waters, which may be inter-related and feed each other, it is reasonable to apply the setback to all public water supplies, not just those provided from wells. Therefore, it is again reasonable to apply a similar setback distance for burial of waste treated seed from public water supplies.

The MPCA believes that a person owning or operating land used for farming would most often already know, or easily be able to identify, water-supply wells used for drinking water within 200 feet of their intended waste treated seed burial site, particularly since the majority of such water-supply wells would most likely be on the land used for farming itself, and thus within the personal knowledge of the person performing the burial. Similarly, public water supplies, since they serve multiple users, are recorded and if not already known to persons owning or operating land used for farming, may be identified through public agencies including counties and the MDH. Avoiding the need for persons operating land used for farming to prepare complete hydrogeological profiles of the areas potentially impacted by burial for disposal of only their waste treated seed by establishing specific minimum setback distances from water-supply wells and public water supplies is necessary and reasonable.

The MPCA next considered the appropriate setback distances for surface waters also required by the Legislature's explicit restriction on "...burial near...any creek, stream, river, lake, or other surface water...." Surface waters are more easily contaminated and may carry contamination some distance by the free flow afforded surface waters from gravity or wind rather than the restricted flow exhibited by underground waters from hydrological pressure and through various ground media, raising risk. Applying this restriction and risk, adjusted for the reasonably expected risk from the relatively small volumes and frequency of waste treated seed burial likely by persons owning or operating land used for farming, the MPCA believes it is instructive to consider the minimum setback distances historically required for sites at which limited solid wastes were buried for disposal without site-specific review by the MPCA, under Minn. R. 7035.2825, Subp. 2.

Though that allowance for burial of limited solid wastes without MPCA review itself is currently being revised for other reasons, the MPCA believes that the water protection standards it applied remain valid and informative to the MPCA in derivation of geology and landform limitations, water table separation, backfill depth, and final surface contouring of waste treated seed burial sites to be allowed under this limited conditional exemption.

The considered setbacks restrict burial on land that is karst and that is within a wetland, floodplain, or shoreland. The MPCA believes that these setbacks are consistent with both the Legislature's intent and with establishment of reasonable and necessary environmental protection. The MPCA also believes that a person owning or operating land used for farming would most often already be familiar with that land's designation relative to wetlands, floodplains, and shorelands, since these designations may substantially affect the farming operation and when and how the land is used for farming under other state and federal regulations and guidelines, such as crop insurance and wetland protection. Similarly, the land's identification as karst would be expected to substantially affect water management and thus planting and irrigation, essential factors for a person owning or operating land used for farming to consider. Therefore, it is reasonable and necessary to apply these conditions to burial of waste treated seed on land used for farming.

Regarding vertical setback from the water table, the MPCA believes that the majority of persons owning or operating land used for farming are already aware of the depth of their local water table, as that depth can affect planting, drainage, irrigation, and other farming-related factors, and thus such persons would have the knowledge needed to comply with this protective requirement without imposing an unreasonable burden or additional effort. However, this minimum depth, five feet, is large enough that this exception would remain available for most land used for farming in the state. The MPCA believes that this precautionary measure is consistent with and meets the intended purpose of the Legislature that solid waste generated as part of the person's farming operation be buried in a "pollution-free" manner as required by the Legislature, because it will reduce the likelihood of buried waste treated seed from impacting groundwater.

Regarding drainage, appropriate site slope and cover, and forethought given to the intended future use of the site following burial of waste treated seed, the MPCA believes these expectations are reasonable and necessary and consistent with the Legislature's conditions for burial of waste generated as part of a farming operation discussed generally above.

Finally, the body text of Subi. (3) restates the statutory ineligibility of this exception for a farm where scheduled pickup of solid waste is reasonably available, under the final paragraph of Minn. Stat. § 17.135, (a) This exception is limited by the explicit statutory language, and the MPCA has not been extended authority by the Legislature to alter this ineligibility by rule.

Justification for Minn. R. 7035.3700, Subp. 4, Item B

This Item clarifies the already-existing limitations and conditions for burning waste treated seed for disposal or energy recovery. The MPCA already clarified in the proposed Minn. R. 7035.3700, Subp. 2, that waste treated seed is an industrial solid waste. Waste burning is considered as taking place either in a burning or combustion unit, or in the open.

Any unit or facility used to burn, otherwise referred to in applicable Minnesota Rules as to combust, solid waste is a waste combustor under Minn. R. 7011.1201, Subp. 46. Waste combustors are classified as Class I through Class IV for recently constructed waste combustors and classes A and C for older waste combustors. Burning waste in Class I through III, and Class A and C waste combustors requires an air quality permit issued by the MPCA or EPA. Functionally, all waste combustors burning waste in Minnesota are energy recovery facilities, also known as Waste-To-Energy (WTE) facilities and are issued

an air quality permit by the EPA or MPCA. The conditional exemption from state agency permitting of burning on the land used for farming of waste generated as part of a person's farming operation in Minn. Stat. § 17.135, (a), does not and cannot exempt any waste combustors from any applicable federal EPA permitting.

Class IV waste combustors, meaning those with a design capacity of less than three million British thermal units (Btu) per hour, are nearly all prohibited in Minnesota under Minn. R. 7011.1220, with exceptions only for hospitals, human or animal crematoria, and metals recovery incinerators. None of these excepted combustors may burn industrial solid waste. These relatively flatly prohibited small Class IV waste combustors are the most likely to be operated without emissions controls or monitoring systems, and produce significantly more toxic emissions per volume of waste burned than the larger waste combustors that are allowed and subject to state or federal permitting in Minnesota.

The conditional exemption from state agency permitting in Minn. Stat. § 17.135, (a) of burning on the land used for farming of waste generated as part of a person's farming operation does not exempt such burning from any other applicable statutory restrictions or prohibitions. Minn. Stat. § 88.171, Subd. 2, prohibits the open burning of "chemically treated materials". Waste treated seeds by definition would be considered a "chemically treated material" subject to this burning prohibition. The new prohibition in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, located in Minn. Stat. § 115A.993, to burning waste treated seed within a home or dwelling adds to these preexisting burning restrictions and conditions, but does not obviate nor limit them.

Together, these existing restrictions, as well as the new restriction, result in waste treated seeds being eligible to be burned for disposal or energy recovery only in an energy recovery facility knowingly issued an air quality permit by the MPCA or EPA to burn mixed municipal solid waste or industrial solid waste explicitly identified as including waste treated seed. These strictly regulated energy recovery facilities are required to take measures to plan for, identify, and control air emissions, including likely toxic emissions. Burning of waste treated seed by such facilities after explicit review and approval by the MPCA would be subject to close oversight and continuing assessment and review of the environmental and human health risks of such burning. Restating and clarifying these existing restrictions will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension of the existing restrictions.

Justification for Minn. R. 7035.3700, Subp. 4, Item C

This Item restates the restrictions from disposal by composting of waste treated seed enacted in Laws of Minnesota 2023, Ch. 60, Art. 3, Sec. 16, located in Minn. Stat. § 115A.993; and also implemented in the proposed Minn. R. s 7035.0300, Subp. 105a; and 7035.2836, Subp. 5, Item M. The justification for those Minn. R. s is stated in the justification narratives for each respectively. Restating and clarifying this restriction will improve understanding by the reader and simplify reference for the reader. It is reasonable to improve readability and comprehension.

Justification for Minn. R. 7035.3700, Subp. 4, Items D, E, and F

The MPCA lists non-legitimate uses of waste treated seed expected to cause significant harm to human health or the environment, or to cause substantial risk of significant harm to human health or the environment, yet would still be expected to be attempted without these prohibitions. Existing Minn. R. 7035.0800 already requires satisfactory collection and transportation of solid waste, such as waste treated seed, to a facility that is authorized to accept the waste. Because waste treated seed is considered an industrial solid waste, the use, donation, sale, and offers of waste treated seed for human food, animal feed, and oil processing, would already be effectively prohibited. As further discussed below, it is needed and reasonable to expressly prohibit these activities due to the risk to human health and the environment and the reasonably foreseeable risk that waste treated seed generators may

attempt to effectively dispose of waste treated seed through one of these illegitimate uses.

Waste treated seed has already in Minn. R. 7035.3700, Subp. 2, been clarified to be a solid waste regulated by the MPCA. Delineation of proper and improper solid waste management methods is a necessary and critical core responsibility of the MPCA. The Legislature has long directed the MPCA in Minn. Stat. 115A.02, (b), to apply a hierarchy of waste management methods, in order, with the first preferred approach being waste reduction and reuse. Inherent economic motivators also commonly drive waste generators to consider possible reuses of wastes as alternatives to standard waste disposal, if only to avoid otherwise incurred potentially significant disposal costs, even if the possible reuse results in little to no inherent economic benefit. Such waste reuse, when appropriate and safe for human health and the environment, can result in benefits to human health and the environment.

However, these economic pressures to avoid waste disposal costs can also, in the absence of clear guidelines from and oversight by the MPCA, result in reuses that directly or indirectly harm human health and the environment, both immediately and long-term. The MPCA is aware of a history of effectively sham reuses of wastes that have caused harm, ranging from toxic heavy metal-containing paint wastes being sprayed on the underside of automobiles as ostensible “rustproofing,” to toxic fire retardant-bearing kitchen utensils made from recycled electronics casings, to, particularly relevant to this rulemaking, treated wood scraps allegedly sold for firewood.

Therefore, it is reasonable for the MPCA to clearly prohibit reuses of waste treated seed that might otherwise be possible, or even likely in some situations, to prevent harm to human health and the environment. In doing so, the MPCA finds instructive the directives and cautions of other agencies with experience dealing with treated seeds, including the U.S Food & Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the EPA, and the MDA, as well as the reasoning of the Legislature.

In an explanatory discussion in the body of the actual federal regulation relating to treated seed coloration, the FDA at 21 CFR 2.25 describes instances where treated seed has been used for human food and animal feed preparation. While common sense would suggest that such reuse would not be directly contemplated by reasonable handlers of waste treated seed, the highly segregated nature of both the human food and animal feed processing chains in today’s industry may obscure the original producer or the ultimate use from both each other as well as intermediate handlers unless extremely clear communication of what methods can and cannot be used for waste treated seed are made from the outset. While the coloration required for certain treated seed, and generally utilized by the industry for nearly all treated seed, even when not explicitly required, is intended to be a visual warning that the seed is treated, it does not and cannot prohibit use of waste treated seed for those cautioned uses, since the users and thus handlers of any resulting waste treated seed are not regulated by the FDA for this respect; it is the need and responsibility of the MPCA in this rulemaking to directly regulate waste treated seed management as the solid waste it is, including prohibited reuse.

Similarly, USDA federal regulation relating to treated seed labeling at 7 CFR 201.31 requires that any treated seed that could be harmful to humans or other animals be labeled with cautions not to use the treated seed for food, feed, or oil purposes. However, again, these labels are intended to be textual warnings to the user, but do not and cannot prohibit use of waste treated seed for those cautioned uses, since the users and thus handlers of any resulting waste treated seed are not regulated by the USDA for this respect; it is the need and responsibility of the MPCA in this rulemaking to directly regulate waste treated seed management as the solid waste it is, including reasonably foreseeable but illegitimate uses.

The EPA’s federal regulation relating to use of pesticides in accordance with their EPA-approved label instructions required under FIFRA at 40 CFR 170.9, while technically a requirement, was determined by

the EPA in 2022, and confirmed in 2023, at 88 FR 70628, to be “...not generally enforceable under FIFRA...”. It is therefore again the need and responsibility of the MPCA in this rulemaking to directly regulate, waste treated seed management as the solid waste it is, including prohibited reuse.

In the same Session Law that mandated this rulemaking, the Legislature enacted a new MDA restriction on use of seed treated with neonicotinoid pesticides from ethanol feedstock use at Minn. Stat. 21.86, Subd. 2. While this direct restriction is the province of the MDA, not the MPCA, the MPCA has consulted with the MDA. MPCA finds that the potential reuse of waste treated seed for fuel use, including biodiesel produced from waste treated soybeans or other oil-bearing waste treated seed, biomass, or sustainable aviation fuel made from a potential variety of waste treated seed, that involve other toxic pesticides that are not neonicotinoids, raises similar and parallel human health and environmental risks as the already-seen ethanol made from waste treated seed corn that was addressed in the new MDA statute. This infamous example of widespread and severe pollution caused by the AltEn ethanol refinery in Mead, Nebraska’s use of waste treated seed for fuel-production feedstock, was pointed to by the sponsor of the bill that was passed as 2023 Session Law, Ch. 60, as a stark warning. The MPCA finds this warning instructive and believes it is necessary to ensure that this rulemaking in parallel also clearly state the MPCA’s determination that fuel use is not an allowed solid waste management method for waste treated seed.

In promulgating these safeguards, the MPCA clarifies that the exchange of value or actual sale is not controlling, as the same human health risk or environmental damage would come from waste treated seed that is sold for processing into, for instance, wildlife feed, as waste treated seed that is offered free for such use, i.e. donated. Indeed, in cases of sham reuse of solid wastes, it is often the avoided disposal cost that is of far higher value to the offeror than any compensation from a receiver they may expect to obtain. The MPCA’s primary concern is the ultimate prohibited end use of the waste treated seed, not the parameters of the agreement by which the waste treated seed came to be in the possession of a handler intending or attempting to reuse the waste treated seed for the prohibited end use. However, the MPCA’s experience has historically been that some parties may have a mistaken belief that a transaction prohibited to prevent an ultimate harm is exempted or forgiven if no money or other value changes hands during the transaction. Therefore, the MPCA explicitly includes donation as well as sale of waste treated seed for prohibited reuses as a disallowed act, to head off this potential misunderstanding.

In part 7035.3700 Waste Treated Seed, Items D and E uses the undefined terms “food” and “feed.” The term “food” is used extensively and consistently throughout the Minnesota Statutes to mean nutritive material eaten by humans. Similarly, “feed” consistently is used throughout the Minnesota Statutes to mean nutritive material given to animals, including livestock, poultry, domestic pets, and wildlife. The MPCA believes that “food” is common enough that nearly all readers will readily understand its meaning, but “feed” could potentially be misconstrued to mean feed either for only one category of animal, or readers might easily not automatically consider all potential uses of “feed,” and might therefore misinterpret that use of waste treated seed for wildlife, for example, was not banned. It is reasonable to attempt to ensure readers understand the intended application of the ban by including the examples of livestock, poultry, and wildlife.

Finally, the MPCA applies the restrictions addressed in Item B regarding burning waste treated seed for disposal or energy recovery to the concept of using waste treated seed directly for fuel. The restriction in Item B explicitly addressed only the first-person burning of waste treated seed, but would not prohibit sale or other transfer of waste treated seed to another person, even if that person intended to burn it for disposal or energy recovery, effectively as fuel. The MPCA notes that this loophole could result in a person who was aware of and understood the applicable burning prohibitions remaining compliant

while still passing along waste treated seed, possible to an unknowing, innocent Minnesota citizen or business. It is reasonable to ensure that innocent third parties are not exposed to contact with or emissions from burning of waste treated seed.

Justification for Minn. R. 7035.3700, Subp. 5

As discussed in the justification for Subp. 4, Item D, instructions on treated seed container labels are considered effectively only “right to know” and not as enforceable requirements or prohibitions under long-standing USDA and EPA interpretation of existing federal law. Indeed, some treated seed labels even explicitly title the directions as “...Hazard Communication Data...,” a phrase typically used under the U.S. Occupational Safety & Health Administration’s (OSHA) Hazard Communication Standard which has as its paradigm the employee’s “Right To Know” about risks. These interpretations were reaffirmed as recently as October of 2023, and the MPCA does not expect they will change absent changes in federal statute or regulation that explicitly render the directions as mandatory, enforceable requirements. While the EPA is in the very early information-gathering stages of potential future regulatory changes that could affect the enforceability of treated seed label directions, actual regulatory changes are neither ultimately guaranteed nor expected in the next several years.

In addition, these label directions are prepared by pesticide manufacturers from the perspective of protection of agricultural production and the effectiveness of use of their product treated seed. Proposed labels are reviewed and approved by the EPA, but crucially only by the EPA FIFRA program, not by the EPA RCRA program nor delegated state RCRA programs with knowledge and experience in waste risk identification and management. The EPA’s FIFRA program, while knowledgeable and experienced in considerations for pesticide use and application from an agronomic perspective and public exposure risks arising from pesticide use and application, is not knowledgeable nor experienced in waste management practices nor risk identification and management arising from waste management. Even regarding pesticides directly, the EPA FIFRA program does not regulate risk identification and management of pesticide wastes, including waste pesticides themselves, containers, or packaging. Federally, this regulation is the purview of the EPA RCRA program. Further, because the majority of environmental and human health impacts from waste management are relatively local, the RCRA program is substantively delegated to the states, which are considered to have the most knowledge regarding local waste management resources, risks, and best management.

As a result, treated seed label directions have previously, and may in many instances still, include statements that are functionally incomplete or that can easily be misread to potentially conflict with existing Minnesota requirements and restrictions regarding waste management, including those clarified and restated in this rulemaking. Phrases such as: “...incorporate any remaining seed in the soil to prevent feeding by wildlife...”, or “...If treated seed is spilled outdoors or in areas accessible to birds, promptly clean up or bury to prevent ingestion. Dispose of all excess treated seed. ...” with no other direction; or “...Dispose of all excess treated seed by burying seed away from bodies of water...” Again, presented alone, the instructions appear to allow or even direct simple burial for disposal with only vague limits, with no explanation or reference of the existing Minnesota requirements and restrictions that apply to solid wastes, including waste treated seed.

Even when treated seed label directions do contain more guidance or a reference, it may be of little actual help, such as “...Dispose of all excess treated seed. Do not contaminate bodies of water when disposing of excess treated seed or wash waters of planting equipment. Dispose of them in accordance with local requirements...” While this statement is technically correct, it is left to the reader’s imagination what method of disposal might not contaminate water.

Unless the EPA may at some time in the future render compliance with treated seed label directions as compulsory and enforceable, and simultaneously both requires a printed direction that any local

requirements control and a mandate that waste treated seed generators actively determine what those local requirements are, it is critically necessary and reasonable for the MPCA to specify and explicitly clarify those requirements.

Justification for Minn. R. 7035.3700, Subp. 6

As Minn. R. of this rulemaking, the MPCA is explicitly required by the Legislature to, in rule “...clearly identify the regulatory jurisdiction of state agencies and local governments...” with regard to waste treated seed management. It is necessary and reasonable to promulgate rules identifying the regulatory jurisdictions as directed by the Legislature.

Justification for Minn. R. 7035.3700, Subp. 6, Item A

The Legislature authorized the MPCA to adopt rules for the safe and lawful disposal of waste treated seed. While the MPCA was directed to consult with the MDA and the University of Minnesota, an executive agency is considered to be the primary implementation and enforcement agency of the rules it promulgates unless explicitly otherwise specified. Additionally, the MPCA has previously been charged by the Legislature under the statutes cited in section 3 of this SONAR, Statutory Authority, with responsibility for statewide oversight of management of solid waste. As determined under already existing statutes and rules, and as clarified under these proposed rules, waste treated seed is solid waste. Implementing and enforcing the provisions of these proposed rules will not contradict or hinder any other existing rules promulgated by the MPCA nor conflict with any existing statutes. These proposed rules are being placed within Chapter 7035, a chapter of rules which the MPCA has jurisdiction to implement and enforce completely. It is reasonable for the MPCA to affirm its jurisdiction over all of the proposed provisions.

Justification for Minn. R. 7035.3700, Subp. 6, Item B

The MDA has previously been charged by the Legislature under Minnesota Statutes § 18B.03 and 21.85 with responsibility for statewide oversight of registration and use of the pesticides used to treat seed and with the specifications and labeling of treated seed. Treatment of seed with a registered pesticide is considered to be the ultimate intended use of that pesticide; under current USDA and EPA interpretation of federal statutes and regulations related to pesticides, and MDA interpretation of Minnesota statutes and rules related to pesticides, seed treated with a pesticide is considered a treated article, similar to treated wood or treated soil, not itself a pesticide subject to direct EPA or MDA regulation. However, requirements for treated seed labels are considered an extension of the labeling requirements for the pesticides used to treat them. Statutes 18B and 21 provide for MDA regulation of pesticides and pesticide labeling, including treated seed labeling.

Justification for Minn. R. 7035.3700, Subp. 6, Items C and D

Local units of government have two effective fields of regulation regarding waste treated seeds. First, Chapter 1505 allows for partial delegation of certain MDA responsibilities to local units of government who enter into individual delegation agreements with the MDA. The scope of regulation of each local unit of government is negotiated with MDA and then specified in their respective delegation agreement. Second, all local units of government in Minnesota have both regulatory authority over solid waste as it relates to land use and zoning, areas of regulation primarily regulated by local units of government, as well as over solid waste management under ordinances under the authority of statutes 115A, 400, and 473.

7) Minn. R. 7045.0020

Justification for Minn. R. 7035.0300, Subp. 58c

A new definition of “monitoring well” is added to maintain consistency with the corrected term in Chapter 7035 and to improve clarity and certainty in this chapter. The term “monitoring well” is used 33

times in this chapter but has not previously been defined. Altering the term used in each of these instances would require considerable revision of the chapter and could potentially result in unintentional meaning changes to those using provisions. Therefore, it is reasonable to instead retain the existing term but redefine it for purposes of this chapter to maintain the same meaning clarified in Chapter 7035. No change in the meaning of this term in any use in this chapter is intended or expected by this addition. It is reasonable and necessary to maintain consistency where possible between terminology in Chapters 7035 and 7045, to the significant overlap in regulation and waste management between the solid waste and hazardous waste programs. [See proposed Minn. R. 7035.0300, Subp. 66]

Justification for Minn. R. 7045.0020, Subp. 83

The definition of this term is revised to concord with the clear definition added to Chapter 7035 in Minn. R. 7035.0300, Subp. 98a. This term is used once in Chapter 7045, for the same purpose as used in Chapters 7035. The current statutory reference for the definition of this term in Chapter 7045 is the basis for the rule to which the Chapter 7035 uses all currently refer. Because of the close relationship between the solid waste and hazardous waste rules and regulatory programs in Minnesota, the MPCA has observed that comprehension and utility for regulated parties and regulators alike are improved when these Chapters can share identical definitions for like terms. No change to the effective meaning to the single use of this term in this chapter will result from this change, however potential confusion about whether the intended meanings of the term in either of the associated chapters will be removed. Therefore, it is reasonable and necessary to revise the definition of this term in this chapter. [See Minn. R. 7035.0300, Subp. 98a; Minn. Stat. § 103F.205, Subd. 4; Minn. Stat. § 105.485, Subd. 2, renumbered by 1990 Session Law, Ch. 391, Art. 10, Sec. 4]

Justification for Minn. R. 7045.0020, Subp. 88a

A new definition for “surface water” and “surface waters” is added to this chapter. These terms are used 100 times in this Chapter currently, but have not previously been explicitly defined. Examined in context, each of these uses is consistent with the MPCA’s own general definition found in Chapter 7050. Reliance by the MPCA on this general definition is consistent across many MPCA regulatory programs. Explicitly defining “surface water” and “surface waters” to have the meaning in Minn. R. 7050.0130, Subp. 6, will not change the intended meaning any existing use of the terms in this Chapter, but will improve clarity and provide certainty of the intended meaning to these uses as well as to the newly proposed use. In addition, it is reasonable to maintain parity and consistency in terminology and term definitions in the regulation of hazardous waste similarly to the regulation of solid waste wherever possible, due to the close relationship between these programs and overlapping regulation and oversight provided them by the MPCA. A new definition of these terms is proposed for addition to Chapter 7035. Therefore, it is reasonable and necessary to adopt this definition.

Justification for Minn. R. 7045.0020, Subp. 96b

A new cross-reference to the detailed definition of treated seed in Chapter 7035 is added. The Hazardous Waste Rules in Chapter 7045 do not currently include a definition of treated seed. Adding this definition is necessary to clarify the meaning of treated seed in the conditional exemption for waste treated seeds from hazardous waste regulation to be effected in 7045.0120, Subp. 2. It is reasonable to ensure that both Minnesota rule chapters apply the same definition of treated seed to prevent confusion by regulated parties.

Justification for Minn. R. 7045.0020, Subp. 102d

A new cross-reference to the detailed definition of waste treated seed in Chapter 7035 is added. The Hazardous Waste Rules in Chapter 7045 do not currently include a definition of waste treated seed. Adding this definition is necessary to accurately reference this waste stream in the conditional exemption for waste treated seeds from hazardous waste regulation to be effected in 7045.0120, Subp.

2. It is reasonable to ensure that both chapters apply the same definition of waste treated seed to prevent confusion by regulated parties.

Justification for Minn. R. 7035.0300, Subp. 105a

A new definition of “water-supply well” is added to this chapter. This term is used three times in this chapter currently, but has not previously been explicitly defined. Currently this term is found in Minn. R. 7045.0590, Subp. 3; and Subp. 3, Item B. Examined in context, each of these uses is consistent with the MDH’s definition of this term in Chapter 4725, already referenced previously by other closely related definitions in this rulemaking for the same reasons. Explicitly defining “water-supply well” to have the meaning in Minn. R. 4725.0100, Subp. 50a, will not change the intended meaning of the three existing uses of the term in this chapter, but will improve clarity and understanding of the intended meaning to these uses as well as maintain consistency with Chapter 7035. Therefore, it is reasonable and necessary to adopt this definition.

8) Minn. R. 7045.0120

Justification for Minn. R. 7045.0120, Subp. 2, Item F

The conjunction at the end of this Item is removed and relocated to Item G to maintain correct grammar in the list of Items in the addition of new Item H.

Justification for Minn. R. 7045.0120, Subp. 2, Item G

A conjunction is relocated from Item F and added to the end of this Item to maintain correct grammar in the list of Items in the addition of new Item H.

Justification for Minn. R. 7045.0120, Subp. 2, Item H

A conditional exemption for waste treated seeds and discarded containers that held treated seed from the hazardous waste requirements is added for the same reasons discussed under Minn. R. 7035.3700, Subp. 2. It is necessary to add this exemption to this chapter because without it, generators of waste treated seed that did not cross-reference Chapter 7035 would automatically be required to individually evaluate their waste treated seed to determine if it is hazardous waste under this chapter. Though many businesses generate some amounts of both solid waste and hazardous waste, and thus are subject to both the solid waste Chapter 7035 and hazardous waste Chapter 7045, these chapters are most commonly read and applied separately, and the MPCA does not expect most readers considering hazardous waste requirements to by default also study the solid waste requirements nor vice versa. Including this explicit conditional exemption will make it clear to businesses and other readers what the actual regulatory requirements for waste treated seeds are and will help prevent inadvertent regulatory compliance duplication. It is reasonable to reduce confusion and the regulatory study burden on waste treated seed generators.

5. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131, which require state agencies to address a number of questions in the SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the MPCA’s response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The majority of persons affected by this rule will be persons dealing regularly with treated seed,

including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers. Because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions, the MPCA does not expect the proposed rule to significantly increase costs or regulatory burdens. Because this proposed rule is intended to improve clarity and understanding of proper management of waste treated seed across the state, reducing the risk of harm to human health and the environment from mismanagement of waste treated seed, the MPCA expects that all Minnesota citizens will benefit from the proposed rule.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

In general, the MPCA does not anticipate that any of the proposed amendments will have any direct effect on State revenue other than the overall value of maintaining rules that are accurate and up to date and that reflect current requirements. The MPCA also does not anticipate additional costs to the MPCA or other state agencies to implement or enforce the proposed amendments.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Because the proposed rule is intended to primarily bring together and clarify already-existing requirements, the MPCA considers it the least costly method to achieve the purpose mandated by the Legislature. Additionally, because this is an explicitly mandated rulemaking, the MPCA must accept that the Legislature has already considered this question and has determined that rulemaking is most appropriate.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The MPCA reviewed existing requirements and collated, presented, and explained them in MPCA fact sheet #w-hw4-51 in April of 2022. The Legislature enacted the mandate for this rulemaking in May of 2023. The MPCA has therefore concluded that the Agency's originally implemented alternative method for achieving the purpose of the proposed rule was considered insufficient by the Legislature. Because the Legislature has mandated this rulemaking, the Agency must reject additional alternative methods.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The majority of persons affected by this rule will be persons dealing regularly with treated seed, including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers. Because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions, the MPCA does not expect the proposed rule to significantly increase costs.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The Legislature has mandated this rulemaking. The cost or consequences of not adopting the proposed rule would thus be at the discretion of the Legislature to achieve its intended purpose. Regardless, the costs of not adopting the proposed rule would not be expected to significantly change because the proposed rule will effectively bring together and clarify already-existing requirements and prohibitions. Not adopting the rule would result in failing to comply with the legislature's mandate.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

While the EPA has recently requested comment from the public on potential future changes in federal regulation of treated seed, including possible management of waste treated seed, at the time of this rulemaking there are currently no enforceable federal regulations directly applicable to management of waste treated seed, as stated by the EPA in 2023. The MPCA is aware of federal regulations of the EPA and U.S. Department of Agriculture that regulate some aspects of treated seed handling, including manufacture and proper intended use, however these standards do not directly regulate disposal of waste treated seed.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as *“the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”*

The proposed amendments for the most part bring together and clarify existing state rule and statutory requirements. Therefore, the proposed amendments are not expected to have significant cumulative effect.

6. Environmental Justice

MPCA publication #p-gen5-05, May, 2022, available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf>, describes the MPCA’s vision, strategies, and implementation for integrating environmental justice principles into the Agency’s work.

The MPCA operates under a policy for environmental justice that closely mirrors the EPA policy. The MPCA’s policy states:

The Minnesota Pollution Control Agency expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.

When undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development. This review of the impacts and meaningful involvement are provided in this SONAR, though these analyses are not required under the Administrative Procedures Act (Minn. Stat. ch. 14).

A. Equity Analysis

To implement the “fair treatment” aspect of the EJ Framework policy, the MPCA would generally complete an equity analysis considering and documenting how the proposed rule may affect low-income populations and communities of color. The MPCA does not expect the proposed rules to have any negative environmental consequences; as stated previously, the intent of the rules is to compile and clarify already-existing regulatory requirements.

B. Meaningful Involvement

In order to meet the directive to strive for “meaningful involvement,” the MPCA works to seek out and facilitate the involvement of those potentially affected by the proposed rule, particularly those populations that have historically not been as engaged in the public process. Because the proposed revisions compile and clarify already-existing regulatory requirements, the MPCA does not expect the proposed rules to have any negative environmental consequences. The proposed rules will apply statewide, with no particular effect on any community over another. Thus, no additional outreach is necessary.

As described in Section 2 of the SONAR, Public participation and stakeholder involvement, there has been stakeholder involvement during the development of the proposed rules. While there was no specific plan developed to reach out to low-income populations and communities of color, we believe our stakeholder outreach has ensured that most affected communities are aware of the rule. Additionally, during the formal public comment period, all interested and affected parties may submit comments on the proposed rulemaking.

7. Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The MPCA utilizes a self-subscription service for interested and affected to register to receive rule related notices. Request for US Mail service is available. Rule projects are listed on the Agency’s Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription list for that specific rule is established and an electronic notice is sent to individuals who have self-subscribed to receive notice for all rulemakings. The Agency also purchases the League of Minnesota Cities’ email address list to reach out to new government officials that may not be familiar with the electronic delivery system used by the MPCA to send rule notices, public notices and other information. Examples of the government officials are: MN Cities, County Chairs, Zoning and Planning, Commissioners and Solid Waste Officers. An electronic message is sent inviting individuals to subscribe to topics that interest them. The MPCA sent an electronic message to the government officials on March 4, 2024.

A. Notice:

On August 28, 2023, the MPCA published notice requesting comments on planned rule amendments to Minnesota Rules Chapter 7035, and on December 26, 2023, the MPCA published an additional notice requesting comments on additional planned rule amendments in Minnesota Rules Chapters 7035 and 7045.

The notices were placed on the MPCA’s Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments> and the Waste Treated Seed rule webpage at <https://www.pca.state.mn.us/get-engaged/waste-treated-seed>.

- 1) Minn. Stat. § 14.14, subd. 1a. On the date the Dual Notice is published in the State Register, the MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings. Parties within this group that have requested non-electronic notice will receive copies of the Dual Notice and the proposed rule amendments in hard copy via U.S. Mail.

- 2) Minn. Stat. § 14.116. The MPCA intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This applies because a bill was authored within the past two years granting rulemaking authority.
- 3) Minn. Stat. §14.111. If the rule affects agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the State Register. The Commissioner of Agriculture will be notified of potential rule changes. As requested, the rule changes will be submitted via email with a cover letter notifying the Commissioner of Agriculture of the changes. The following individuals will receive the information:

- Thom Petersen, Commissioner
- Doug Spanier, General Counsel

The Agency would also like to note that it worked in consultation with MDA and UofM Extension staff, as mandated, in the development of the preliminary draft rule. The following is a list of MDA and UofM Extension staff involved in consultation for this rule:

- Jane Boerboom, Pesticide and Fertilizer Mgmt. (MDA)
 - Rajinder Mann, Pesticide and Fertilizer Mgmt. (MDA)
 - Theresa Cira, Pesticide and Fertilizer Mgmt. (MDA)
 - Michael Merriman, Plant Protection (MDA)
 - Jolene Warnke, Pesticide Safety Environmental Education (PSEE) Program Mgr. (UofM Extension)
 - Tana Haugen-Brown, Educator & Co-Coordinator, PSEE (UofM Extension)
 - Linda Johns, Associate Director & Coordinator, PSEE (UofM Extension)
- 4) Minn. Stat. § 115.44, subd. 7. Under Minn. Stat. § 115.44, subd. 7, the MPCA is required to send notice to the governing body of each municipality touching the waters for which standards (authorized under Minn. Stat. § 115.44) are sought to be adopted. The proposed amendments do not involve standards authorized under Minn. Stat. § 115.44.
 - 5) Minn. Stat. § 116.07, subd. 7(j). Under Minn. Stat. § 116.07, subd. 7(i), the MPCA is required to send notice to the members of legislative policy and finance committees with jurisdiction over agriculture and the environment before final adoption of any new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7. The proposed amendments do not involve new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7.

In addition, a copy of the Notice, proposed rule amendments and SONAR will be posted on the MPCA's MPCA's Public Comments webpage at <https://www.pca.state.mn.us/get-engaged/public-comments>.

B. Additional notice:

The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to:

- 1) Association of MN Counties; Brian Martinson, Environment & Natural Resources;
- 2) Association of Metropolitan Municipalities; Michael Lund, Government Relations Specialist;
- 3) League of MN Cities; Craig Johnson, Intergovernmental Relations Representative;
- 4) MN Association of Townships; Jeff Krueger, Executive Director;
- 5) MN City/County Management Association; Richard Fursman, President;
- 6) MN Center for Environmental Advocacy; Kathryn Hoffman, Chief Executive Officer;
- 7) Izaak Walton League of America, MN Division; John Rust, Executive Committee President;
- 8) MN Chamber of Commerce; Tony Kwilas, Director Environmental Policy;
- 9) MN Resource Recovery Association; Chris McConn, Executive Director;
- 10) National Waste & Recycling Association (NWRA), Amber Backhaus, Vice President of Government Affairs; Bill Keegan, President;
- 11) Solid Waste Association of North America – MN Chapter (SWANA); Matthew Evans;
- 12) MN Solid Waste Administrators Association (SWAA); Rebecca Rice, Executive Director;
- 13) MN Waste Wise; Doug Loon, President and CEO, MN Chamber of Commerce;
- 14) Recycling Association of MN (RAM); Paul Gardner, Board Chair;
- 15) Solid Waste Permitting GovDelivery List. The MPCA established the Solid Waste Permitting GovDelivery list to distribute notifications and updates for owners and operators of solid waste management facilities. The MPCA created the list using the most recent facility contact information (owners, operators, and land owners) stored in Tempo (Agency permitting software) for all facilities required to submit annual reports. To supplement the list, the MPCA invited consultants associated with the permitted facilities, via email, the option to sign up for the GovDelivery list. In addition, the Agency sent notifications to the RAM/SWANA, NWRA and SWAA organizations along with sign up information. As of May 3, 2021, this list contained approximately 733 subscribers (May 21).

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's webpage will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

8. Performance-based rules

Minnesota Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives.

The MPCA believes that the consideration of performance-based alternatives has already been conducted at the time the varying already-existing requirements were adopted. The proposed amendments are not making any fundamental changes to the regulatory systems that are governed by the existing rules. The intent of the proposed rules is to compile and clarify already-existing regulatory requirements, not to modify how prescriptive or flexible the rules are.

9. Consideration of economic factors

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subdivision 6 and Minn. Stat. § 115.43, subdivision 1 to give due consideration to:

...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The MPCA considered the required economic factors and determined that, because the proposed rules effectively collate and clarify already-existing requirements, the standards should not present a burden on any municipality. The MPCA does not anticipate that the proposed rules will significantly affect the establishment, maintenance, operation and expansion of business, commerce, trade, industry, or traffic. Therefore, under the circumstances no actions described in the above sections are warranted.

10. Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearings (OAH) at the hearing or with the documents it submits for Administrative Law Judge review.

11. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. Local units of government may choose to adopt or amend their local ordinances, but they are not required to do so as a result of the proposed amendments.

12. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

Because the proposed rules effectively collate and clarify already-existing requirements, the MPCA does not believe that small businesses or cities will face significant new costs in complying with the standards.

13. Differences with federal and other state standards

Minn. Stat. § 116.07, subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar

standards in states bordering Minnesota; and similar standards in states within the US Environmental Protection Agency (EPA) Region 5; and a specific analysis of the need and reasonableness of each difference.

Non-hazardous solid waste is regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA). Regulations established under Subtitle D ban open dumping of waste and set minimum federal criteria for the operation of municipal waste and industrial waste landfills, including design criteria, location restrictions, financial assurance, corrective action (cleanup), and closure requirement. Under existing standards in force in Minnesota, waste treated seed is an industrial solid waste and may be managed in municipal waste or industrial waste landfills. The rules proposed in this rulemaking comport with and do not alter the applicable federal requirements for municipal solid waste or industrial waste landfills.

This rule revision does not affect air quality or water quality standards promulgated by the federal government. As required, a review was conducted of solid waste and hazardous waste regulations from EPA Region 5 states and the states surrounding Minnesota. The states reviewed were: Wisconsin, Illinois, Indiana, Michigan, Ohio, Iowa, North Dakota, and South Dakota.

Table 2: Differences Amongst Specific States

State	Findings regarding specific waste treated seed standards
Wisconsin	General waste treated seed standard [ATCP 29.57(5)]. The standard generically requires disposal 'in a manner that does not pose a risk to persons, property, or the environment'. MPCA analysis: Equivalent to Minn. Stat. § 18B.075.
Illinois	No apparent specific waste treated seed standards.
Indiana	No apparent specific waste treated seed standards.
Michigan	No apparent specific waste treated seed standards.
Ohio	Specific waste treated seed standards [OAC Rule 901:5-11-11(D)(2)]. The standards require management as solid waste or hazardous waste, dependent on the evaluation of the waste. MPCA review indicates that waste treated seed would be evaluated as solid waste under the applicable Ohio state hazardous waste standards. MPCA analysis: Equivalent to proposed Minn. R. 7035.3700.
Iowa	No apparent specific waste treated seed standards. Guidance published jointly by Iowa Department of Natural Resources and Department of Agriculture at: https://iowaagriculture.gov/sites/default/files/pesticides/Updates/Treated%20Seed%20Disposal%207-8-2022.pdf https://www.iowadnr.gov/Portals/idnr/uploads/waste/swfact_treatedseeddisposal.pdf
North Dakota	No apparent specific waste treated seed standards.
South Dakota	No apparent specific waste treated seed standards currently, though the Department of Agriculture and Natural Resources has received explicit authorization to establish specific standards [SD Stat. 38-12A-20(18)]

14. Authors, witnesses and SONAR exhibits

A. Authors

- 1) Joshua Burman, Pollution Control Specialist, Senior, Industrial Division, MPCA. Mr. Burman is the Hazardous Waste Compliance & Enforcement Unit contact staff for regulatory citation and rule interpretation.

B. Witnesses and other staff

- 1) The MPCA expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the MPCA anticipates having the listed authors, current staff, testify as witnesses in support of the need for and reasonableness of the rules.
- 2) David Stellmach, MPCA. Mr. Stellmach is a staff attorney to the MPCA and will introduce the required jurisdictional documents into the record.
- 3) Daniel Gonzalez, MPCA. Mr. Gonzalez is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.

C. SONAR exhibits

- 1) S-1. MPCA Treated Seed fact sheet; December, 2023.
<https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>
- 2) S-2. MPCA Treated Seeds fact sheet; April, 2022.
- 3) S-3. MPCA Treated Seeds fact sheet; March, 2022.

15. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. Chs. 7035 and 7045. The MPCA has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

Katrina Kessler

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

November 20, 2024

Date

- F. The Notice of Dual Notice to Adopt without Hearing:
 - a. F-1a: Notice as emailed on December 30, 2024
 - b. F-1b: Certificate of Notice to the Legislative Reference Library
 - c. F-1c: Notice as published in the State Register on December 30, 2024

Minnesota Pollution Control Agency

Division of Resource Management

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number 4806

Proposed Amendment to Rules Governing Waste Treated Seed, *Minnesota Rules*, chapter 7035, and 7045.

Introduction. The Pollution Control Agency intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on February 14th, 2025, the Department will hold a virtual public hearing that can be accessed [here](#). **An Administrative Law Judge will conduct the hearing** starting at 3:00 PM on Wednesday, March 5th, 2025. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after February 14th, 2025 and before March 5th, 2025.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Daniel Gonzalez at Minnesota Pollution Control Agency, 520 Lafayette Rd, St Paul, MN 55155, 651-757-2267, and daniel.gonzalez@state.mn.us.

Subject of Rules and Statutory Authority. The proposed rules are about Waste Treated Seed. The statutory authority to adopt the rules is *Minnesota Statutes* §§ 116.07, subd. 2(b) and subd. 4(b) for solid waste; and *Minnesota Statutes* §§ 116.07, subd. 2(d) and 4(g) for hazardous waste section. A copy of the proposed rules is published in the *State Register*.

Comments. You have until 4:30 p.m. on Friday, February 14th, 2025, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date.

Submit written comments to the:

1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at william.t.moore@state.mn.us; please note that you may not submit rulemaking comments by phone or email.

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 OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

The MPCA encourages comments. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Friday, February 14th, 2025. Submit your written request for a hearing to the:

1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

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 or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department will cancel the hearing scheduled for March 5th, 2025, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-757-2267 after February 14th, 2025 to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-757-2267 or going on-line at <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Todnem is assigned to conduct the hearing. Judge Todnem can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, and fax (651) 539-0310.

If 25 or more parties submit a written request for a hearing, the ALJ will conduct the hearing on March 5th, 2025, by WebEx beginning at 3:00 pm.

Hearing link:

<https://minnesota.webex.com/minnesota/j.php?MTID=md1f63a96b33e817cc7f6c1064b6e375b>

Meeting number: 2492 803 8460

Meeting password: kMwpi2Bwr29

For audio connection, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2492 803 8460

The hearing continues until all parties are heard, or until the ALJ adjourns the hearing (no earlier than 6:00 pm). The MPCA may schedule additional days of hearing if necessary. All interested or affected parties will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You may submit a statement without appearing at the hearing. To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should contact the MPCA contact person after February 14th, 2025 and before March 5th, 2025.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

All post-hearing comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. The Office of Administrative Hearings strongly encourages all persons submitting comments and responses to do so using the [Administrative Hearings' Rulemaking eComments website](https://minnesotaoah.granicusideas.com/discussions) <https://minnesotaoah.granicusideas.com/discussions>. If using the eComments website is not possible, you may submit post-hearing comments in person, via United States mail, or by facsimile addressed to Judge Todnem at the address or facsimile number listed in the Notice of Hearing section above.

All comments or responses received will be available for review at the Minnesota Pollution Control Agency or on the agency's website at <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*,

sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

November 20, 2024

Date



Katrina Kessler, P.E.

MPCA Commissioner

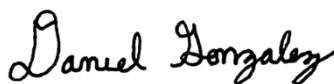
[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

Certificate of Emailing the Dual Notice of Intent to Adopt Rules to the Rulemaking Mailing List

Minnesota Pollution Control Agency

Proposed Permanent Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045; Revisor's ID No. 04806; OAH Docket No. 23-9003-39350

I certify that on December 30, 2025, at least 33 days before the end of the comment period, in St. Paul, Ramsey County, Minnesota, I emailed the Dual Notice of Intent to Adopt Rules, SONAR, and proposed rules by sending an electronic copy to all persons on the rulemaking list under Minnesota Statutes, section 14.14, subdivision 1a. A copy of each of the emails is attached to this Certificate.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style with a horizontal line underneath it.

Daniel Gonzalez
Rule Coordinator

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Burman, Joshua \(MPCA\)](#)
Bcc: [Boerboom, Jane \(MDA\)](#); [Mann, Rajinder \(MDA\)](#); [Cira, Theresa M \(She/Her/Hers\) \(MDA\)](#); [Merriman, Michael \(MDA\)](#); [Warnke, Jolene \(UofM\)](#); [Haugen-Brown, Tana \(UofM\)](#); [Johns, Linda \(UofM\)](#); [bmartinson@mncounties.org](#); [michael@metrocitiesmn.org](#); [cjohnson@lmc.org](#); [jkrueger@mntownships.org](#); [richardfursman@gmail.com](#); [kathryn@mncenter.org](#); [imgahn2u@yahoo.com](#); [tkwilas@mnchamber.com](#); [cmconn@co.ottertail.mn](#); [billkeegan@dem-con.com](#); [amber@mada.org](#); [maevans@burnsmcd.com](#); [rebecca.rice@swaa-mn.org](#); [dloon@mnchamber.com](#); [ramrecycle@comcast.net](#)
Subject: FW: Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Monday, December 30, 2024 1:18:00 PM
Attachments: [image001.png](#)

Good afternoon,

You are receiving this notice because you may have interest in the Minnesota Pollution Control Agency's (MPCA's) proposed rules governing waste treated seed. The MPCA has published a Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Disposal Rule. The information regarding this proposed rule can be found in the bulletin forwarded below.

Thank you.

Daniel Gonzalez (he/him/his)
 Rule Coordinator
daniel.gonzalez@state.mn.us
 651-757-2267



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>
Sent: Monday, December 30, 2024 10:31 AM
To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>
Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

[Minnesota Pollution Control Agency logo on white background](#)



Proposed rules

Dual notice of intent to adopt rules — Waste treated seed disposal rule

Dec. 30, 2024

MPCA's legal notice of its intent to waste treated seed disposal rules

The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it

originally adopted or significantly amended the rules, and no further justification is necessary.

Next steps

As a result of this notice, a new comment period has opened. You can submit your questions, comments, and feedback on the proposed rule to the administrative law judge (ALJ) assigned to this rulemaking. You can also submit a request for a hearing as part of your comment or separately. Please submit your written comments to the ALJ online, using the Office of Administrative Hearings' [rulemaking e-comments website](#).

The comment period and the opportunity to request a hearing closes at 4:30 p.m. on Feb. 14, 2025.

[Comment here!](#)

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

MPCA logo



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From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Bcc: chrisgcowen@gmail.com; gdamian@cleanenergyeconomymn.org; g.larson@mchsi.com; laurie@pollinatorfriendly.org; lrhoads@nrdc.org; margaret.levin@sierraclub.org; alleyfarmsandgardens@gmail.com; rep.rick.hansen@house.mn.gov; rtitus@croplifeamerica.org; pmiller@betterseed.org; mberger@gislason.com; rosemary.malfi@xerces.org; ehardykern@abcbirds.org; mpmonson.insx@gmail.com
Subject: FW: Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Monday, December 30, 2024 1:14:00 PM
Attachments: [image001.png](#)

Good afternoon,

You are receiving this notice because you may have interest in the Minnesota Pollution Control Agency's (MPCA's) proposed rules governing waste treated seed. The MPCA has published a Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Disposal Rule. The information regarding this proposed rule can be found in the bulletin forwarded below.

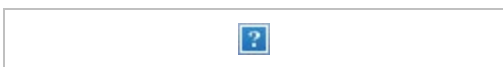
Thank you.

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>
Sent: Monday, December 30, 2024 10:31 AM
To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>
Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Dec. 30, 2024

MPCA's legal notice of its intent to waste treated seed disposal rules

The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it

originally adopted or significantly amended the rules, and no further justification is necessary.

Next steps

As a result of this notice, a new comment period has opened. You can submit your questions, comments, and feedback on the proposed rule to the administrative law judge (ALJ) assigned to this rulemaking. You can also submit a request for a hearing as part of your comment or separately. Please submit your written comments to the ALJ online, using the Office of Administrative Hearings' [rulemaking e-comments website](#).

The comment period and the opportunity to request a hearing closes at 4:30 p.m. on Feb. 14, 2025.

[Comment here!](#)

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

MPCA logo



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From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Wenger, Maggie \(MPCA\)](#); [Burman, Joshua \(MPCA\)](#)
Bcc: ["jeremyb@stcroixojibwe-nsn.gov"](#); ["georger@stcroixojibwe-nsn.gov"](#); ["jasone@swo-nsn.gov"](#); ["linda.nguyen@redcliff-nsn.gov"](#); ["noah.saperstein@redcliff-nsn.gov"](#); ["allissa.stutte@redcliff-nsn.gov"](#); ["marvin.defoe@redcliff-nsn.gov"](#); ["edwina.buffalo-reyes@redcliff-nsn.gov"](#); ["randy.poelma@ho-chunk.com"](#); ["Hinu.smith@ho-chunk.com"](#); ["Brandon.bleuer@ho-chunk.com"](#); ["jcoleman@glifwc.org"](#); ["esteban@glifwc.org"](#); ["dvoigt@1854treatyauthority.org"](#); ["ed.snetsinger@whiteearth-nsn.gov"](#); ["jerryb@uppersiouxcommunity-nsn.gov"](#); ["brylear@uppersiouxcommunity-nsn.gov"](#); ["alenab@uppersiouxcommunity-nsn.gov"](#); ["samanthao@uppersiouxcommunity-nsn.gov"](#); ["scott.walz@shakoopedakota.org"](#); ["jleblanc@redlakenation.org"](#); ["gabriel.miller@piic.org"](#); ["jane.feely@piic.org"](#); ["henry.stelten@piic.org"](#); ["Madeline.Hyde@piic.org"](#); ["franky.jackson@piic.org"](#); ["noah.white@piic.org"](#); ["kelly.applegate@millelacsband.com"](#); ["Susan.Klapel@millelacsband.com"](#); ["Susan.Klapel@millelacsband.com"](#); ["Diane.thompson@llojibwe.net"](#); ["jason.helgeson@llojibwe.net"](#); ["jakob.sorensen@llojibwe.net"](#); ["Deschampe, Robert"](#); ["agathaa@grandportage.com"](#); ["April@grandportage.com"](#); ["mariespry@grandportage.com"](#); ["tobys@grandportage.com"](#); ["Trustlands.admin@grandportage.com"](#); ["kwoerheide@grandportage.com"](#); ["davidsmith@fdlband.org"](#); ["jackbassett@fdlband.org"](#); ["cholm@boisforte-nsn.gov"](#)
Subject: FW: Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Monday, December 30, 2024 1:04:00 PM
Attachments: [image001.png](#)

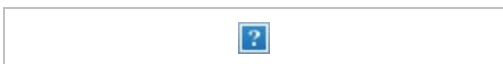
Good afternoon,

You are receiving this notice because you are listed as the tribal contact for the Minnesota Pollution Control Agency's (MPCA's) solid waste rule notices. The MPCA has published a Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Disposal Rule. Please feel free to reach out to me with any questions you may have, otherwise the information regarding this proposed rule can be found in the bulletin forwarded below.

Thank you.

-Daniel Gonzalez

Daniel Gonzalez (he/him/his)
 Rule Coordinator
daniel.gonzalez@state.mn.us
 651-757-2267



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Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Dec. 30, 2024

MPCA's legal notice of its intent to waste treated seed disposal rules

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The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

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The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

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The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

[MPCA logo](#)



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This email was sent to daniel.gonzalez@state.mn.us using GovDelivery Communications Cloud on behalf of: Minnesota Pollution Control Agency
520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Johnson, Tom \(MPCA\)](#); lcc@lcc.mn.gov
Bcc: rep.samantha.yang@house.mn.gov; rep.paul.anderson@house.mn.gov; rep.rick.hansen@house.mn.gov; rep.josh.heintzeman@house.mn.gov; sen.aric.putnam@senate.mn; sen.torrey.westrom@senate.mn; sen.foung.hawj@senate.mn; sen.justin.eichorn@senate.mn
Subject: FW: Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Monday, December 30, 2024 1:47:00 PM
Attachments: [leg.pdf](#)
[sw-rule3-02f.pdf](#)
[sw-rule3-02g.pdf](#)
[sw-rule3-02e.pdf](#)
[image001.png](#)

Good afternoon,

Please see the notice (below) and attachments regarding Proposed Amendments to MPCA Rules Governing Waste Treated Seed – Waste Treated Seed Disposal Rule; Revisor's ID Number Revisor's ID Number R-4806; OAH Docket No. 23-9003-39350. Please feel free to reach out to me with any questions you may have.

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



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Sent: Monday, December 30, 2024 10:31 AM

To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>

Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Dec. 30, 2024

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From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Johnson, Tom \(MPCA\)](#); lcc@lcc.mn.gov
Bcc: rep.samantha.yang@house.mn.gov; rep.paul.anderson@house.mn.gov; rep.rick.hansen@house.mn.gov; rep.josh.heintzeman@house.mn.gov; sen.aric.putnam@senate.mn; sen.torrey.westrom@senate.mn; sen.foung.hawj@senate.mn; sen.justin.eichorn@senate.mn
Subject: FW: Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Monday, December 30, 2024 1:47:00 PM
Attachments: [leg.pdf](#)
[sw-rule3-02f.pdf](#)
[sw-rule3-02g.pdf](#)
[sw-rule3-02e.pdf](#)
[image001.png](#)

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Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



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Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Dec. 30, 2024

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MPCA logo



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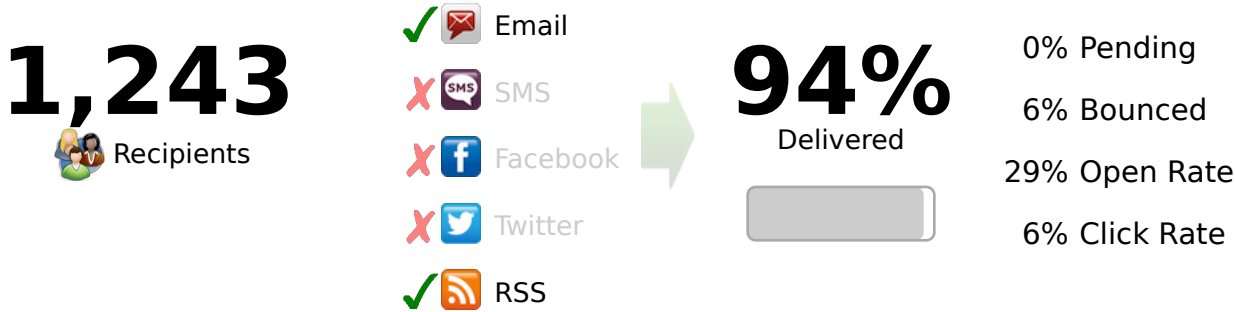
Minnesota Pollution Control Agency - Bulletin Detail Rep...

Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

Sent: 12/30/2024 10:30 AM CST

Sent By: dan.ruiter@state.mn.us

Sent To: Subscribers of Rulemaking: Waste treated seeds



Email Delivery Stats

Minutes	Cumulative Attempted
3	93%
5	94%
10	96%
30	96%
60	96%
120	96%

Delivery Metrics - Details

1,243 Total Sent

1,169 (94%) Delivered

0 (0%) Pending

74 (6%) Bounced

0 (0%) Unsubscribed

Bulletin Analytics

1,049 Total Opens

338 (29%) Unique Opens

161 Total Clicks

71 (6%) Unique Clicks

15 # of Links

Delivery and performance

These figures represent all data since the bulletin was first sent to present time.

	Progress	% Delivered	Recipients	# Delivered	Opened Unique	Bounced/Failed	Unsubscribes
Email Bulletin	Delivered	93.7%	1,167	1,093	298 / 27.3%	74	0
Digest	n/a	n/a	76	76	40 / 52.6%	0	0
SMS Message	Delivered	0.0%	0	0	n/a	0	n/a

Link URL

**Unique
Clicks**
**Total
Clicks**

https://www.pca.state.mn.us/get-engaged/waste-treated-seeds	32	97
https://mn.gov/admin/assets/SR49_27_tcm36-662936.pdf	13	28
https://minnesotaoah.granicusideas.com/discussions/39350-minnesota-pollution-control-agency-dual-notice-of-intent-to-adopt-rules	7	28
https://www.pca.state.mn.us	11	13
https://www.youtube.com/user/TheMnPCA	2	8
https://www.instagram.com/mnpca/?hl=en	2	7
https://www.pca.state.mn.us/	3	6
https://subscriberhelp.govdelivery.com/	2	2
https://public.govdelivery.com/accounts/MNPCA/subscriber/edit?preferences=true#tab1	2	2
https://twitter.com/MnPCA	1	1
https://www.facebook.com/MNPCA	1	1
https://www.linkedin.com/company/minnesota-pollution-control-agency	0	0

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Wenger, Maggie \(MPCA\)](#)
Bcc: chrisgowen@gmail.com; gdamian@cleanenergyeconomymn.org; g.larson@mchsi.com; laurie@pollinatorfriendly.org; lrhoads@nrdc.org; margaret.levin@sierraclub.org; alleyfarmsandgardens@gmail.com; rep.rick.hansen@house.mn.gov; rTitus@croplifeamerica.org; pmiller@betterseed.org; mberger@gislason.com; rosemary.malfi@xerces.org; ehardyern@abcbirds.org; mpmonson.insx@gmail.com
Subject: FW: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Tuesday, February 11, 2025 2:39:00 PM

Good afternoon,

You are receiving this notice because you may have interest in the Minnesota Pollution Control Agency's (MPCA's) proposed rules governing waste treated seed. The comment period for the Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Disposal Rule will be closing February 14th, 2025. The information regarding this proposed rule can be found in the bulletin forwarded below.

Thank you.

From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>
Sent: Tuesday, February 11, 2025 2:02 PM
To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>
Subject: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Feb. 11, 2025

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The comment period and the opportunity to request a hearing closes at 4:30

p.m. on Feb. 14, 2025.

[Comment here!](#)

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MPCA logo



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520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Wenger, Maggie \(MPCA\)](#)
Bcc: jeremyb@stcroixojibwe-nsn.gov; georger@stcroixojibwe-nsn.gov; jasone@swo-nsn.gov; linda.nguyen@redcliff-nsn.gov; noah.saperstein@redcliff-nsn.gov; allissa.stutte@redcliff-nsn.gov; marvin.defoe@redcliff-nsn.gov; edwina.buffalo-reyes@redcliff-nsn.gov; randy.poelma@ho-chunk.com; Hinu.smith@ho-chunk.com; Brandon.bleuer@ho-chunk.com; jcoleman@glifwc.org; esteban@glifwc.org; dvogt@1854treatyauthority.org; ed.snetsinger@whiteearth-nsn.gov; jerryb@uppersiouxcommunity-nsn.gov; brylear@uppersiouxcommunity-nsn.gov; alenab@uppersiouxcommunity-nsn.gov; samanthao@uppersiouxcommunity-nsn.gov; scott.walz@shakopeedakota.org; jleblanc@redlakenation.org; gabriel.miller@piic.org; jane.feely@piic.org; henry.stelten@piic.org; Madeline.Hyde@piic.org; franky.jackson@piic.org; noah.white@piic.org; kelly.applegate@millelacsband.com; Susan.Klapel@millelacsband.com; Susan.Klapel@millelacsband.com; Diane.thompson@llojibwe.net; jason.helgeson@llojibwe.net; jakob.sorensen@llojibwe.net; [Deschampe, Robert](mailto:Deschampe,Robert); agathaa@grandportage.com; April.m@grandportage.com; mariespy@grandportage.com; tobys@grandportage.com; Trustlands.admin@grandportage.com; kwoerheide@grandportage.com; genevadiaz@fdlband.org; enevadiaz@fdlband.org; jackbassett@fdlband.org; holm@boisforte-nsn.gov; [Shania Nordby](#)
Subject: FW: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Tuesday, February 11, 2025 2:37:00 PM

Good afternoon,

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Thank you.

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Subject: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules

Dual notice of intent to adopt rules — Waste treated seed disposal rule

Feb. 11, 2025

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The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need

for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

Next steps

As a result of this notice, a new comment period has opened. You can submit your questions, comments, and feedback on the proposed rule to the administrative law judge (ALJ) assigned to this rulemaking. You can also submit a request for a hearing as part of your comment or separately. Please submit your written comments to the ALJ online, using the Office of Administrative Hearings' [rulemaking e-comments website](#).

The comment period and the opportunity to request a hearing closes at 4:30 p.m. on Feb. 14, 2025.

Comment here!

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

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From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Bcc: ramrecycle@comcast.net; [Boerboom, Jane \(MDA\)](#); [Mann, Rajinder \(MDA\)](#); [Cira, Theresa M \(She/Her/Hers\) \(MDA\)](#); [Merriman, Michael \(MDA\)](#); [Warnke, Jolene \(UofM\)](#); [Haugen-Brown, Tana \(UofM\)](#); [Johns, Linda \(UofM\)](#); bmartinson@mncounties.org; michael@metrocitiesmn.org; cjohnson@lmc.org; jkrueger@mntownships.org; richardfursman@gmail.com; kathryn@mncenter.org; imgahn2u@yahoo.com; tkwilas@mnchamber.com; cmconn@co.ottertail.mn; billkeegan@dem-con.com; amber@mada.org; maevans@burnsmcd.com; rebecca.rice@swaa-mn.org; dloon@mnchamber.com; ramrecycle@comcast.net
Subject: FW: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Tuesday, February 11, 2025 2:41:00 PM

Good afternoon,

You are receiving this notice because you may have interest in the Minnesota Pollution Control Agency's (MPCA's) proposed rules governing waste treated seed. The comment period for the Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Disposal Rule will be closing February 14th, 2025. The information regarding this proposed rule can be found in the bulletin forwarded below.

Thank you.

From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>
Sent: Tuesday, February 11, 2025 2:02 PM
To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>
Subject: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule

[Minnesota Pollution Control Agency logo on white background](#)



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Feb. 11, 2025

MPCA's legal notice of its intent to waste treated seed disposal rules

The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

Next steps

As a result of this notice, a new comment period has opened. You can submit your questions, comments, and feedback on the proposed rule to the administrative law judge (ALJ) assigned to this rulemaking. You can also submit a request for a hearing as part of your comment or separately. Please submit your written comments to the ALJ online, using the Office of Administrative Hearings' [rulemaking e-comments website](#).

The comment period and the opportunity to request a hearing closes at 4:30 p.m. on Feb. 14, 2025.

[Comment here!](#)

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

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This email was sent to daniel.gonzalez@state.mn.us using GovDelivery Communications Cloud on behalf of: Minnesota Pollution Control Agency
520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

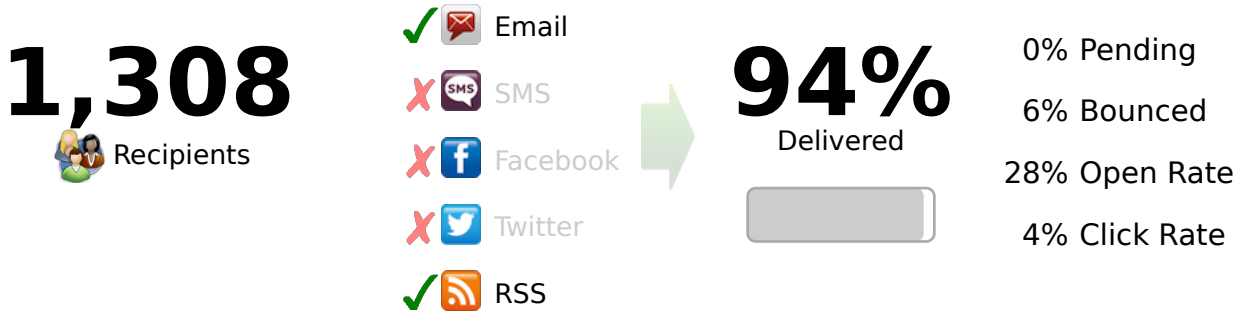
Minnesota Pollution Control Agency - Bulletin Detail Rep...

Subject: REMINDER: Comment Period ending Feb. 14 for Dual notice of intent to adopt rules — Waste treated seed disposal rule

Sent: 02/11/2025 02:00 PM CST

Sent By: dan.ruiter@state.mn.us

Sent To: Subscribers of Rulemaking: Waste treated seeds



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MINNESOTA STATE REGISTER

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Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

The Minnesota State Register is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. It contains:

- Proposed Rules
- Adopted Rules
- Exempt Rules
- Expedited Rules
- Withdrawn Rules
- Executive Orders of the Governor
- Appointments
- Proclamations
- Vetoed Rules
- Commissioners' Orders
- Revenue Notices
- Official Notices
- State Grants and Loans
- Contracts for Professional, Technical and Consulting Services
- Non-State Public Bids, Contracts and Grants

Printing Schedule and Submission Deadlines

Vol. 49 Issue Number	Publish Date	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
#28	Monday 6 January	Noon Tuesday 31 December	Noon Thursday 26 December
#29	Monday 13 January	Noon Tuesday 7 January	Noon Thursday 2 January
#30	Tuesday 21 January	Noon Tuesday 14 January	Noon Thursday 9 January
#31	Monday 27 January	Noon Tuesday 21 January	Noon Thursday 16 January

PUBLISHING NOTICES: We need to receive your submission ELECTRONICALLY in Microsoft WORD format. Submit ONE COPY of your notice via e-mail to: sean.plemmons@state.mn.us. State agency submissions must include a "State Register Printing Order" form, and, with contracts, a "Contract Certification" form. Non-State Agencies should submit ELECTRONICALLY in Microsoft WORD, with a letter on your letterhead stationery requesting publication and date to be published. Costs are \$13.50 per tenth of a page (columns are seven inches wide). One typewritten, double-spaced page = 6/10s of a page in the State Register, or \$81. About 1.5 pages typed, double-spaced, on 8-1/2"x11" paper = one typeset page in the State Register. Contact editor with questions (651) 201-3204, or e-mail: sean.plemmons@state.mn.us.

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Governor: Tim Walz
(651) 201-3400

Attorney General:
Keith Ellison (651) 296-3353

Department of Administration
Commissioner:
Tamar Gronvall
(651) 201-2560

Minnesota State Register
Editor: Sean Plemmons
(651) 201-3204
sean.plemmons@state.mn.us

Lieutenant Governor:
Peggy Flanagan
(651) 201-3400

Auditor: Julie Blaha
(651) 296-2551

Secretary of State: Steve Simon
(651) 296-2803

Communications and Planning
Division: Curtis Yoakum
(651) 201-2771

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25 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
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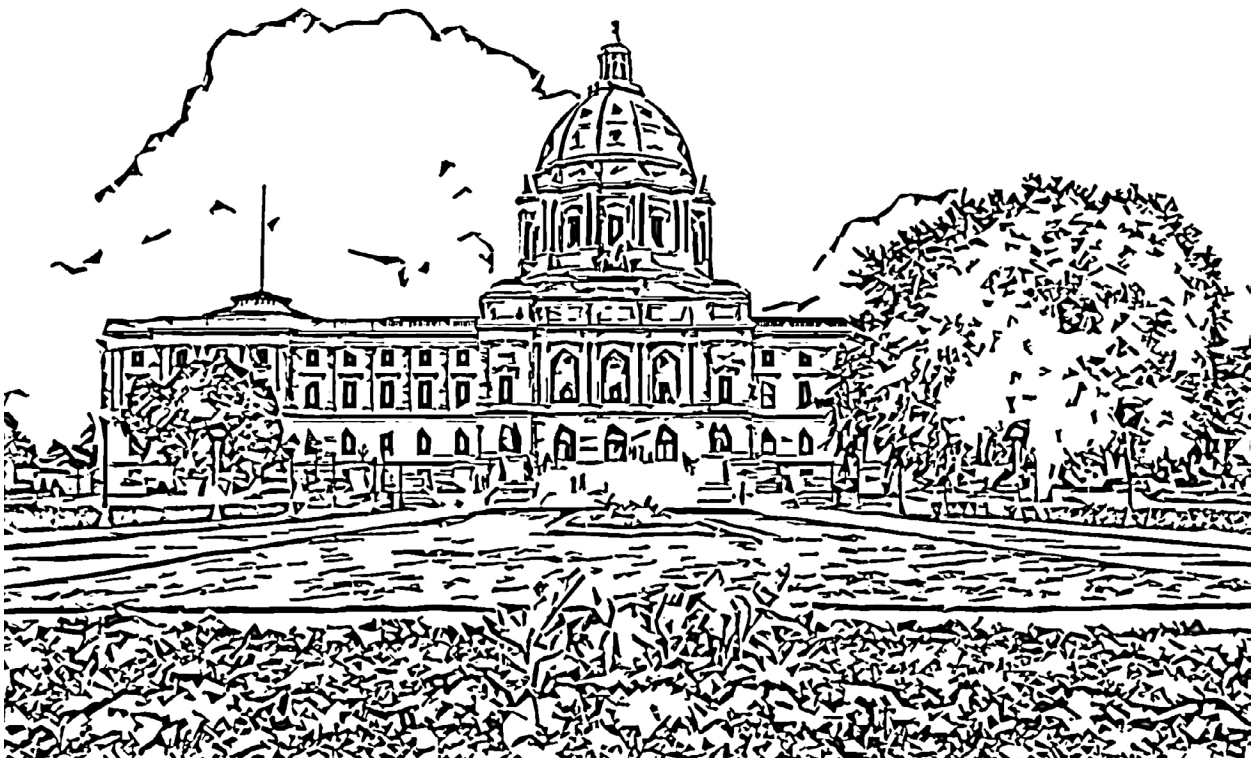
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*Front Cover Artwork: The Bentleyville Holiday lights and the lift bridge in Duluth, Minn. shine brightly on a cold November night.
Photo by Sean Plemmons*



Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register. The State Register is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the State Register. Published every Monday, the State Register makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific Minnesota Rule chapter numbers. Every odd-numbered year the Minnesota Rules are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the State Register.

An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (Minnesota Statutes §§ 14.101). It does this by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as Proposed Rules, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the State Register. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the State Register as Adopted Rules. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the State Register, the issue the rule appeared in as proposed, and later as adopted.

The State Register features partial and cumulative listings of rules in this section on the following schedule: issues #1-26 inclusive (issue #26 cumulative for issues #1-26); issues #27-52 inclusive (issue #52, cumulative for issues #27-52 or #53 in some years). A subject matter index is updated weekly and is available upon request from the editor. For copies or subscriptions to the State Register, contact the editor at 651-201-3204 or email at sean.plemmons@state.mn.us

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Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.1414.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Pollution Control Agency

Division of Resource Management

Proposed Permanent Rules Relating to Waste Treated Seeds; DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor’s ID Number 4806

Proposed Amendment to Rules Governing Waste Treated Seed, *Minnesota Rules*, chapter 7035, and 7045.

Introduction. The Pollution Control Agency intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on February 14th, 2025, the Department will hold a virtual public hearing that can be accessed *here*. **An Administrative Law Judge will conduct the hearing** starting at 3:00 PM on Wednesday, March 5th, 2025. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after February 14th, 2025 and before March 5th, 2025.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Daniel Gonzalez at Minnesota Pollution Control Agency, 520

Proposed Rules

Lafayette Rd, St Paul, MN 55155, 651-757-2267, and daniel.gonzalez@state.mn.us.

Subject of Rules and Statutory Authority. The proposed rules are about Waste Treated Seed. The statutory authority to adopt the rules is *Minnesota Statutes* §§ 116.07, subd. 2(b) and subd. 4(b) for solid waste; and *Minnesota Statutes* §§ 116.07, subd. 2(d) and 4(g) for hazardous waste section. A copy of the proposed rules is published in the *State Register*.

Comments. You have until 4:30 p.m. on Friday, February 14th, 2025, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date.

Submit written comments to the:

1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at william.t.moore@state.mn.us; please note that you may not submit rulemaking comments by phone or email.

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 OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

The MPCA encourages comments. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Friday, February 14th, 2025. Submit your written request for a hearing to the:

1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Proposed Rules

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 or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department will cancel the hearing scheduled for March 5th, 2025, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-757-2267 after February 14th, 2025 to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-757-2267 or going on-line at <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Todnem is assigned to conduct the hearing. Judge Todnem can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, and fax (651) 539-0310.

If 25 or more parties submit a written request for a hearing, the ALJ will conduct the hearing on March 5th, 2025, by WebEx beginning at 3:00 pm.

Hearing link: <https://minnesota.webex.com/minnesota/j.php?MTID=md1f63a96b33e817cc7f6c1064b6e375b>

Meeting number: 2492 803 8460

Meeting password: kMwpi2Bwr29

For audio connection, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2492 803 8460

The hearing continues until all parties are heard, or until the ALJ adjourns the hearing (no earlier than 6:00 pm). The MPCA may schedule additional days of hearing if necessary. All interested or affected parties will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You may submit a statement without appearing at the hearing. To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should contact the MPCA contact person after February 14th, 2025 and before March 5th, 2025.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

All post-hearing comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. The Office of Administrative Hearings strongly encourages all persons submitting comments

Proposed Rules

and responses to do so using the *Administrative Hearings' Rulemaking eComments website* <https://minnesotaoah.granicusideas.com/discussions>. If using the eComments website is not possible, you may submit post-hearing comments in person, via United States mail, or by facsimile addressed to Judge Todnem at the address or facsimile number listed in the Notice of Hearing section above.

All comments or responses received will be available for review at the Minnesota Pollution Control Agency or on the agency's website at <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds>. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Date: November 20, 2024

Katrina Kessler, P.E.
MPCA Commissioner

7035.0300 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 7035.0300 to 7035.2915 and 7035.3700, the following terms have the meanings given them in this part.

[For text of subparts 2 and 3, see Minnesota Rules]

Subp. 3a. **Agricultural products.** "Agricultural products" has the meaning given in *Minnesota Statutes*, section 273.13, subdivision 23, paragraph (i).

[For text of subparts 4 to 16, see Minnesota Rules]

Subp. 17. **Community water supply.** "Community water supply" has the meaning given it «community water system» in part 4720.0100 4725.0100, subpart 23a.

[For text of subparts 18 to 37, see Minnesota Rules]

Subp. 37a. **Farming.** "Farming" means producing agricultural products. Farming does not include:

Proposed Rules

A. processing, refining, packaging, or transporting agricultural products; or

B. providing spraying or harvesting services for agricultural products.

[For text of subparts 38 to 65, see Minnesota Rules]

Subp. 66. **Monitoring well.** “Monitoring well” ~~has the meaning given it in part 4725.0100, subpart 30a~~ means an excavation of any depth that otherwise meets the definition given «environmental well» in Minnesota Statutes, section 1031.005, subdivision 8a.

[For text of subparts 67 to 85, see Minnesota Rules]

Subp. 86. **Public water supply.** “Public water supply” has the meaning given “public water system” in ~~part 4720.0100~~ 4725.0100, subpart 37b.

[For text of subparts 87 to 98, see Minnesota Rules]

Subp. 98a. **Shoreland.** “Shoreland” has the meaning given in part 6120.2500, subpart 15.

[For text of subparts 99 to 105, see Minnesota Rules]

Subp. 105a. **Source-separated organic material.**

[For text of items A and B, see Minnesota Rules]

C. Source-separated organic material does not include:

(1) septage; or

(2) sewage sludge, as defined in part 7041.0100, subpart 49-; or

(3) waste treated seed.

[For text of subparts 105b to 108, see Minnesota Rules]

Subp. 108a. **Surface water or surface waters.** “Surface water” or “surface waters” has the meaning given “surface waters” in part 7050.0130, subpart 6.

[For text of subparts 109 to 111d, see Minnesota Rules]

Subp. 111e. **Treated seed.** “Treated seed” means seed that is treated, as defined in Minnesota Statutes, section 21.81, subdivision 28.

[For text of subparts 112 to 116, see Minnesota Rules]

Subp. 116a. **Waste treated seed.** “Waste treated seed” has the meaning given in Minnesota Statutes, section 115A.03, subdivision 37a. Waste treated seed includes treated seed that will not be planted for the purpose of growing live plants in accordance with the instructions on the treated seed container label. Treated seed planted for the purpose of growing live plants in accordance with the instructions on the treated seed container label is not waste treated seed.

[For text of subpart 117, see Minnesota Rules]

Subp. 117a. **Water-supply well.** “Water-supply well” has the meaning given in part 4725.0100, subpart 50a.

[For text of subparts 118 to 121, see Minnesota Rules]

7035.2525 SOLID WASTE MANAGEMENT FACILITIES GOVERNED.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Exceptions.** Parts 7035.2525 to 7035.2915 do not apply to the following solid waste management facilities or persons, except as indicated:

A. backyard compost sites must comply with only part 7035.2836, subpart 5, item M;

[For text of items B to K, see Minnesota Rules]

Proposed Rules

L. small compost sites must ~~only~~ comply with only parts 7035.2535, subpart 1, items A to E; 7035.2555; ~~and~~ 7035.2565; and 7035.2836, subpart 5, item M.

7035.2535 GENERAL SOLID WASTE MANAGEMENT FACILITY REQUIREMENTS.

[For text of subparts 1 to 4, see Minnesota Rules]

Subp. 5. **Industrial solid waste management.** All industrial solid waste delivered to a solid waste management facility must be managed by the owner or operator to protect human health and the environment. The industrial solid waste management plan required under part 7001.3300 must address items A to C, except that the industrial solid waste management plan for a municipal solid waste combustor ash land disposal facility need not comply with items B and C.

[For text of item A, see Minnesota Rules]

B. The plan must address how the following categories of waste will be managed to comply with the requirements of item A, subitems (2) to (4), ~~and, for waste treated seed under subitem (13), with part 7035.3700:~~

[For text of subitems (1) to (11), see Minnesota Rules]

(12) spent activated carbon filters; ~~and~~

(13) waste treated seed; and

~~(13)~~ (14) any other wastes that can be identified.

[For text of items C to E, see Minnesota Rules]

[For text of subpart 6, see Minnesota Rules]

7035.2815 MIXED MUNICIPAL SOLID WASTE LAND DISPOSAL FACILITIES.

[For text of subparts 1 to 5, see Minnesota Rules]

Subp. 6. **Intermittent, intermediate, and final cover system.** The owner or operator of a mixed municipal solid waste land disposal facility must design and maintain a cover system capable of minimizing infiltration of precipitation into the fill areas, preventing surface water ponding on fill areas, controlling gas movement, preventing erosion of surface and side slopes, reducing wind erosion and wind blown litter, minimizing the creation and movement of dust, retaining slope stability, reducing effects of freeze-thaw and other weather conditions, maintaining vegetative growth while minimizing root penetration of the low permeability cover layer, and discouraging vector and burrowing animal intrusion into the site. A complete cover system must consist of intermittent, intermediate, and final covers as outlined in items A to E.

A. The owner or operator must place an intermittent cover upon all exposed solid waste in accordance with the approved operation and maintenance manual for the site. The owner or operator shall submit to the commissioner for approval a proposed cover system that addresses the frequency and depth of placement and the material to be used as cover. The frequency of placement may be no less than once per week, except that waste treated seed must be covered immediately after being placed on the working face. The cover depth must be sufficient to cover the waste completely and must be at least six inches if soil or similar material is used. The commissioner, in approving the proposed cover system, must consider the characteristics of the proposed cover material, the characteristics of the solid waste, the leaching potential of the solid waste, the design and operation of the facility, and the potential for nuisance conditions if other than daily cover is proposed.

[For text of items B to E, see Minnesota Rules]

[For text of subparts 7 to 10, see Minnesota Rules]

Subp. 11. **Gas monitoring, collection, and treatment system.** The concentration of any explosive gas must not exceed its lower explosion limit at the property boundary or 25 percent of its lower explosion limit in and around facility structures or any other on-site monitoring point. A gas monitoring, collection, and treatment system must be designed to meet the requirements of items A to G.

[For text of items A to E, see Minnesota Rules]

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F. The size of the gas collection system must be based on the volume and type of waste to be received at the site.

(1) The owner or operator must determine the need for a gas collection system and discuss in the engineering report how the need was determined. The commissioner shall review the determination during the permit review process and again at closure. Approval of a gas monitoring system without collection at the time of permitting shall not limit future requirements determined necessary by the commissioner based on the volume of gas generated at the facility, the proximity to residential or business property, or problems experienced at the facility in maintaining vegetative growth or accumulation of gas in site structures.

(2) If waste treated seed is accepted at the facility, the operator must determine the maximum volume of waste treated seed that the facility can accept daily based on the size of the gas collection system.

[For text of item G, see Minnesota Rules]

[For text of subpart 12, see Minnesota Rules]

Subp. 13. **Operation and maintenance requirements.** A mixed municipal solid waste land disposal facility must be operated by a certified operator, as defined in parts 7048.0100 to 7048.1300. A certified operator must be present during the time that the facility is open to accept waste. The facility operations must meet the requirements of items A to W, at a minimum.

A. Solid waste must be spread and compacted in layers two feet or less in depth. When waste treated seed is placed on the working face, the operator must spread the waste treated seed across the working face to maintain slope stability and minimize localized settlement.

[For text of items B to W, see Minnesota Rules]

[For text of subparts 14 to 16, see Minnesota Rules]

7035.2836 COMPOST FACILITIES.

[For text of subparts 1 to 4, see Minnesota Rules]

Subp. 5. **Operation requirements for solid waste compost facility.** The owner or operator of a compost facility shall submit an operation and maintenance manual to the commissioner for approval with the facility permit application. The manual must include a personnel training program plan, a leachate management plan, and a compost sampling plan and must comply with the operation requirements in items A to E M.

[For text of items A to L, see Minnesota Rules]

M. Waste treated seed must not be composted.

[For text of subparts 6 to 11, see Minnesota Rules]

7035.3700 WASTE TREATED SEED.

Subpart 1. **Scope.** This part applies to any person managing waste treated seed, including persons who own or operate land used for farming, dealers and other sellers of treated seed, owners or operators of a solid waste management facility, and any other person disposing of waste treated seed.

Subp. 2. **Status.** Waste treated seed managed as specified in this part is industrial solid waste. When managed as specified in this part, waste treated seed is exempt from the requirements of chapter 7045. Discarded containers that held treated seed are mixed municipal solid waste.

Subp. 3. **Requirements.** Waste treated seed must be managed in compliance with this part and with:

A. Minnesota Statutes, section 18B.075, which relates to pesticide-treated seed;

B. Minnesota Statutes, section 21.86, subdivision 2, paragraph (h), which relates to seeds treated with neonicotinoid pesticide; and

Proposed Rules

C. Minnesota Statutes, section 115A.993, which relates to prohibited disposal methods.

Subp. 4. **Prohibitions.** Waste treated seed must not be:

A. disposed of by burial, except:

(1) at a mixed municipal solid waste land disposal facility under part 7035.2815;

(2) at a land disposal facility with a liner and a leachate management system that has been approved by the commissioner to accept waste treated seed. Land disposal facilities accepting waste treated seed under this subitem must comply with part 7035.2815, subparts 6, 11, and 13; or

(3) by a person who owns or operates land used for farming, if the waste treated seed is generated as part of that person's farming operation and is buried on the land used for farming in a nuisance-free, pollution-free, and aesthetic manner. This subitem does not apply if regularly scheduled pickup of solid waste is reasonably available at the person's farm, as determined by resolution of the county board of the county where the land used for farming is located. Burial under this subitem must:

(a) be located more than 200 feet from any water-supply well used for human or animal drinking water and be more than 1,000 feet from any public water supply;

(b) not be on land that is karst;

(c) not be within a wetland, floodplain, or shoreland;

(d) be no deeper than five feet above the water table;

(e) be deep enough or sufficiently backfilled to provide final cover of at least two feet of soil, with the top foot capable of sustaining vegetative growth; and

(f) have the final cover contoured and sloped consistent with the planned ultimate use of the burial location, to divert surface water drainage around and away from the burial location and to prevent erosion, with a minimum two percent and maximum 20 percent slope;

B. burned, except in an energy recovery facility that is issued an air quality permit by the commissioner to burn:

(1) industrial solid waste that is explicitly identified in the permit to be or to include waste treated seed;

(2) mixed municipal solid waste; or

(3) refused-derived fuel prepared from mixed municipal solid waste;

C. composted;

D. used, donated, sold, or offered for human food;

E. used, donated, sold, or offered for animal feed, such as feed for livestock, poultry, or wildlife; or

F. used, donated, sold, or offered for oil processing or for fuel or fuel production, except as allowed in item B.

Subp. 5. **Preemption.** Unless explicitly superseded by controlling federal law, instructions on treated seed container labels relating to disposition or disposal of waste treated seed or disposition or disposal of treated seed containers do not preempt the requirements of this part.

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Subp. 6. **Regulatory jurisdiction.**

A. The agency has jurisdiction to implement and enforce this part, chapter 7035, and chapter 7045.

B. The Department of Agriculture has jurisdiction to implement and enforce chapter 1505 and Minnesota Statutes, chapters 18B and 21, including requirements for registration and use of pesticides used to treat seeds and labeling of treated seed containers.

C. Local units of government that have entered into delegation agreements with the Department of Agriculture under parts 1505.4000 to 1505.4130 have jurisdiction to enforce requirements of the Department of Agriculture that are specified in their respective delegation agreements.

D. Local units of government have jurisdiction to regulate management of industrial solid waste and mixed municipal solid waste as specified in their respective solid waste ordinances, as provided in Minnesota Statutes, chapters 115A, 400, and 473. Local regulation must be consistent with this part but may further restrict location or manner of waste treated seed burial.

7045.0020 DEFINITIONS.

[For text of subparts 1 to 58b, see Minnesota Rules]

Subp. 58c. **Monitoring well.** “Monitoring well” means an excavation of any depth that otherwise meets the definition given “environmental well” in Minnesota Statutes, section 1031.005, subdivision 8a.

[For text of subparts 59 to 82, see Minnesota Rules]

Subp. 83. **Shoreland.** “Shoreland” has the meaning given in Minnesota Statutes, section 103F.205, subdivision 4, and rules adopted pursuant to that section part 6120.2500, subpart 15.

[For text of subparts 84 to 88, see Minnesota Rules]

Subp. 88a. **Surface water or surface waters.** “Surface water” or “surface waters” has the meaning given “surface waters” in part 7050.0130, subpart 6.

[For text of subparts 89 to 96a, see Minnesota Rules]

Subp. 96b. **Treated seed.** “Treated seed” has the meaning given in part 7035.0300, subpart 111e.

[For text of subparts 97 to 102c, see Minnesota Rules]

Subp. 102d. **Waste treated seed.** “Waste treated seed” has the meaning given in part 7035.0300, subpart 116a.

[For text of subparts 103 to 105, see Minnesota Rules]

Subp. 105a. **Water-supply well.** “Water-supply well” has the meaning given in part 4725.0100, subpart 50a.

[For text of subparts 106 to 109, see Minnesota Rules]

7045.0120 EXEMPTIONS AND SPECIAL REQUIREMENTS.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Special requirements.** The following waste is exempt from the general requirements of this chapter if managed as specified:

[For text of items A to E, see Minnesota Rules]

F. universal waste managed under part 7045.1400; and

G. hazardous waste containing radioactive waste when it meets the eligibility criteria and conditions of Code of Federal Regulations, title 40, part 266, subpart N, Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal, as amended. This exemption also pertains to:

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(1) any mixture of a waste and an eligible radioactive mixed waste; and

(2) any waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

Waste exempted under this item must meet the eligibility criteria and specified conditions in Code of Federal Regulations, title 40, sections 266.225 and 266.230 (for storage and treatment), as amended, and 266.310 and 266.315 (for transportation and disposal), as amended. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste; and

H. waste treated seed and discarded containers that held treated seed, if the waste treated seed and containers are managed under chapter 7035, including part 7035.3700.

TERM CHANGE. In Minnesota Rules, chapters 7035 and 7045, the terms “water supply well” and “water supply wells” are changed to “water-supply well” and “water-supply wells,” respectively.

RENUMBERING INSTRUCTION. In Minnesota Rules, part 7035.0300, the subparts listed in column A are renumbered as the subparts listed in column B:

<u>Column A</u>	<u>Column B</u>
<u>Subpart 111a</u>	<u>Subpart 111f</u>
<u>Subpart 111b</u>	<u>Subpart 111g</u>
<u>Subpart 111c</u>	<u>Subpart 111h</u>
<u>Subpart 111d</u>	<u>Subpart 111i</u>

In Minnesota Rules, part 7045.0020, subpart 102c, is renumbered as subpart 102e.

Minnesota Racing Commission

Proposed Permanent Rules Relating to Horse Racing; Notice of Intent to Adopt Rules Without A Public Hearing

Proposed Amendments to Rules Governing Horse Racing: Definitions, Facilities and Equipment, Class C Licensees, Thoroughbred/Quarter Horse Races, Harness Races, Horse Medication, Physical Examination, Medical Testing, Breeders’ Fund, and Prohibited Acts; Chapters 7869, 7875, 7877, 7883, 7884, 7890, 7891, 7892, 7895, and 7897. Revisor’s ID Number R-04887 Docket Number OAH 22-0911-4189.

Introduction. The Minnesota Racing Commission intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules, until Thursday, January 30, 2025.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is Taylor Trauffer at the Minnesota Racing Commission, 15201 Zurich Street STE 212, Columbus MN, 55025 at 651-925-3951(phone), 651-925-3953 (fax), and taylor.trauffer@state.mn.us (email).

Subject of Rules and Statutory Authority. The proposed rule updates strive to keep Minnesota Racing Commission rules current and relevant as the industry evolves. This rulemaking initiative will modify, clarify, and update various existing MRC rules pertaining to licensing, animal welfare, and the safety of all participants. There is an emphasis on horse health, veterinary practices, and racing rules. Following is a summary of the changes.

- G. Certificates of Mailing the Notice of Hearing:
 - a. G-1: Certificate of Mailing the Notice of Hearing to the Rulemaking Mailing List
 - b. G-2: Certificate of Accuracy of the Mailing List

Notice of Hearing to Those Who Requested a Hearing

Minnesota Pollution Control Agency

**Proposed Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045;
Revisor's ID No. 04806; OAH Docket No. 23-9003-39350**

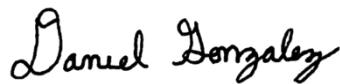
To people who requested a hearing. In accordance with Minnesota Statutes, section 14.25, subdivision 1, the Minnesota Pollution Control Agency (MPCA) is sending this Notice to all people who requested a hearing.

There will be a hearing. On December 30th, in the *State Register*, on pages 697 to 706, the MPCA published a Notice of Intent to Adopt Rules relating to Waste Treated Seed. The Notice stated that the MPCA would hold a hearing on the proposed rules if 25 or more people submitted written requests.

The MPCA has received a sufficient number of requests for a hearing. The hearing will be conducted as stated in the *State Register* online via Webex, continuing until the hearing is completed.

Administrative law judge. Administrative Law Judge Todnem will conduct the hearing. The judge can be reached by contacting William Moore, OAH Administrative Rule and Applications Specialist, at William.T.Moore@state.mn.us or (651) 361-7893. You should direct questions on the rule hearing procedure to William Moore.

Agency contact person. The agency contact person is Daniel Gonzalez, MPCA, 520 Lafayette Rd, St. Paul, MN 55155, 651-757-2267, and daniel.gonzalez@state.mn.us. You should direct questions or comments about the rules to Daniel Gonzalez. A copy of the Notice of Intent to Adopt Rules is available upon request from Daniel Gonzalez.



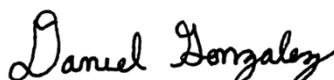
Daniel Gonzalez
Rule Coordinator

Certificate of Emailing a Notice of Hearing to Rulemaking Mailing List

Minnesota Pollution Control Agency

**Proposed Permanent Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035
and 7045; Revisor's ID No. 04806; OAH Docket No. 23-9003-39350**

I certify that on February 27, 2025, I emailed a Notice of Hearing by sending an electronic copy via email to all persons on the Waste Treated Seed mailing list and MPCA tribal contacts. The Notice is given under Minnesota Statutes, section 14.25, subdivision 1. A copy of each of the emails is attached to this Certificate.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style and is positioned above a solid horizontal line.

Daniel Gonzalez
Rule Coordinator

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Wenger, Maggie \(MPCA\)](#)
Bcc: ["jeremyb@stcroixojibwe-nsn.gov"](#); ["georger@stcroixojibwe-nsn.gov"](#); ["jasone@swo-nsn.gov"](#); ["linda.nguyen@redcliff-nsn.gov"](#); ["noah.saperstein@redcliff-nsn.gov"](#); ["allissa.stutte@redcliff-nsn.gov"](#); ["marvin.defoe@redcliff-nsn.gov"](#); ["edwina.buffalo-reyes@redcliff-nsn.gov"](#); ["randy.poelma@ho-chunk.com"](#); ["Hinu.smith@ho-chunk.com"](#); ["Brandon.bleuer@ho-chunk.com"](#); ["jcoleman@glifwc.org"](#); ["esteban@glifwc.org"](#); ["dvogt@1854treatyauthority.org"](#); ["ed.snetsinger@whiteearth-nsn.gov"](#); ["jerryb@upperprouxcommunity-nsn.gov"](#); ["brylear@upperprouxcommunity-nsn.gov"](#); ["alenab@upperprouxcommunity-nsn.gov"](#); ["samanthao@upperprouxcommunity-nsn.gov"](#); ["scott.walz@shakopeedakota.org"](#); ["jleblanc@redlakenation.org"](#); ["gabriel.miller@piic.org"](#); ["jane.feely@piic.org"](#); ["henry.stelten@piic.org"](#); ["Madeline.Hyde@piic.org"](#); ["franky.jackson@piic.org"](#); ["noah.white@piic.org"](#); ["kelly.applegate@millelacsband.com"](#); ["Susan.Klapel@millelacsband.com"](#); ["Susan.Klapel@millelacsband.com"](#); ["Diane.thompson@llojibwe.net"](#); ["jason.helgeson@llojibwe.net"](#); ["jakob.sorensen@llojibwe.net"](#); ["Deschampe, Robert"](#); ["agathaa@grandportage.com"](#); ["April@grandportage.com"](#); ["mariespry@grandportage.com"](#); ["tobys@grandportage.com"](#); ["Trustlands.admin@grandportage.com"](#); ["kwoerheide@grandportage.com"](#); ["genevadiaz@fdlband.org"](#); ["enevadiaz@fdlband.org"](#); ["jackbassett@fdlband.org"](#); ["cholm@boisforte-nsn.gov"](#); ["Shania Nordby"](#)
Subject: FW: REMINDER: Rule Hearing – Waste Treated Seed Disposal Rule
Date: Thursday, February 27, 2025 8:52:00 AM
Attachments: [image001.png](#)

Hello,

You are receiving this notice because you are listed as the tribal contact for the Minnesota Pollution Control Agency's (MPCA's) solid waste rule notices. The MPCA has published a Notice of Hearing for the Waste Treated Seed Disposal Rule. The information regarding this proposed rule can be found in the bulletin forwarded below.

Thank you.

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>

Sent: Thursday, February 27, 2025 8:32 AM

To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>

Subject: REMINDER: Rule Hearing – Waste Treated Seed Disposal Rule



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Feb. 27, 2025

Notice of Hearing

The comment period for the Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Rule (Revisor's ID R-4806; OAH docket number 23-9003-39350) closed Feb. 14, 2025 at 4:30 p.m. In reviewing the comments, the agency received the required 25 or more written requests for a hearing.

Administrative Law Judge Todnem will conduct a rule hearing on Wednesday, March 5, 2025, by WebEx beginning at 3 p.m.

To join the hearing

[Via Webex:](#)

Meeting number: 2492 803 8460

Meeting password: kMwpi2Bwr29

By phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2492 803 8460

The hearing continues until all parties are heard, or until the ALJ adjourns the

hearing (no earlier than 6 p.m.). The MPCA may schedule additional days of hearing if necessary. All interested or affected parties will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You may submit a statement without appearing at the hearing.

Ways to Comment:

1. Offer oral comments at the hearing
2. Offer written comments electronically, by mail, or by fax:
 1. Electronically at: www.minnesotaoah.granicusideas.com/discussions
 2. By U.S. mail to : Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 551464-0620
 3. By Fax to 651-539-0310

This hearing has also been added to the MPCA's events and meetings webpage.

[Event link](#)

MPCA's legal notice of its intent to waste treated seed disposal rules

The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

MPCA logo



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This email was sent to daniel.gonzalez@state.mn.us using GovDelivery Communications Cloud on behalf of: Minnesota Pollution Control Agency
520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Wenger, Maggie \(MPCA\)](#)
Bcc: [Boerboom, Jane \(MDA\)](#); [Mann, Rajinder \(MDA\)](#); [Cira, Theresa M \(She/Her/Hers\) \(MDA\)](#); [Merriman, Michael \(MDA\)](#); [Warnke, Jolene \(UofM\)](#); [Haugen-Brown, Tana \(UofM\)](#); [Johns, Linda \(UofM\)](#); [bmartinson@mncounties.org](#); [michael@metrocitiesmn.org](#); [cjohnson@lmc.org](#); [Jeff Krueger; richardfursman@gmail.com](#); [kathryn@mncenter.org](#); [imgahn2u@yahoo.com](#); [tkwilas@mnchamber.com](#); [cmconn@co.ottetail.mn](#); [billkeegan@dem-con.com](#); [amber@mada.org](#); [maevans@burnsmcd.com](#); [rebecca.rice@swaa-mn.org](#); [dloon@mnchamber.com](#); [ramrecycle@comcast.net](#); [Boerboom, Jane \(MDA\)](#); [Mann, Rajinder \(MDA\)](#); [Merriman, Michael \(MDA\)](#); [Cira, Theresa M \(She/Her/Hers\) \(MDA\)](#); [Warnke, Jolene \(UofM\)](#); [Kroening, Heidi \(MPCA\)](#); [Johns, Linda \(UofM\)](#)
Subject: FW: REMINDER: Rule Hearing – Waste Treated Seed Disposal Rule
Date: Thursday, February 27, 2025 8:48:00 AM
Attachments: [image001.png](#)

Hello,

You are receiving this notice because you may have interest in the Minnesota Pollution Control Agency's (MPCA's) proposed rules governing waste treated seed. The MPCA has published a Notice of Hearing for the Waste Treated Seed Disposal Rule. The information regarding this proposed rule can be found in the bulletin forwarded below.

Thank you.

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>

Sent: Thursday, February 27, 2025 8:32 AM

To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>

Subject: REMINDER: Rule Hearing – Waste Treated Seed Disposal Rule



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Feb. 27, 2025

Notice of Hearing

The comment period for the Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Rule (Revisor's ID R-4806; OAH docket number 23-9003-39350) closed Feb. 14, 2025 at 4:30 p.m. In reviewing the comments, the agency received the required 25 or more written requests for a hearing.

Administrative Law Judge Todnem will conduct a rule hearing on Wednesday, March 5, 2025, by WebEx beginning at 3 p.m.

To join the hearing

[Via Webex:](#)

Meeting number: 2492 803 8460

Meeting password: kMwpi2Bwr29

By phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2492 803 8460

The hearing continues until all parties are heard, or until the ALJ adjourns the hearing (no earlier than 6 p.m.). The MPCA may schedule additional days of hearing if necessary. All interested or affected parties will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You

may submit a statement without appearing at the hearing.

Ways to Comment:

1. Offer oral comments at the hearing
2. Offer written comments electronically, by mail, or by fax:
 1. Electronically at: www.minnesotaoah.granicusideas.com/discussions
 2. By U.S. mail to : Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 551464-0620
 3. By Fax to 651-539-0310

This hearing has also been added to the MPCA's events and meetings webpage.

[Event link](#)

MPCA's legal notice of its intent to waste treated seed disposal rules

The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it

originally adopted or significantly amended the rules, and no further justification is necessary.

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

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520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Wenger, Maggie \(MPCA\)](#)
Bcc: chrisgcowen@gmail.com; gdamian@cleanenergyeconomymn.org; g.larson@mchsi.com; laurie@pollinatorfriendly.org; lroads@nrhc.org; margaret.levin@sierraclub.org; alleyfarmsandgardens@gmail.com; rep.rick.hansen@house.mn.gov; rTitus@croplifeamerica.org; pmiller@betterseed.org; mberger@gislason.com; rosemary.malfi@xerces.org; ehardykern@abcbirds.org; mpmonson.insx@gmail.com; Guthrie55981@gmail.com
Subject: FW: REMINDER: Rule Hearing – Waste Treated Seed Disposal Rule
Date: Thursday, February 27, 2025 8:59:00 AM
Attachments: [image001.png](#)

Hello,

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Thank you.

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



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From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>

Sent: Thursday, February 27, 2025 8:32 AM

To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>

Subject: REMINDER: Rule Hearing – Waste Treated Seed Disposal Rule



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Feb. 27, 2025

Notice of Hearing

The comment period for the Dual Notice of Intent to Adopt Rules for the Waste Treated Seed Rule (Revisor's ID R-4806; OAH docket number 23-9003-39350) closed Feb. 14, 2025 at 4:30 p.m. In reviewing the comments, the agency received the required 25 or more written requests for a hearing.

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 1. Electronically at: www.minnesotaoah.granicusideas.com/discussions
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The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it originally adopted or significantly amended the rules, and no further justification is necessary.

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).



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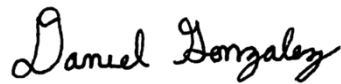
This email was sent to daniel.gonzalez@state.mn.us using GovDelivery Communications Cloud on behalf of: Minnesota Pollution Control Agency
520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

Certificate of Accuracy of the Mailing List

Minnesota Pollution Control Agency

Proposed Permanent Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045; Revisor's ID No. 04806; OAH Docket No. 23-9003-39350

I certify that the list of persons that have requested that their names be placed on the Pollution Control Agency's rulemaking list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of December 30, 2024.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style with a large initial 'D'.

Daniel Gonzalez
Rule Coordinator

H. Not enclosed - Certificate of Additional Notice Plan

Certificate of Additional Notice Plan

Minnesota Pollution Control Agency

Division of Resource Management and Assistance

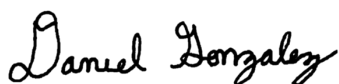
Proposed Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045

I certify that on December 30, 2024, at St. Paul, Ramsey County, Minnesota, I sent an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to:

- 1) University of Minnesota Extension
 - a. Jolene Warnke, Pesticide Safety Environmental Education (PSEE) Program Mgr.
 - b. Tana Haugen-Brown, Educator & Co-Coordinator, PSEE
 - c. Linda Johns, Associate Director & Coordinator, PSEE
- 2) Minnesota Department of Agriculture (MDA)
 - a. Jane Boerboom, Pesticide and Fertilizer Mgmt.
 - b. Rajinder Mann, Pesticide and Fertilizer Mgmt.
 - c. Theresa Cira, Pesticide and Fertilizer Mgmt.
 - d. Michael Merriman, Plant Protection
- 3) Solid Waste Permitting GovDelivery List. The MPCA established the Solid Waste Permitting GovDelivery list to distribute notifications and updates for owners and operators of solid waste management facilities. The MPCA created the list using the most recent facility contact information (owners, operators, and land owners) stored in Tempo (Agency permitting software) for all facilities required to submit annual reports. To supplement the list, the MPCA invited consultants associated with the permitted facilities, via email, the option to sign up for the GovDelivery list. In addition, the Agency sent notifications to the RAM/SWANA, NWRA and SWAA organizations along with sign up information. As of May 3, 2021, this list contained approximately 733 subscribers (May 21).
- 4) MPCA Tribal Contact List. The MPCA maintains a list of tribal contacts for the 12 federally recognized tribes in Minnesota. I sent additional notice to the MPCA's Solid Waste Rulemaking Tribal Contacts.
- 5) Association of MN Counties; Brian Martinson, Environment & Natural Resources;
- 6) Association of Metropolitan Municipalities; Michael Lund, Government Relations Specialist;
- 7) League of MN Cities; Craig Johnson, Intergovernmental Relations Representative;
- 8) MN Association of Townships; Jeff Krueger, Executive Director;
- 9) MN City/County Management Association; Richard Fursman, President;
- 10) MN Center for Environmental Advocacy; Kathryn Hoffman, Chief Executive Officer;
- 11) Izaak Walton League of America, MN Division; John Rust, Executive Committee President;

- 12) MN Chamber of Commerce; Tony Kwilas, Director Environmental Policy;
- 13) MN Resource Recovery Association; Chris McConn, Executive Director;
- 14) National Waste & Recycling Association (NWRA), Amber Backhaus, Vice President of Government Affairs; Bill Keegan, President;
- 15) Solid Waste Association of North America – MN Chapter (SWANA); Matthew Evans;
- 16) MN Solid Waste Administrators Association (SWAA); Rebecca Rice, Executive Director;
- 17) MN Waste Wise; Doug Loon, President and CEO, MN Chamber of Commerce;
- 18) Recycling Association of MN (RAM); Paul Gardner, Board Chair;
- 19) Solid Waste Permitting GovDelivery List. The MPCA established the Solid Waste Permitting GovDelivery list to distribute notifications and updates for owners and operators of solid waste management facilities. The MPCA created the list using the most recent facility contact information (owners, operators, and land owners) stored in Tempo (Agency permitting software) for all facilities required to submit annual reports. To supplement the list, the MPCA invited consultants associated with the permitted facilities, via email, the option to sign up for the GovDelivery list. In addition, the Agency sent notifications to the RAM/SWANA, NWRA and SWAA organizations along with sign up information. As of May 3, 2021, this list contained approximately 733 subscribers (May 21).
- 20) MPCA Tribal Contact List. The MPCA maintains a list of tribal contacts for the 12 federally recognized tribes in Minnesota. I sent additional notice to the MPCA's Solid Waste Rulemaking Tribal Contacts.

I accomplished this by sending an electronic copy via email to all persons and associations on the list. A copy of each of the emails is attached to this Certificate.



Daniel Gonzalez
Rule Coordinator



VIA EFILING

2/27/2024

The Honorable Judge Suzanne Todnem
Administrative Law Judge
Office of Administrative Hearings

**In the Matter of the Proposed Amendments to MPCA Rules Governing Waste Treated Seed Disposal Rule; Request for Review and Approval of Additional Notice Plan;
Revisor's ID Number R-4806; OAH Docket No. 23-9003-39350**

Dear Judge Todnem:

The MPCA requests that you please review and approve our Additional Notice Plan for our Notice of Intent to Adopt rules under Minnesota Statutes, section 14.131, 14.14, 14.22, and 14.23. The Notice of Intent to Adopt is for the MPCA's planned rules proposing small, noncontroversial rules that provide for the safe and lawful disposal of waste treated seed.

Enclosed for your review is the proposed Notice of Intent to Adopt the proposed rules as required by Minnesota Rules, part 1400.2060, subpart 2, item B.

Part 1400.2060, subpart 2, item A, also requires that we describe our proposed Additional Notice Plan and explain why we believe our Additional Notice Plan constitutes good-faith efforts to seek information by other methods designed to reach persons or classes of persons who might be significantly affected by the proposal.

Our proposed Additional Notice Plan consists of:

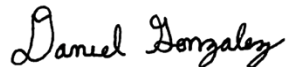
- Publishing the Notice of Intent to Adopt Rules to the MPCA's webpages;
- Providing specific notice to tribal authorities;
- Providing specific notice to those that provided comments during the previous Request for Comments;
- Providing specific notice to associations and environmental groups including facility groups, agricultural groups, jurisdictional groups, neighborhood groups, human health groups, and environmental health groups;

- Providing notice in an electronic newsletter.

We believe that our Additional Notice Plan complies with the statute because the MPCA has made reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule. This includes notice to agricultural cooperatives, seed dealers, farmers, ethanol refinery operators, landowners adjacent to ethanol refineries, solid waste landfill operators that will be required to comply with and may oppose the proposed rule, and the public and environmental groups that may support the proposed rule.

If you have any questions or concerns, please contact me at daniel.gonzalez@state.mn.us or 651-757-2754.

Sincerely,

A handwritten signature in black ink that reads "Daniel Gonzalez". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Daniel Gonzalez
MPCA Rule Coordinator

Enclosure: SONAR, Dual Notice of Intent to Adopt without Hearing, and Revisor's Office Certified Copy of Rule

- I. Written comments received by the Agency during the comment period for the Notice of Hearing for Proposed Amendments to Rules Governing Waste Treated Seed.

The Minnesota Pollution Control Agency has not directly received any written comments as of February 27, 2025. All comments have been sent to OAH either through email or on the OAH eComments website.

- a. I-1: Comments received during Request for Comment #1
- b. I-2: Comments received during Request for Comment #2
- c. I-3: Comments received during Request for Notice of Intent to Adopt

39350 Minnesota Pollution Control Agency Request for Comments on Waste Treated Seeds Rule

Closed Oct 27, 2023 · Discussion · 3 Participants · 1 Topics · 3 Answers · 0 Replies · 2 Votes

3

PARTICIPANTS

1

TOPICS

3

ANSWERS

0

REPLIES

2

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 3 Answers · 0 Replies


Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Pat Miller · Citizen · (Postal Code: unknown) · Oct 27, 2023 10:56 am

 1 Votes


Please see the attached joint comment from CropLife America and the American Seed Trade Association

Matthew Berger · Citizen · (Postal Code: unknown) · Oct 27, 2023 1:46 pm

 1 Votes

Please see the attached public comments from Minnesota Corn Growers Association, Minn-Dak Farmers Cooperative, et al.

Rosemary Malfi · Citizen · (Postal Code: unknown) · Oct 27, 2023 2:14 pm

 0 Votes

Please see the attached joint comment from The Xerces Society for Invertebrate Conservation and American Bird Conservancy.



RECEIVED

Exhibit 1-1
By: OAH on 10/27/2023
Pat Miller Attachment

October 27, 2023

Mr. William Moore
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164

Re: Comments on Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, ch. 7035.3700 – 7035.3900; Revisor's ID Number R-04806

Dear Mr. Moore:

CropLife America (CLA) and the American Seed Trade Association (ASTA) appreciate the opportunity to comment on the Minnesota Pollution Control Agency's (MPCA) possible rulemaking on Minnesota Rules (Minn. R.) chapter 7035, relating to waste treated seeds. Any regulations promulgated by MPCA would impose impacts on each organization's members, who, as to CLA, develop and sell crop protection products for agriculture and pest management in the United States and, as to ASTA, develop, produce, and distribute seeds for use in agriculture in the United States and abroad.

With regard to regulatory jurisdiction over waste treated seed, the Minnesota Legislature has tasked MPCA, in consultation with the Department of Agriculture and University of Minnesota, with rulemaking to provide for the safe and lawful disposal of waste treated seed. The Legislature also directs that any new rules "must clearly identify the regulatory jurisdiction of state agencies ... with regard to such seed." In Minnesota, the Minnesota Department of Agriculture continues to have regulatory authority for all aspects of seed, seed treatments and treated seed¹. While MPCA undertakes this rulemaking on waste treated seed disposal given its regulatory jurisdiction over management and waste disposal of treated seed that will not be used by planting, we feel it is important for MPCA to exercise this authority in a manner that ensures consistency and uniformity with MDA's existing regulatory authority.

It is the view of both CropLife and ASTA that the MPCA treated seed disposal guidance document provides sufficient guidance to industry and to consumers regarding the proper use, limitations on use, and disposal of seed treated with pesticides². We believe the MPCA treated seed guidance, along with instructions on the seed bag tag, adequately address use, storage, handling, distribution, and disposal of treated seed to potentially avoid adverse impacts on

¹ Buying and Selling Seed in Minnesota, Minnesota Department of Agriculture, <https://www.mda.state.mn.us/plants-insects/buying-selling-seed-minnesota>

² Treated seeds, Minnesota Pollution Control Agency, <https://www.pca.state.mn.us/sites/default/files/w-hw4-51.pdf>

***Comments on Planned New Rules Governing Waste Treated Seeds,
Minnesota Rules, ch. 7035.3700 – 7035.3900; Revisor's ID Number R-04806***

CropLife America & American Seed Trade Association

2

humans, food, livestock, fish, or wildlife and no unreasonable adverse effects on the environment. Indeed, the seed bag tag and label contain handling requirements, wildlife warnings, storage, disposal, and container handling instructions.

In summary, the use of seeds improved through modern technologies, such as seed treatments, continues to grow around the world because of their economic, environmental, and human health benefits. We encourage MPCA to avoid imposing new and unnecessary regulatory burdens on their use and disposal, given the current authority and regulatory resources that adequately enable their safe use. Thank you for your consideration of our comments on these possible regulations.

Sincerely,

Riley Titus
CropLife America
rtitus@croplifeamerica.org
(239) 398-0992

Pat Miller
American Seed Trade Association
pmiller@betterseed.org
(512) 259-2118

GISLASON & HUNTER LLP
ATTORNEYS AT LAW

Matthew C. Berger
Also admitted in Iowa
507-354-3111
mberger@gislason.com

October 27, 2023

Mr. William Moore
Office of Administrative Hearings
600 N Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

Re: Public Comments – Planned New Rules Governing Waste Treated Seeds

Dear Mr. Moore:

On July 6, 2023, the Minnesota Pollution Control Agency issued a Request for Comments with respect to a possible new administrative rule regulating the management and disposal of treated seeds that will not be used to plant agricultural crops. This rulemaking process is undertaken in response to a law enacted during the 2023 Legislative Session that requires “[t]he commissioner of the Pollution Control Agency, in consultation with the commissioner of agriculture and the University of Minnesota,” to adopt administrative rules “providing for the safe and lawful disposal of waste treated seed” and to “clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed.” 2023 Minn. Laws ch. 60, art. 3, § 28. I am submitting the following comments regarding the MPCA’s proposed rulemaking on behalf of Minn-Dak Farmers Cooperative, Minnesota Corn Growers Association, Minnesota Crop Production Retailers, Minnesota Farm Bureau, Minnesota Soybean Growers Association, Minnesota Wheat Growers Association, Red River Valley Sugarbeet Growers, and Southern Minnesota Beet Sugar Cooperative.

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Page 2

Mr. William Moore
Office of Administrative Hearings
October 27, 2023

BACKGROUND

A “pesticide” is “a substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.” Minn. Stat. § 18B.01, subd. 18 (2022); *see* 7 U.S.C. § 136(u). At the federal level, pesticides are extensively regulated by the Environmental Protection Agency under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.* FIFRA, and the regulations that implement it, generally prohibits the distribution or sale of any pesticide unless the pesticide is registered. *See* 7 U.S.C. § 136a(a). As part of the registration process, an applicant must provide “a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.” 7 U.S.C. § 136a(c)(1). Before registering a pesticide, the EPA generally must determine that the pesticide “will perform its intended function without unreasonable adverse effects on the environment” based on the proposed use as described in the application materials (including the proposed label). *See* 7 U.S.C. § 136a(c)(5).

In Minnesota, pesticides are also highly regulated under existing laws and regulations. Under existing law, “[a] person may not use, store, handle, distribute, or dispose of a pesticide, rinsate, pesticide container, or pesticide application equipment in a manner: (1) that is inconsistent with a label or labeling as defined by FIFRA; (2) that endangers humans, damages agricultural products, food, livestock, fish, or wildlife; or (3) that will cause unreasonable adverse effects on the environment.” Minn. Stat. § 18B.07, subd. 2 (2022). Existing law specifically designates the Minnesota Department of Agriculture as “the lead state agency for the regulation of pesticides” and delegates authority to the Commissioner of Agriculture to “administer, implement, and enforce” the state laws governing pesticides. Minn. Stat. § 18B.03, subd. 1 (2022). Existing law also specifically directs the Commissioner of Agriculture to “adopt rules to implement and enforce” the state laws governing pesticides, including “rules to govern the distribution, use, storage, handling, and disposal of pesticides, rinsates, and pesticide containers.” Minn. Stat. § 18B.06, subds. 1, 3 (2022). Finally, during the 2023 Legislative Session, the Minnesota Legislature adopted a new law—to be codified with existing laws governing pesticides in Minnesota Statutes chapter 18B—providing that “[a] person may not use, store, handle, distribute, or dispose of seed treated with pesticide

GISLASON & HUNTER LLP

Page 3

Mr. William Moore
Office of Administrative Hearings
October 27, 2023

in a manner that: (1) endangers humans, food, livestock, fish, or wildlife; or (2) will cause unreasonable adverse effects on the environment.” 2023 Minn. Laws ch. 60, art. 9, § 2 (to be codified at Minn. Stat. § 18B.075).

COMMENTS

In describing the background for this rulemaking process, the Minnesota Pollution Control Agency states that “[w]hile the Minnesota Department of Agriculture (MDA) and the U.S. Environmental Protection Agency (EPA) regulate the pesticides and fungicides that are used to treat seeds, treated seeds themselves are exempt from those requirements.” MPCA, *Waste Treated Seeds*, <https://www.pca.state.mn.us/get-engaged/waste-treated-seeds> (last visited Oct. 18, 2023). This legal premise, however, is inaccurate and misleading.

Federal regulations enacted by the Environmental Protection Agency to implement FIFRA provide an exemption for treated articles and substances:

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) Treated articles or substances. An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.

40 C.F.R. § 152.25 (2023). But as the EPA thoroughly explained in responding to a Citizen Petition that requested administrative action related to treated seeds, the treated-article exemption to FIFRA is conditioned on the pesticide that was used to treat the seed being “registered for such use.” See EPA, *Response to the April 2017 Petition from Center for Food Safety and Others Related to EPA Regulation of Pesticide-Treated Seed* (“EPA Response to Petition”), at 23, available at <https://www.regulations.gov/document/EPA-HQ-OPP-2018-0805-0104> (Sept. 27, 2022). In order for a treated article to satisfy

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this condition, “the presence of the pesticide in the article or substance [must] be the result of treatment using a pesticide registered for the use and requiring that the registered pesticide be expressly labeled for the precise use in question.” *Id.* at 24-25. And before registering a pesticide with a label that authorizes use to treat seeds, the EPA must complete a “thorough assessment of the treating pesticide product, including any exposure and risk to human and ecological health from use of the treating pesticide and use of the treated article,” to determine that the use of the pesticide in this manner “would protect ‘man and the environmental from unreasonable adverse effects.’ ” *Id.* at 23 (emphasis added). Further, the “registered for such use” condition also requires that the distribution, sale, and use of the treated seed be “be consistent with any instruction on the registered pesticide product labeling, as communicated on the seed bag tag labeling.” *Id.* at 39.

In other words, pesticide-treated seeds are not wholly exempt from the requirements of FIFRA or applicable state laws. Instead, the regulation of such treated seeds is necessarily part of, and subject to, the regulation of the pesticide that was used to treat the seed. Thus, the legal premise upon which the Minnesota Pollution Control Agency has commenced this rulemaking process is inaccurate—treated seeds, like other articles treated with pesticides, are already regulated as part of the existing federal and state laws that regulate the pesticides used to treat the seeds.

Separately from the existing regulations (under both FIFRA and state law) of pesticides that are distributed and used through treated seeds, the Minnesota Pollution Control Agency published a guidance document in April 2022 that provides recommended management practices for disposal of treated seeds that will not be used for planting. Each of the groups who join in submitting these comments support the MPCA’s informal guidance and encourage their members to implement the recommended practices described by the MPCA when disposing of excess treated seed that will not be used to plant a crop.

In light of the existing regulations and guidance, Minn-Dak Farmers Cooperative, Minnesota Corn Growers Association, Minnesota Crop Production Retailers, Minnesota Farm Bureau, Minnesota Soybean Growers Association, Minnesota Wheat Growers Association, Red River Valley Sugarbeet Growers, and Southern Minnesota Beet Sugar Cooperative do not believe that additional government

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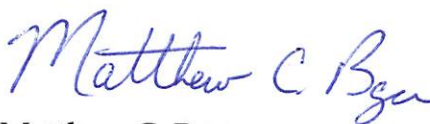
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regulation is necessary or appropriate. Nonetheless, if the Minnesota Pollution Control Agency decides to move forward with the rulemaking process as described in the Request for Comments, these groups look forward to participating further in the process once specific rules are prepared and published for comment.

Thank you for your attention concerning this matter.

Very truly yours,



Matthew C. Berger

MCB:elm

cc: Kaitlyn Bemis, Minnesota Farm Bureau (*via e-mail only*)
Joe Smentek, Minnesota Soybean Growers Association (*via e-mail only*)
Lee Helgen, Minnesota Crop Production Retailers (*via e-mail only*)
Bruce Kleven, Minnesota Wheat Growers Association, Red River Valley
Sugarbeet Growers, and Minn-Dak Farmers Cooperative (*via e-mail only*)
Jeff Rustvang, Southern Minnesota Beet Sugar Cooperative (*via e-mail only*)
Amanda Bilek, Minnesota Corn Growers Association (*via e-mail only*)



Attn: Mr. William Moore
The Office of Administrative Hearings
600 Robert St N, St Paul, MN 55101

Subject: Public Comment on Planned New Rules Governing Waste Treated Seeds, Minnesota Rules, ch. 7035.3700 – 7035.3900; Revisor's ID Number R-04806; OAH Docket No. 23-9003-39350

Oct 27, 2023

Dear Mr. Moore,

The Xerces Society for Invertebrate Conservation and American Bird Conservancy respectfully submit these comments on the planned new rules governing waste treated seeds in Minnesota. **The Xerces Society** is an international nonprofit that uses science-driven methods to protect invertebrate wildlife and their habitat. Our organization is recognized as a global leader in pollinator conservation by entities such as the U.N. Food and Agriculture Organization and USDA-NRCS, and we work directly with farmers across Minnesota to safeguard pollinator populations. **American Bird Conservancy** is an international non-profit that seeks to conserve birds and habitats across the Americas. ABC staff are trusted partners for the Minnesota Department of Natural Resources, Minnesota Department of Agriculture, US Fish and Wildlife Service, US Forest Service, and also work actively with Minnesota residents to advance bird conservation practices and issues.

Ensuring the judicious use and proper disposal of pesticide-treated seed is an important issue for the Xerces Society and American Bird Conservancy. We are glad that Minnesota is working to codify disposal regulations and we appreciate the opportunity to provide input during your rulemaking process. We offer our thoughts below.

1. Pesticide-treated seeds entering the waste stream should be handled as hazardous waste.

Pesticides are generally considered hazardous waste and we ask MPCA to consider handling pesticide-treated seed in the same manner. Presently, MPCA's guidelines for waste pesticide-treated seed disposal state that waste treated seed and packaging are "*industrial solid waste with no need for further hazardous waste evaluation by the generator, landfill, or WTE incineration facility.*" Depending on the active ingredient, many pesticide-treated seed labels - such as those for products containing imidacloprid - indicate their danger to human health, wildlife, and waterways. Seeds treated with toxic substances should be subject to the same "cradle-to-grave" oversight that is applied to other hazardous materials.

Presently, the MPCA guidance document addresses the need for landfills accepting pesticide-treated seed to immediately cover the seed to protect wildlife, but it does not address the need to protect against the leaching of concentrated pesticides into soil and groundwater. Reclassification of pesticide-treated seeds as hazardous waste would help to ensure they are received by a facility equipped to contain leachate. Because MPCA oversees permitting and reporting for hazardous waste, reclassification would also allow Minnesota to track the amount of excess seed that is disposed of each year, a metric that is currently not well documented (see comment #2). At a minimum, regulations should require MPCA-approved Industrial Solid Waste Management Plans to include protections against leaching.

At the moment, the MPCA's guidance indicates that generators must communicate with waste management facilities to ensure they are able to receive pesticide-treated seed and their packaging. We encourage MPCA to explore the possibility of creating programs or requirements whereby end-users may send their waste pesticide-treated seed back to the entity that treated the seed (e.g., manufacturer), who is then responsible for proper disposal. We reiterate the need for the treated seed to go to disposal sites equipped to address leachate.

2. We encourage MPCA to track pesticide-treated seed entering the waste stream. Tracking treated seed use and disposal is important for understanding the state's capacity to properly handle and dispose of treated seed waste.

It is estimated that nearly all U.S. corn and the majority of soybeans are grown from insecticide-treated seed (Douglas & Tooker 2015), which are among Minnesota's top commodity exports. Pesticides are also used as seed treatments on many other commodity and specialty crops. For example, the neonicotinoid imidacloprid is approved for use as a seed treatment on alfalfa, wheat, canola, sorghum, sunflower, squash, and more. (See the [Xerces Systemic Insecticide Database](#) for more information on which systemics are approved for various crops.)

To the best of our understanding, MPCA does not collect or report information on the amount of treated seed received by solid waste facilities. It is also the case that data on annual treated seed use in agricultural production is not collected or reported by MDA. Gathering information on sales, use, and disposal would aid MPCA and other agencies in accurately estimating and anticipating how much treated seed is or will be making its way to landfills or WTE facilities. In turn, this will allow the state to ensure it has the resources and means to handle this waste stream over time. It might also allow treated seed manufacturers and distributors to calibrate treated seed production to prevent excess waste.

We also note that enforcement of disposal rules will be a difficult task without new record-keeping requirements. If sellers and end users were required to keep records of treated seed purchases and use and if waste facilities were required to keep records of disposals, it would be possible for regulators to identify and investigate discrepancies. We encourage MPCA to gather as much information on the use of pesticide-treated seed as its authority allows.



3. We encourage MPCA to create regulations regarding the use of excess treated seed for wildlife plantings as part of its rulemaking process.

The MPCA guidance document states that pesticide-treated seeds, depending on label directions, may be permitted for wildlife habitat. We encourage MPCA to create regulations that clearly prohibit the use of insecticide-treated seed for this purpose, especially on refuge lands and state-managed wildlife lands (state parks, wildlife management areas, etc.).

Though habitat is being created with conservation in mind, sowing insecticide-treated seeds carries risks for wildlife. The widespread, prophylactic use of neonicotinoid treated seeds on various crops, including corn, soy, wheat, and even alfalfa - a pollinator-attractive plant - is causing harm to pollinator populations (Hopwood et al. 2018), birds (Mineau & Kern 2023), and mid-western waterways (The Xerces Society, 2021). Seed treatments can also disrupt soil communities (Parizadeh et al. 2021). Recent research found high levels of neonicotinoids in wild white-tailed deer in North Dakota and linked neonicotinoid levels in the spleens of deer to deformities and reduced health (Berheim et al. 2019). Neonicotinoids are also being found in pheasants, possibly owing to contaminated forage (Daley 2019), which can have harmful effects at high levels (Sundall 2020). Observational studies on Minnesota farmland have found that growers are not properly mitigating spilled neonicotinoid-coated seed during the course of planting, directly exposing local wildlife to toxic chemicals and underscoring the need for regulations on use of excess treated seed for wildlife plantings (Roy et al. 2019).

Excess treated seed is often sold at discounted rates for spring food lots - a form of wildlife habitat that is usually planted to support game species. Food lots with plants grown from insecticide-treated seeds are a risk to the very animals they are intended to sustain. The high water solubility of treatment active ingredients makes them liable to contaminate local waterways, leading to non-target invertebrate impacts and, ultimately, aquatic habitats and ecosystems with lower productivity (Hallmann 2014, Hladik et al. 2018). New rules that specifically prohibit insecticide-treated seed for on-farm habitat would provide clarity on this issue for end users.

4. We appreciate the current guidelines that prohibit ethanol production and burial as methods of waste treated seed disposal, even if the label instructs otherwise, and support inclusion of these restrictions in the final rules.

In early 2021, severe pesticide contamination was uncovered at an ethanol plant outside of Mead, Nebraska. Nearby bee-kills led to the discovery that the plant was accepting the vast majority of excess treated corn seed in North America and processing it into ethanol – resulting in byproducts with astronomical levels of pesticide contamination. These byproducts were then spread on local fields as soil conditioners or via irrigation, and contaminated the surrounding area and its waterways with pesticides. Cleaning up the contaminated plant is expensive and challenging, and it will continue to pose risks to the area for some time. The situation in Mead raises critical questions about how treated seed should be handled in order to avoid contamination, and we thank MPCA for its firm language prohibiting the use of waste treated seed for ethanol, biodiesel, or other fermentation or oil processing.



Burial of excess seed is also a concern because this can further contribute to surface and groundwater contamination. Neonicotinoids, which are applied as seed treatments to some of Minnesota's most abundant crops (corn, soy, wheat) are water soluble, and thus often end up in waterways. Most of the neonicotinoids applied to seeds are not absorbed by the growing plants, leaving 80–98% of the pesticides in the soil, where they can then move into surface or groundwater (Alford & Krupke 2017). As a result, neonicotinoids are present in Midwestern waterways throughout the year, often at levels that pose risk to aquatic species (Hladik et al. 2018, Schepker et al. 2020). Broader studies across the Midwest have also noted elevated pulses of neonics in waterways during crop planting, attributed to seed treatments (Hladik et al. 2014, Berens et al. 2021). We thank MPCA for prohibiting the burial of waste pesticide-treated seeds, which would otherwise be a needless source of environmental contamination.

5. We ask for greater clarity regarding the burial prohibition exemption granted to farmers who may “bury treated seeds from their own farm on the farm property.”

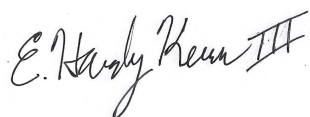
We would appreciate clarification on the exact meaning of this statement. Does this exemption allow farmers to bury any treated seed that is planted on the farm property? Or is the exemption specific to seed that was treated by the end user on-farm (as opposed to seed that was treated by the supplier)? For all the reasons noted above, we encourage MPCA to work with the farming community to prevent burial of pesticide-treated seeds and to instead send them to properly equipped disposal facilities that will contain or incinerate them. Burial of excess seed introduces unnecessary risks to the environment, including soil and water contamination and ingestion by wildlife. We reiterate that manufacturers could play a role in lessening the burden of excess seed on farmers by accepting the seed and handling its proper disposal.

We thank MPCA for the work they are doing to ensure the proper disposal of pesticide-treated seed and hope our comments will be given full consideration. We look forward to seeing the proposed Waste Treated Seed Rules when they are released.

Sincerely,



Rosemary Malfi, Ph.D.
Pesticide Program Specialist, Policy Lead
The Xerces Society for Invertebrate Conservation
rosemary.malfi@xerces.org



E. Hardy Kern III
Director of Government Relations, Pesticides and Birds Campaign
American Bird Conservancy
EHardyKern@abcbirds.org



References:

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39350 Minnesota Pollution Control Agency Request for Comments on Waste Treated Seeds Rule

Closed Jan 30, 2024 · Discussion · 9 Participants · 1 Topics · 11 Answers · 0 Replies · 9 Votes

9

PARTICIPANTS

1

TOPICS

11

ANSWERS

0

REPLIES

9

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 11 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Michael Stoick · Citizen · (Postal Code: unknown) · Dec 29, 2023 11:32 am

 2 Votes

As an agricultural state and environmental leader the state of Minnesota should provide open and transparent financial support to farmers to properly plant any unused treated seeds in designated fallow fields or other approved non-cropped planting area on Minnesota farms. The State also needs to require seed companies that sell treated seeds to document and report sales as well as where the seeds are transported, stored, and ultimately planted. If seed companies have excess inventory at the end of the planting season they should be required to donate those seeds to farmers that can use them or pay farmers directly to plant excess seeds in fallow fields or other approved non-cropped areas on Minnesota farms. Just like any other chemical or industrial waste they need to be regulated. It is important to keep the chemicals used to treat seeds out of our waterways, out of the food chain, away from compost facilities, out of our bodies, and out the biological world in which we live.

Laurie Schneider · Citizen · (Postal Code: unknown) · Jan 19, 2024 1:39 pm

 3 Votes

On behalf of Pollinator Friendly Alliance, please see attached PDF, "PFA comments treated seed", for MPCA Request for Comments on Waste Treated Seed Rules, Revisor's ID No. R-04806; OAH Docket No. 23-9003-39350.
We SUPPORT rulemaking governing proper and safe disposal and regulation of waste treated seed.

39350 Minnesota Pollution Control Agency Request for Comments on Waste Treated Seeds Rule

Closed Jan 30, 2024 · Discussion · 9 Participants · 1 Topics · 11 Answers · 0 Replies · 9 Votes

Greg Larson · Citizen · (Postal Code: unknown) · Jan 20, 2024 11:03 am

👍 2 Votes

On behalf of the Minnesota Environmental Partnership, Pollinator and Wildlife Coalition, see PDF for comments on waste treated seed rules

Chris Cowen · Citizen · (Postal Code: unknown) · Jan 30, 2024 10:32 am

👍 2 Votes

The following attachments are respectfully submitted for agency consideration.

Lucas Rhoads · Citizen · (Postal Code: unknown) · Jan 30, 2024 1:18 pm

👍 2 Votes

The attached comments are submitted on behalf of the Minnesota Center for Environmental Advocacy and NRDC Action Fund. Thank you for your time and consideration of this issue.

Lucas Rhoads · Citizen · (Postal Code: unknown) · Jan 30, 2024 1:20 pm

👍 2 Votes

The attached comments are submitted on behalf of the Minnesota Center for Environmental Advocacy and NRDC Action Fund. Thank you for your time and consideration of this issue.

Rick Hansen · Citizen · (Postal Code: unknown) · Jan 30, 2024 1:42 pm

👍 2 Votes

With statutory changes relating to pesticide coated (treated) seed disposal the rules need to be updated.

Clarifying solid waste authorities within the Mn Pollution Control Agency rules can be assisted adding a pesticide coated treated seed treatment section as 7035.9200 like 7035.9100 with sub parts defining Scope, Definitions, and Required Practices.

Clarifying the roles of end users of pesticide coated treated seed in comparison with the sellers of pesticide coated treated seed and those who produce pesticide coated treated seed is needed.

The end users responsibility for disposal should also be accompanied with direction about what they can not do. For example, the burying of waste treated seed should be further restricted to protect groundwater. It should be prohibited in karst topography and coarse textured soils with a high potential of leaching to groundwater.

Disposing of by putting waste treated seed in sinkholes should be prohibited.

There should be an understanding of differences in volume of waste pesticide coated

39350 Minnesota Pollution Control Agency Request for Comments on Waste Treated Seeds Rule

Closed Jan 30, 2024 · Discussion · 9 Participants · 1 Topics · 11 Answers · 0 Replies · 9 Votes

treated seed between home, garden, and greenhouse use and production agriculture use.

The role of pesticide coated treated seed producers and sellers should require that producers take back waste pesticide coated treated seed.

Rick Hansen · Citizen · (Postal Code: unknown) · Jan 30, 2024 1:50 pm

👍 1 Votes

<https://conservancy.umn.edu/handle/11299/93148>

<https://www.usgs.gov/mission-areas/water-resources/science/karst-aquifers>

George Damian · Citizen · (Postal Code: unknown) · Jan 30, 2024 2:28 pm

👍 0 Votes

The attached comments are submitted on behalf of Clean Energy Economy Minnesota, also known as CEEM. Please let me know if you have any questions.

RILEY TITUS · Citizen · (Postal Code: unknown) · Jan 30, 2024 3:16 pm

👍 0 Votes

Please find attached joint comments on Revisor's ID Number R-04806, submitted by ASTA and CLA. Thank you for your consideration and the opportunity to comment.

Margaret Levin · Citizen · (Postal Code: unknown) · Jan 30, 2024 3:48 pm

👍 2 Votes

On behalf of the Sierra Club North Star Chapter, we concur with the concerns and recommendations submitted by the Pollinator Friendly Alliance, Minnesota Center for Environmental Advocacy, and NRDC Action Fund.

RECEIVED

JAN 22 2024

Office of Administrative Hearings

Jan 18, 2024

William T. Moore, Administrative Rule and Applications Specialist

Re: Request for Comments on Amendments being considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, MN Rules, Under possible parts 7035.3700-7035.3900, and to include 7035 & 7045; Revisor's ID Number R-04806

Since the MPCA is required to undertake this rulemaking to comply with Laws of Minnesota 2023, Chapter 60, article 3, section 28, I ask for your support for the prohibition of insecticide coated seeds to be used for food, feed, oil, or ethanol production, and for ethical and responsible stewardship for disposal of insecticide treated seeds.

For over a decade research worldwide has documented that the use of systemic insecticides, including neonicotinoids, negatively affects native bees and honey bees, *and that aquatic invertebrates* have also been impacted from chemical runoff from agricultural fields into aquatic habitats.

In Jan 2021, there was large scale landscape contamination resulting in serious health problems in Mead NE, because excess supplies of corn seeds previously treated with insecticides, including neonicotinoids (neonics) and fungicides, were recycled and used to produce ethanol at the AltEn plant. The end products were too contaminated with pesticides to feed to animals, and some of the waste water was applied to acreage, leading to concern for residents dependent on well water. The levels of neonics found in the plant's waste water were many times higher than state recommended safety levels .

This contamination resulted in the accumulation of thousands of pounds of green mash from fermented grains that were spread on farm filed as "*soil conditioners*", and photos clearly showed large piles of the left over grain on the grounds of the AltEn plant. It was not long before poor air quality and eye and respiratory problems were reported among residents.

(over)

In addition, the EPA bench marks were exceeded many times for the levels of neonics for humans and freshwater invertebrates that were found in the fermented piles on land, as well as in wastewater lagoons, as reported by NE state officials.

The NRDC recommended that the situation in Mead calls for more strict regulations of pesticide coated seeds.

UNE scientist, Prof Wu-Smart, stated that every single honeybee hive on a university research farm within a mile from Mead died off, coinciding with AltEn's use of neonic treated seeds. She also has video recordings of what appears to be neurologically impaired birds and butterflies.

The evidence of the dangers of systemic pesticides in the environment and the implications from AltEn's poor handling of treated seeds, reach far beyond Mead NE.

We do not want to experience what happened in NE in MN. MN needs regulations that restrict the use of treated and coated seeds so they cannot be sold as food, feed, oil, or ethanol production, and that any excess seed must be properly disposed of so that no contamination occurs to soil, adjacent waterways and human and wildlife communities.

Please adopt rules under MN Statutes, Chapter 14, to provide for the safe and lawful disposal of waste treated seed, clearly identifying the regulatory jurisdiction of state agencies and local governments with regard to such seed.

Thank you for your consideration.

Margot Monson, entomologist and beekeeper
22 Ludlow Ave
St Paul, MN 55108
mpmonson.insx@gmail.com



POLLINATOR FRIENDLY ALLIANCE
PO BOX 934, STILLWATER, MN 55082
WWW.POLLINATORFRIENDLY.ORG

MPCA Request for Comments on Waste Treated Seed Rules, Revisor's ID No. R-04806; OAH Docket No. 23-9003-39350.

Date: January 19, 2024

To: State of Minnesota Office of Administrative Hearings
Minnesota Pollution Control Agency, Minnesota Department of Agriculture

I write pursuant to the MPCA request for comments on rulemaking for the disposal of treated seed.

We strongly recommend improved rulemaking and safer handling of pesticide treated seed. Pesticide treated seeds are hazardous waste. Disposal rules are critical since treated seed constitutes one of the primary uses of pesticides in Minnesota, and considering the health risks to wildlife and humans.

Currently, treated seed is NOT regulated as a pesticide in Minnesota and there are not adequate federal or Minnesota state safeguards for the health of people and the environment from pesticide contamination from treated seed. Rules and regulations are necessary to protect us, pollinators and the environment from contamination disasters and chronic pesticide contamination.

[Pollinator Friendly Alliance](#) is a Minnesota conservation organization with a membership of urban and rural residents, scientists, businesses, farmers and ecologists from around Minnesota and beyond. We urge MNPCA and MDA to step up in the absence of a fail-safe system to protect our waters, land and people from pesticide seed contamination. This is not a big ask - to simply strengthen the existing system for better stewardship. The rewards for environmental and human health are great.

Some countries have banned neonicotinoid pesticides and treated seed entirely. Some communities around the U.S. are further restricting use. Almost fifty Minnesota communities have adopted resolutions to cease neonicotinoid pesticide use.

The wealthy pesticide industry can sell more treated seed using a loophole in federal pesticide law - "treated article exemption" which permits seeds to be coated with toxic insecticides without adequate assessment by the EPA for health or environmental effects. This allows treated seed to be used without proper oversight.

The result of this negligence is evidenced by water contamination in Minnesota and an entire community in [Nebraska taking ill from pesticide coated seed contamination](#). Labels do not always protect us from improper handling, storage or mis-use either. Labels are very difficult to enforce because they are often impossible to interpret, the meaning is unclear and often not defined – for example what is a "measurable residue"? The label does not explain if the seed can be burned or re-used such was the case in the Nebraska

catastrophe. MDA is responsible for administering a program for waste pesticides (*see* Minn. Stat. § 18B.065) yet it does not provide for disposal of waste treated seed.

I come from a farm family and live in a rural area, so I know first-hand corn and soybean farmers often drill 1,000's of acres of pesticide coated seed at a time. The pesticide dust floats and moves through the air, and afterward piles of seed are left over laying in fields where birds and wildlife eat them, and contaminate ground water. The current voluntary best practices are not working to protect the environment, wildlife or us from hazardous waste contamination. Enforceable regulations are needed to require proper stewarding of treated seed.

Neonicotinoid contamination has been studied repeatedly and reported on for years – it is no secret that neonicotinoid insecticides on coated seeds are toxic. Recent science shows neonics have [human health effects](#), pesticides kill pollinators outright and sicken them at sublethal doses, neonics contaminate water ([Five surface water pesticides of concern, Minnesota MDA 2020](#)), birds are effected ([Neonic reduces migration in songbirds, Eng 2019](#)) and most recently large mammals such as deer ([Effects of neonics on physiology and reproduction of white-tailed deer, Berheim 2019](#)). Two flagship species- monarch butterfly and rusty patched bumble bee (Minnesota state bee) are under the watchful eyes of pollinator researchers and declining numbers of monarchs tell us that pollinators are at a critical point for extinction requiring immediate action.

We recommend state agencies including MPCA and MDA develop a long-overdue regulatory program that is critical to protect Minnesota families and ecosystems from the effects of pesticide exposure. The following small steps to steward treated seed will help keep Minnesota communities safe.

- Regulate pesticide-coated seed as pesticides.
- Registration of all systemic-insecticide treated seed.
- List neonic-treated seeds as restricted materials.
- Promote non-chemical pest control alternatives and regenerative agriculture practices that eliminate or reduce chemical inputs.
- Prohibit insecticide- treated seed to be used for food, feed, oil, or ethanol feedstock.
- Rulemaking to guarantee ecologically-responsible disposal of insecticide-treated seed.

Thank you, Laurie Schneider, Executive Director
 POLLINATOR FRIENDLY ALLIANCE
www.pollinatorfriendly.org

Selected support references:

HUMAN HEALTH EFFECTS OF NEONICS National toxicology report from US Dept. of Health and Human Services ISSN: 2473-4756 https://ntp.niehs.nih.gov/ntp/results/pubs/rr/reports/rr15_508.pdf

NRDC BRIEFING TO CONGRESS on Neonc Pesticide Human Health Harms, October 2019.

<https://www.nrdc.org/experts/jennifer-sass/nrdc-briefs-congress-neonic-pesticide-human-health-harms>

PESTICIDES IN MINNESOTA WATERS: Minnesota Department of Agriculture, *surface water pesticides of concern* (2020)

<https://www.mda.state.mn.us/surface-water-pesticides-concern>

INSECTICIDE COATED SEED CONTAMINATES NEBRASKA COMMUNITY AT ETHANOL PLANT

January 2021: <https://www.theguardian.com/us-news/2021/jan/10/mead-nebraska-ethanol-plant-pollution-danger>

POLLINATOR DECLINE: Xerces Society: *The science behind the role neonics play in harming bees*. Jennifer Hopwood, Aimee Code, Mace Vaughan et al. (2016)

https://xerces.org/sites/default/files/2018-05/16-023_01_XercesSoc_ExecSummary_How-Neonicotinoids-Can-Kill-Bees_web.pdf

NEONIC EFFECTS ON LARGE MAMMALS: Scientific Reports: *Effects of Neonicotinoid Insecticides on Physiology and Reproductive Characteristics of Captive Female and Fawn White-tailed Deer*. Elise Hughes Berheim, Jonathan A. Jenks, Jonathan G. Lundgren, et al. volume 9, Article number: 4534 (2019)

<https://www.nature.com/articles/s41598-019-40994-9>

RESULTS OF PESTICIDE STUDY OF NEONIC EXPOSURE TO WHITE-TAILED DEER IN MINNESOTA

March 1, 2021, Minnesota Department of Natural Resources

<https://www.dnr.state.mn.us/news/2021/03/01/preliminary-results-pesticide-study-show-widespread-neonicotinoid-exposure-minnesota-white-tailed-deer>

NEONIC EFFECTS ON SONGBIRDS: Science: *A neonicotinoid insecticide reduces fueling and delays migration in songbirds*. Margaret L. Eng, LeBridget, J. M. Stutchbury, Christy A. Morrissey. Issue 13 Sep 2019: Vol. 365, Issue 6458, pp. 1177-1180.

<https://science.sciencemag.org/content/365/6458/1177>

POLLINATOR PROTECTION RESOLUTION: *Model resolution for cities, counties, state agencies, school districts*. Pollinator Friendly Alliance, Humming for Bees, Pesticide Action Network, Pollinator Minnesota 2020.

<https://static1.squarespace.com/static/59fcf40ab1ffb6ee9911ad2a/t/5f8fb7dcac3e6348089291a2/1603254237712/MODEL+resolution+2020.pdf>

NEONIC CAUSES AUTISM-LIKE SYMPTOMS: November, 2022. Neurosciencenews.com

<https://neurosciencenews.com/neonicotinoid-asd-21898/>

AN UPDATE OF THE WORLDWIDE INTEGRATED ASSESMENT ON SYSTEMIC INSECTICIDES: PART 2: IMPACTS ON ORGANISMS AND ECOSYSTEMS: 2021 Pisa, Goulson, Yang, Gibbons, Sanchez-Bayo

<https://link.springer.com/article/10.1007/s11356-017-0341-3>

RULEMAKING TO REGULATE TREATED SEED, California 2020 NRDC

Minnesota Environmental Partnership,
Pollinator and Wildlife Coalition
546 Rice Street, St. Paul, MN 55103
Contact: Greg Larson, g.larson@mchsi.com

January 20, 2024

2024 COMMENTS ON TREATED SEED RULEMAKING

Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, Minnesota Rules, chs. 7035 and 7045; Revisor's ID Number R-04806

To: State of Minnesota Office of Administrative Hearings,
CC: Minnesota Pollution Control Agency Commissioner, Minnesota Department of Agriculture
Commissioner

I write pursuant to the MPCA request for comments on rulemaking for the disposal of treated seed hazardous waste.

Pesticide treated seed is hazardous waste. The pesticides on the seed are contaminating soil and water and damaging the health of wildlife and people. The most economical and common sense method of eliminating any hazardous waste is to not create the waste in the first place. Disposal rules would not be necessary if crop seeds were not coated with toxic and under-regulated pesticides that easily disperse throughout the environment.

During planting of corn, soybeans, and other crops, hazardous waste in the form of treated seed are spread across more than 15 million acres of Minnesota farm country. Seed spilled during the planting process, unused by the grower or unsold by the distributor presents an especially acute problem because the pesticides are concentrated in a single location.

<https://www.morningagclips.com/minnesota-corn-and-soybean-acres-up-from-2022/>

<https://www.centerforfoodsafety.org/issues/6459/pesticides/pesticide-coated-seeds>

<https://www.agriculture.com/epa-says-three-widely-used-pesticides-driving-hundreds-of-endangered-species-toward-extinction-7566274>

The unregulated disposal of treated seed is not a hypothetical problem. A well reported example is an ethanol plant in Mead, Nebraska. To make ethanol, the plant accepted millions of bushels of leftover treated seed from most of the country's leading corn seed companies. The plant mishandled the seed and the by-products of the ethanol process polluting the surrounding area. Now that this ethanol plant is closed its unknown what's happenings to all the contaminated seed that at one time were dumped at the Nebraska site.

<https://www.ruralhealthinfo.org/toolkits/emergency-preparedness/case-studies/chemical-emergencies/mead-nebraska>

Controlling wide spread environmental contamination from coated seed will require, at the very least, the enactment of stringent handling and disposal rules followed by aggressive enforcement and oversight. The rules must be enforced at every stage of the products use and lifecycle – including the producer, distributor, reseller and end grower.

Near our family farm in Meeker County most newly planted corn fields show evidence of exposed seed. Even with better equipment, small spills occur especially at loading sites, field entry and turn rows.

In addition to field spillage, a significant amount of treated seed is discarded each year by the producers and distributors as the Nebraska ethanol plant incident confirms. Because of reduced seed viability, seed is not normally carried over year-to-year. The community of Claremont, Minnesota can no longer drink or use their water due to contamination from industrial agricultural corn, ethanol and CAFO operation contamination to the soil, water and air.

<https://www.agweek.com/news/minnesota-ethanol-plant-fined-199-000-for-air-pollution-violations-another-fined-for-water-pollution>

Unfortunately, because of inadequate accountability and non-existent oversight, it's doubtful that any agency knows the full scale of the waste problem.

How much waste seed is there, where, and how is it currently being disposed? A July, 2021 article in "Progressive Farmer DTN", attempted to answer these question, here's an excerpt:

"DTN obtained estimates from a variety of industry sources, with most asking to remain anonymous. All settled on around 10% of treated seed as a likely figure.

Ten percent is a popular percentage for retailers and farmers to over-order, to protect themselves and customers in the case of bad weather and stand failures, explained Wisconsin's Conley, who was willing to go on the record about these estimates. "Usually a seed company suggests a farmer books 10% extra seed, just to have it in case," he said.

Based on a corn planting of 92 million acres, nearly 100% of it treated, that would leave the industry with roughly 3.8 million bushels of treated corn seed to discard each year, Conley calculated. For soybeans, based on a planting of 84 million acres and Conley's estimate of 80% treated, that would leave industry with roughly 6 million bushels of treated soybean seed to discard each year, he said.

For context, it would take nearly 10 trips for a 110-car train to move that much corn, and roughly 15 trips for the estimate of discarded soybeans."

"That is why we really need regulators to step in and to push the industry to be transparent about where excess treated seed is going and how it is being disposed of."

<https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/07/13/seed-treatment-overload-unintended>

=====

For the MPCA to create effective disposal rules for waste treated seeds, a reasonable first step requires information from seed producers and distributors and an accounting of the amount and the current disposal methods. But this may not be easy, according to the above referenced article in “Progressive Farming DTN” when the largest seed companies in the U.S., (Bayer, Corteva and Sygenta) were asked about disposal, the companies declined to answer questions on waste seed handling and disposal.

Once these data on disposal and quantity of treated seed are secured, strong enforcement and oversight must be implemented to ensure compliance. Self-policing and voluntary compliance doesn’t work as we have seen with other agricultural environmental problems and evidenced by worsening ground and surface water pollution of from agricultural fertilizers.

<https://www.startribune.com/nitrate-pollution-minnesota-groundwater-farm-fertilizer-mpca-wells-epa/600310942/>

<https://www.ewg.org/news-insights/news/voluntary-programs-reduce-farm-run-still-arent-working>

A fee placed on all sales of treated seed would assure that those responsible for the hazardous waste - the seed producers, distributors and resellers – pay for the associated costs of safe disposal, clean-up and enforcement .

Minnesota is not the first to recognize the hazards associated with the widespread use of treated seed and the pesticides commonly used in the coatings. Non-agricultural uses of neonicotinoids, pesticides often used for treating crop seeds, have been prohibited by New York, , New Jersey, Nevada, and Maine—and restricted in other ways in Maryland, Massachusetts, Vermont, Rhode Island, Colorado, California and Connecticut. Early this year the European Union’s high court ended exemptions for seeds treated with neonicotinoid pesticides. It is time for Minnesota to create strong and strictly enforced rules on the disposal of coated seeds and their payload of dangerous pesticides.

<https://cen.acs.org/environment/pesticides/European-Union-high-court-nixes/101/web/2023/01>

[https://www.xerces.org/blog/states-make-way-for-pesticide-reforms#:~:text=They%20join%20eight%20other%20states,and%20Rhode%20Island%20\(2022\)](https://www.xerces.org/blog/states-make-way-for-pesticide-reforms#:~:text=They%20join%20eight%20other%20states,and%20Rhode%20Island%20(2022))

Thanks for this opportunity to contribute to the rule making for the disposal of treated seed hazardous waste.

Greg Larson
25535 Orchard Circle
Excelsior, MN

Date: 1-30-2024

To: MPCA

From: Chris Cowen
Minnesota citizen and taxpayer

Why we need strong treated seed rules.

Since there are no draft rules to comment on I will instead comment on why strong rules are needed within the scope of the Minnesota Laws 2023 Chapter 60 treated seed language. What happened in Mead NE at the AltEn ethanol plant should never happen again and it is clear that prevention is the best remedy.

AltEn is not an isolated incident but an ongoing nationwide disaster:

For years, unused treated seed from states across the country including Minnesota went to the AltEn ethanol plant in Mead NE where they were used for ethanol feedstock and its byproduct was sold to farmers as a soil supplement. The result of this happening year after year is an ongoing ecological disaster. What took place in Mead due to AltEn and what is happening there now should never happen anywhere else. Clearly, prevention is the best remedy.

In 2020 AltEn sought more toxic unused seed in an email to prospective customers (see attached email):

“AltEn is currently receiving nearly 98% of all the discard created by the seed industry in North America. We are under long term contract by all the Major producers as: Monsanto– Bayer-Syngenta- Dow AgReliant and Land O Lakes. We receive discard from at least another 100 producers across North America annually.”

Millions of pounds of toxic waste, in the form of needlessly excessive unused treated seed, were shipped to from all over North America for years creating a megamess that has taken and will continue to take years of effort to try to clean up and even all with all that effort the goal of restoring to soil and the water may ultimately be elusive if not impossible. Clearly, prevention is the best remedy.

The economic factors that created this situation are still in place. There are still too many treated seed owners who can be tempted by the cheapest, easiest way to dump their unused- poisonous treated seeds in ways that can cause more irreparable harm to our soil and water.

The AltEn Facility Response Group (FRG) includes six former AltEn customers – AgReliant, Bayer, Beck's, Corteva Agriscience, Syngenta and WinField United – that formerly supplied corn seed to AltEn. Read the other attachment to get some idea what a lack of oversight has caused.

Industry cannot be trusted on their own to police themselves. They appear to have turned a blind eye towards Mead and AltEn. Is it not a fair question to ask if industry really did not know what was going on in Mead for years? Did they join many others in taking what seemed to be the “too good to be true” cheap and easy route to rid themselves of a giant ecological headache and calling it good? We cannot let this happen again.

Clearly, prevention is the best remedy. Strong rules are needed to enforce the Minnesota Laws 2023 Chapter 60 treated seed language.

Apologies for any typos.

From: Alan Smith <ASmith@mrgkc.com>
Sent: Monday, August 3, 2020 12:02 PM
To: Alan Smith <ASmith@mrgkc.com>
Subject: AltEn Treated Seed Green Recycling at \$0.00 cost for Processing Corn-
Wheat- Sorghum - Starches

2020 AltEn Green Recycling Program for Corn – Wheat and Sorghum Seed

Greetings from AltEn of Mead, NE. the Seeds industry's #1 choice for recycling treated and regulated seeds in North America.

AltEn uses the discard to produce Ethanol and all by products are put thru an anaerobic digester and the by products are all land applied under State of Nebraska EPA permit and allowance by the USDA.

The 2020 AltEn Corn- Wheat and Sorghum Seed Recycling Program is as follows:

1. AltEn can use palletized unit bags seeds - palletized super sacked seeds and true bulk treated seeds - 44,000 lbs net required for all Van deliveries and 50,000 lbs net for all hopper deliveries. You can deliver as little as 1 pallet yourself to our plant in Mead, NE. for \$0.00 cost for process- you will need an AltEn BOL and delivery date and time scheduled with our plant site.
2. AltEn requires the grain to arrive in USDA #2 grader or better to ensure the starches in full strength in each seed recycled. Basically, the seed has to have stayed completely dry during its entire storage period. Any seeds delivered to AltEn, Mead, NE. that the starch is damaged will be dispose of the full expense of the seed producer that shipped the non-usable product to AltEn. AltEn will bill the producer for all labor – disposal freight and disposal fees payment due in 30 days from ship date.
3. AltEn is charging \$00 for all seed processing delivered to Mead, NE. Contact Craig Gubbels to get started. email - CGubbels@mrgkc.com or **402- 658- 9997** AltEn will do all the arranging and get shipping pricing to make the entire process of green recycling treated discard seed as easy as one phone call or email. AltEn furnishes all BOLs need. If you want to deliver you discard yourself you will still need an AltEn BOL – and delivery date for our Mead, NE. plant site.
4. AltEn is currently receiving nearly 98% of all the discard created by the seed industry in North America. We are under long term contract by all the Major producers as: Monsanto– Bayer- Syngenta- Dow AgReliant and Land O Lakes. We receive discard from at least another 100 producers across North America annually. AltEn is now offering this very same program to every seed producer in North America - \$00 for seed processing deliver to Mead, NE.

2020 AltEn- with Integrated Recycling offers Fee Based Disposal Programs for all other Treated, non-treated or

regulated non-Ethanol producing seed; as Soybeans-
Rye- barley, popcorn and all other.

If you have treated seed discard of any type Integrated Recycling Inc. can get the discard out of your facility and disposed of properly, timely, affordable, safely, and legally. IR can get you pricing on freight and fees prior to ship for your approval and ASmith@mrgkc.com

Any questions please call Alan Smith Project Coordinator: 735-735-6802 Thankyou for reading this email.

Thank you for Your Business.

Respectfully,

**Alan J. Smith
AltEn LLC
North American Feed Stock Coordinator
Cell 734-735-6802
Email: ASmith@mrgkc.com**

**Corp Address:
AltEn LLC.
1344 County Road 10
Mead, NE. 68041
Office: 402-624-2000
AltEnReceiving@mrgkc.com
9@gmail.com**

**Lincoln Warehouse:
AltEn. LLC.
1200 Upland Ave.
Lincoln, NE. 68521
Office: 402-624-2000**

**Alan's office:
Alan j Smith
715 Indian Trail Rd
Carleton, MI. 48117
Cell 734-735-6802
alanjsmith196**

https://journalstar.com/news/state-regional/former-ethanol-plant-alt-en-cleanup/article_a5e09c06-9b5f-11ee-b086-6fc41e952577.html

AltEn cleanup near Mead makes progress despite setbacks; contractor sees room to improve

CHRIS DUNKER Lincoln Journal Star

Dec 20, 2023

The environmental contractor managing the cleanup of millions of pounds of pesticide-contaminated waste at a former ethanol plant near Mead, Nebraska, said the initial efforts to dispose of that material in a landfill have been successful.

NewFields, the company leading the environmental cleanup, hauled 10,208 tons of solidified wet cake from AltEn to the Pheasant Point landfill near Bennington this fall, according to a summary filed with the Nebraska Department of Environment and Energy.

That's roughly 10% of the solid waste currently entombed under a cement and clay shell at the now-defunct biofuel plant, which used seeds coated in pesticides to make ethanol, creating solid and liquid byproducts saturated with agricultural chemicals along the way.

But the amount disposed of is less than half the 24,000 tons of wet cake that NewFields had originally sought to landfill in the feasibility study that was announced in August.

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Bill Butler, a senior engineer and partner at Atlanta-based NewFields, said issues securing bentonite, the reagent used to solidify the wet cake before transport, as well as failures in the equipment used to mix the wet cake and bentonite together, led to less waste being hauled than planned.



Butler

Those setbacks affected the overall amount of material removed, but Butler said NewFields achieved other goals outlined by the feasibility study when work came to a seasonal end Nov. 17.

Removing wet cake, solidifying it and loading it into trucks was done without stirring up the strong, pungent odors from the 16-acre pile that was the focus of complaints from nearby residents that ultimately brought attention to AltEn and its unusual method for producing ethanol, he said.

And after the equipment and supply-chain issues were resolved, NewFields reported that as many as 58 truckloads of wet cake were leaving the AltEn facility every day, each carrying roughly 20 tons of waste, which Butler said indicates that a high volume can be managed at either end of the cleanup work.

Over the final two weeks of the pilot project, 7,300 tons were sent to the landfill, state records show.

“We were able the last two weeks to step up production and get things rolling,” Butler said in a Zoom interview last week. “But we still have room for improvement.”

Work to clean up the site is on hold during the winter months as freezing temperatures make the wet cake, which has a high moisture content, more difficult to work with and mix with the bentonite.

Butler said NewFields is planning to ramp operations back up in late April or early May — weather depending — to continue the feasibility study, which will include examining the effectiveness of a new way of solidifying the wet cake.

Instead of removing the waste from the pile and putting it into an industrial-sized mixer to be combined with the bentonite, the reagent will be added to the pile itself and allowed to cure until it is the right consistency to be hauled to the landfill, Butler said.

“We’ve got some aggressive plans to get a lot more done next year,” Butler said.

“There’s a lot of things to get ready for in the second round of the pilot.”

In the meantime, as planning continues, NewFields is also awaiting test results from soil samples gathered from underneath the wet cake. The results are expected to be available sometime next month and will also inform future work.



NewFields, the company leading the environmental cleanup of AltEn, shown on Dec. 7, hauled 10,208 tons of solidified wet cake from the former ethanol plant near Mead, Neb., to the landfill this fall.

JOHN F. SCHALLES photos

Jim Macy, director of the Department of Environment and Energy, said the state is continuing to engage with the AltEn Facility Response Group and monitor progress of several cleanup projects at the site.

“While the AFRG did not complete the pilot study this fall as they planned, useful information was gathered to move forward to restart work in the spring,” Macy said in a statement.

Once completed in mid-2024, the feasibility study will be used as the basis for a remedial action plan for disposing of the remaining 100,000 tons of solid waste left at the site to be submitted to the Department of Environment and Energy.

Macy said the remedial action plan, which the agency anticipates it will receive sometime next year, will go through a public review and comment period before approval.

“There is still progress to be made and NDEE is committed to continuing its oversight to ensure all remedial actions comply with state and federal environmental regulations and all pollution is remediated,” Macy said.

NewFields and state environmental regulators remain optimistic about the progress made at AltEn, the Perivallon Group, but a coalition of researchers, environmental advocates and Saunders County residents say work is not moving fast enough.

The ground beneath the wet cake pile remains exposed to the pesticide-contaminated waste, which is leaching chemicals into the Todd Valley aquifer below, said Al Davis, a former state senator who is part of the Perivallon Group.



Davis

Samples taken from groundwater monitoring wells in August show the presence of neonicotinoid pesticides like clothianidin at concentrations as high as 36 parts-per billion, as well as thiamethoxam at a concentration of 400 parts-per billion.

Other wells show the presence of fungicides, herbicides and other agricultural chemicals found in byproducts at AltEn.

“At the rate the remediation is occurring, it will take over eight years to clear out the wet cake pile while every hour the chemical soup is leaching into the aquifer,” Davis said. “This is not great progress if the goal is to protect the aquifer as a clean drinking water source.”

Davis also said the cleanup has not looked at the offsite and downstream effects and encouraged the Environmental Protection Agency — which has previously said it doesn’t view AltEn as a candidate to become a Superfund cleanup site — to take control over the remediation work.



The northwest lagoon and wet cake pile at AltEn are seen on Dec. 7. Work to clean up the site is on hold during the winter months as freezing temperatures make the wet cake, which has a high moisture content, more difficult to work with.

JOHN F. SCHALLES

“The rosy picture that NDEE and the seed companies try to paint for the public amounts to trying to make a silk purse out of a smelly sow’s ear,” Davis said. “How long is EPA going to stand on the sidelines instead of taking direct control of the cleanup?”

“Nebraskans deserve far better,” he added.

Butler said NewFields is continuing to monitor the groundwater results on site, particularly in a well located next to a former lagoon that held pesticide-laced wastewater. He said that despite the high concentrations, the number of chemicals detected in the wells was going down.

While the concentrations in that particular well are high, Butler said the contractor and state have not found “impacts to any of the water in the area above any standards of concern” — a sign that drinking water remains safe.

He also said NewFields has treated 16 million gallons of lagoon water this year, bringing the total amount of water that has been treated to 65 million gallons. About 58 million gallons of wastewater remains to be treated.

Through its partnership with Covanta, a New Jersey-based company that operates an incinerator facility in Tulsa, Oklahoma, NewFields also has disposed of more than 4,060 tons of leftover treated seed that was stored in either of the two hoop buildings.

Approximately 1,025 tons of seed stored in a silo at AltEn will be removed by the end of January, Butler said.

Our best Omaha staff photos & videos of December 2023



Submitted via OAH Rulemaking Comments Website

January 30, 2024

Minnesota Office of Administrative Hearings
600 N. Robert Street, P.O. Box 64620
St. Paul, MN 55164

RE: MPCA Request for Comments on Waste Treated Seed Rules, Revisor's ID No. R-04806; OAH Docket No. 23-9003-39350.

To whom it may concern:

NRDC (Natural Resources Defense Council) Action Fund and the Minnesota Center for Environmental Advocacy (MCEA) appreciate the opportunity to comment on the Minnesota Pollution Control Agency's (MPCA) proposal to promulgate rules governing disposal of waste treated seed. Treated seed constitutes one of the primary uses of pesticides in Minnesota, yet current law provides inadequate protections to ensure that use and disposal of these pesticides does not present risks to human health and the environment. The ecological disaster that unfolded at a treated seed processing facility in Mead, Nebraska, underscores the importance of clear rules to ensure proper disposal of treated seeds. We urge MPCA to adopt rigorous, protective rules that ensure that waste treated seed—no matter the source—is disposed of through established waste streams competent to receive and safely process pesticides.

BACKGROUND

"Treated seeds" are crop seeds coated with a mixture of pesticides prior to planting. They cover millions of acres of Minnesota farmland and constitute one of the largest uses of pesticides statewide. Despite this, treated seeds are not regulated as "pesticides," a loophole that allows treated seeds to escape safeguards designed to protect people and the environment from the harms of these chemicals.¹ Use of treated seeds is untracked and almost entirely unregulated by the Minnesota Department of Agriculture (MDA).

This loophole also undermines safe disposal of treated seeds. While MDA is charged with administering a program for collection of waste pesticides, see Minn. Stat. § 18B.065, the program does not provide for disposal of waste treated seed.²

Recent legislative enactments reflect concern that use and disposal of treated seeds are not adequately regulated in the State of Minnesota, and begin to address this critical loophole. Of primary relevance, MPCA must "adopt rules . . . providing for the safe and lawful disposal of waste treated seed."³ The rules must clearly identify the regulatory jurisdiction of state agencies and local governments with regard to such seed." Laws of

¹ MDA, Review of Neonicotinoid Use, Registration, and Insect Pollinator Impacts in Minnesota (Aug. 2016), <https://www.lrl.mn.gov/docs/2016/other/160802.pdf> ("MDA Neonic Review").

² MDA, *Waste Pesticide Collection Program FAQs*, <https://www.mda.state.mn.us/pesticide-fertilizer/waste-pesticide-collection-program-faqs> (last visited Jan. 16, 2024).

³ Waste treated seed is defined as "seed that is treated, as defined in section 21.81, subdivision 28, and that is withdrawn from sale or that the end user considers unusable or otherwise a waste."

Minnesota 2023, chapter 60, article 3, section 28. MPCA must consult with MDA when developing these rules. *Id.* The instant rulemaking responds to this directive and is critical to ensure that Minnesota's people and environment are properly protected from pesticide exposure from waste treated seed.

COMMENTS AND RECOMMENDATIONS

I. Regulations governing disposal of waste treated seed are urgently needed

The agrichemical industry generates an enormous amount of waste treated seed. Seed industry sources estimate that about 10 percent of purchased treated seed ultimately goes to waste because farmers and seed dealers commonly over-order pesticide-treated seeds as a precautionary measure.⁴ Based on industry estimates that nearly 100 percent of corn and 80 percent of soybean seeds are treated with pesticides, this amounts to about 3.8 million bushels of treated corn and 6 million bushels of treated soybean seed discarded each year nationwide.⁵ In Minnesota alone, this translates to approximately 330 thousand bushels of waste treated corn seed and 532 thousand bushels of waste treated soybean seed each year.⁶ These numbers do not take into account any seed treated by upstream suppliers and never sold to distributors or end-users. They also do not account for dozens of other crops, like wheat and sugar beets, where treated seeds are commonly used. And according to industry groups, use of treated seeds "continues to grow."⁷

Seeds are commonly coated with pesticides that present known risks to the environment and human health. A large and growing number of crop seeds are treated with neonicotinoid insecticides, or "neonics."⁸ Today, this includes nearly all convention corn seeds, from 50-75 percent of soybean seeds, and substantial portions of a wide variety of crops.⁹ Widespread contamination of the environment with these neurotoxic

⁴ Emily Unglesbee, *Treated Seed Troubles*, Progressive Farmer (July 14, 2021), <https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/07/13/seed-treatment-overload-unintended>.

⁵ *Id.*

⁶ See U.S. Department of Agriculture, National Agricultural Statistics Service, *2022 State Agricultural Overview: Minnesota*, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MINNESOTA.

⁷ Comments of CropLife America and the American Seed Trade Association (Oct. 27, 2023), available at <https://www.pca.state.mn.us/sites/default/files/sw-rule3-02b.pdf>.

⁸ Margaret Douglas and John Tooker, *Large Scale Deployment of Seed Treatments Has Driven Rapid Increase in Use of Neonicotinoid Insecticides and Preemptive Pest Management in U.S. Field Crops*, 49 Environ. Sci. Technol. 8, 5088-5097 (2015), available at <https://pubs.acs.org/doi/abs/10.1021/es506141g>; Claudia Hitaj et al., *Sowing Uncertainty: What We Do and Don't Know About the Planting of Pesticide-Treated Seed*, 70 BioScience 5, 390-403 (May 2020), available at <https://academic.oup.com/bioscience/article/70/5/390/5805569?login=false>.

⁹ Maggie Douglas and John Tooker, *Large-scale deployment of seed treatments has driven rapid increase in use of neonicotinoid insecticides and preemptive pest management in U.S. field crops*, 49 Environ. Sci. Technol. 8, 5088-97 (Apr. 21, 2015), <https://pubmed.ncbi.nlm.nih.gov/25793443/>; Hitaj et al., *Sowing Uncertainty: What we do and don't know about the planting of pesticide-treated seed*, 70 BioScience 5, 390-403 (May 2020), <https://academic.oup.com/bioscience/article/70/5/390/5805569>.

insecticides has been identified as a leading cause of pollinator declines¹⁰ and is contributing to mass losses of birds,¹¹ devastating aquatic ecosystems,¹² and harming soil health.¹³

Neonicotinoids are linked with a wide variety of health harms, including birth defects of the heart and brain and autism-like symptoms. And people are commonly exposed to neonicotinoids. Data from the Centers for Disease Control and Prevention from 2015-2016 show that over half of Americans are regularly exposed to neonics.¹⁴ A more recent study, which tested 171 pregnant women from 2017-2021, found that 95% had neonicotinoids in their bodies.¹⁵ These data—consistent with DNR studies showing growing, now-ubiquitous contamination of Minnesota’s deer with neonicotinoids—indicate that exposure is widespread and worsening. Further, many chemicals used to treat seeds are pernicious environmental contaminants. Systemic insecticides, like neonicotinoids or anthranilic diamides, are highly water soluble, mobile, and long-lasting in the environment. For example, the half-life of imidacloprid, a common neonic seed treatment, is up to 608 days;¹⁶ the half-life of chlorantraniliprole is up to 1130 days in soil.¹⁷

As a result of their widespread use, high water solubility, and persistence, neonics widely contaminate Minnesota’s environment. They are ubiquitous in waters, with an independent study finding neonics in 97% of surface water samples and 73% of groundwater samples.¹⁸ Further still, testing by the Minnesota Department of Natural Resources has detected neonics in 94% of Minnesota deer, with 64% containing levels linked with health harms including increased fawn mortality.¹⁹ Just two years earlier, these numbers were 61% and 29%, respectively, indicating rapidly worsening contamination.

The quantity of waste treated seed, combined with the toxicity of chemicals used to treat seed, mean that proper disposal is crucial. Nowhere has this been more apparent than in Mead, Nebraska, where an ethanol plant caused mass environmental contamination by collecting and improperly processing waste neonicotinoid-

¹⁰ See, e.g., Lennard Pisa et al., *An Update of the Worldwide Integrated Assessment (WIA) on Systemic Insecticides. Part 2: Impacts on Organisms and Ecosystems*, *Envtl. Sci. Pollution Research Int’l* (Nov. 9, 2017), <https://bit.ly/2HqgHwB>; Thomas Wood & Dave Goulson, *The Environmental Risks of Neonicotinoid Pesticides: A Review of the Evidence Post 2013*, *Envtl. Sci. Pollution Research Int’l*, 24(21): 17285–17325 (Jun. 7, 2017), <https://bit.ly/2Hpn8T5>; Ben A. Woodcock et al., *Country-specific Effects of Neonicotinoid Pesticides on Honeybees and Wild Bees*, 356 *Science* 6345, 1393-1395 (Jun. 30, 2017), <https://politi.co/2HrEnDI>; Ben A. Woodcock et al., *Impacts of neonicotinoid use on long-term population changes in wild bees in England*, 7 *Nature Communications* 12459 (Aug. 16, 2016), <https://go.nature.com/2EU6Xho>; Travis A. Grout et al., *Neonicotinoid Insecticides in New York State*, Cornell University (June 23, 2020), <https://bit.ly/2XIB2cA>.

¹¹ American Bird Conservancy, *Neonicotinoid Insecticides: Failing to Come to Grips with a Predictable Environmental Disaster* (June 2023), <https://abcbirds.org/wp-content/uploads/2023/07/2023-Jul20-ABC-Neonicotinoid-Insecticides-Report.pdf>.

¹² Masumi Yamamuro et al., *Neonicotinoids Disrupt Aquatic Food Webs and Decrease Fishery Yields*, *Science* (Nov. 1, 2019), <https://bit.ly/34rKCSG>.

¹³ Dr. Daniel Rath, *How Neonicotinoids Can Harm Soil Health and Soil Biodiversity* (Dec. 5, 2023), <https://www.nrdc.org/bio/daniel-rath/how-neonics-can-harm-soil-health-and-soil-biodiversity>.

¹⁴ Ospina et al., *Exposure to neonicotinoid insecticides in the U.S. general population: Data from the 2015-2016 national health and nutrition examination survey*, *Environ. Res.* 176, 108555, <https://pubmed.ncbi.nlm.nih.gov/31288196/>.

¹⁵ Jessie Buckley et al., *Exposure to Contemporary and Emerging Chemicals in Commerce among Pregnant Women in the United States: The Environmental influences on Child Health Outcome (ECHO) Program*, *Environ. Sci. Technol.* 56(10), 6560-6579 (2022), <https://pubs.acs.org/doi/10.1021/acs.est.1c08942>.

¹⁶ https://www.epa.gov/sites/default/files/2020-01/documents/imidacloprid_pid_signed_1.22.2020.pdf

¹⁷ https://www3.epa.gov/pesticides/chem_search/reg_actions/registration/fs_PC-090100_01-Apr-08.pdf

¹⁸ Matthew Berens et al., *Neonicotinoids in Surface Water, Groundwater, and Wastewater Across Land-Use Gradients and Potential Effects*, 40 *Environ. Toxicol. Chem.* 4, 1017-1033 (2021), available at <https://pubmed.ncbi.nlm.nih.gov/33301182/>.

¹⁹ Dan Gunderson, *Data Show Increasing Insecticide Levels in Minnesota Deer* (Aug. 23, 2022), <https://www.mprnews.org/story/2022/08/23/data-show-increasing-insecticide-levels-in-minnesota-deer>.

treated seeds.²⁰ The facility reportedly may have processed upwards of 1 billion pounds of waste treated seed²¹ from leading seed manufacturers, including Bayer U.S. LLC, Syngenta Seeds LLC, and Pioneer Hi-Bred International, Inc.²² The plant produced upwards of 115 thousand tons of pesticide-laden waste product which was stored outdoors, leading to mass contamination of the surrounding areas with neonicotinoids and other pesticides.²³

Stringent and comprehensive disposal regulations are critical to ensure that the disaster in Mead, Nebraska, is not repeated in Minnesota.

II. MDA's failure to regulate pesticide-treated seeds undermines development of an effective waste treated seed disposal program.

Because MDA does not currently regulate treated seeds as pesticides, the agency lacks basic information about treated seed use statewide, including where seeds are used, the quantity of seed used, what chemicals are used to treat seeds, and more. This is especially true with respect to treated seeds purchased out of state and brought into Minnesota for planting. See MDA Neonic Review, supra n. 1 (“[A]lmost all corn seed and about 20% of soybean seed treated outside of Minnesota’s borders and shipped into the state for planting is not tracked by the MDA.”).

This means that MPCA and MDA have no way of knowing exactly what chemicals may be found on treated seeds and end up being disposed of in Minnesota. California provides a relevant example of this problem. There, a survey by the Department of Food and Agriculture revealed that of 48 seed treatment products detected on seeds, only 21 were registered in California as a seed treatment.²⁴ Further, 7 products were not registered for seed treatment anywhere in the United States; an additional 4 had been cancelled by U.S. EPA. The problem may be even more significant in Minnesota, where seed treatment-intensive row crops constitute a much larger proportion of agriculture than in California. Comprehensive use information is critical to ensure that Minnesota has a proper waste treated seed disposal program.

In other words, to adequately protect public health and the environment from either use or disposal of treated seeds, MDA must establish a regulatory program for treated seeds.

III. Waste treated seeds must be disposed of solely at facilities capable of safely processing and disposing of pesticides.

MPCA’s current guidance governing on-farm disposal of treated seeds is inadequate to protect human health and the environment. The Agency’s rulemaking must prohibit on-farm disposal of treated seeds via burial and facilitate proper disposal at approved landfills that are capable of safely disposing of industrial solid waste.

²⁰ Nebraska Department of Environment and Energy, Information and Updates for AltEn near Mead, Nebraska (Jan. 5, 2024), <http://dee.ne.gov/Press.nsf/pages/AltEn> (last visited Jan. 12, 2024); Rural Health Information Hub, Ethanol Plant Disaster Creates Environmental and Human Health Concerns for Rural Community in Mead, Nebraska, <https://www.ruralhealthinfo.org/toolkits/emergency-preparedness/case-studies/chemical-emergencies/mead-nebraska> (last visited 1/12/2024).

²¹ Chris Dunker, Cleanup of Pesticide Contaminated Solid Waste to Begin Next Month at Former Mead Plant (Aug. 22, 2023), <https://bit.ly/48Odd5O>.

²² Todd Neeley, AltEn Cleanup Ongoing, Lawsuit Slows (Nov. 17, 2023), <https://bit.ly/3u0x5no>.

²³ *Id.*

²⁴ California Department of Pesticide Regulation, Pesticide-Treated Seed Public Workshop, Slide 38 (Nov. 15, 2021), https://www.cdpr.ca.gov/docs/emon/surfwtr/pest_seeds/pest_seeds_slides.pdf.

And as the disaster in Mead, Nebraska, has demonstrated, *supra* pp. 3-4, MPCA must strictly prohibit use of waste treated seed at ethanol processing plants.

A. Burial is an inappropriate method of disposing of waste treated seed

Permitting farmers to dispose of treated seeds on-site presents serious risk of widespread, untracked contamination of Minnesota's lands with unknown quantities and concentrations of pesticides. This presents serious risk to wildlife. Birds frequently feed on treated seeds or fragments of treated seeds that are improperly buried or unearthed,²⁵ and just one neonic-treated corn seed can kill a small songbird.²⁶ Because neonics and other active ingredients in seed treatments are systemic, they can also be absorbed from contaminated soil to wild plants, posing significant risks to pollinators.²⁷ And MDA data already links treated seeds with contamination of Minnesota surface waters²⁸—a problem that will persist if farmers are permitted to dispose of treated seeds on-farm.

Untracked burial of treated seeds across Minnesota's landscape also poses serious risks to emerging farmers. Emerging farmers, many of whom are BIPOC, already struggle to gain access to land to start their farms. It is even more difficult for these farmers to gain access to farmland that is *uncontaminated* with pesticides and other chemicals. They already have to contend with contamination caused by use of pesticides by a previous owner or adjacent farm; they should not also need to worry that the land they are purchasing has been used as a dumping ground for waste pesticide-treated seeds.

This concern is even more prevalent for farmers who wish to obtain organic certification. To be certified as organic, a farmer's land must not have had prohibited substances—like neonics—applied for at least three years. 7 U.S.C. § 205.202(b). And if testing discovers residues of prohibited substances in a farmer's produce, the farmer may not sell their produce as "organic." *Id.* § 205.671. Soil contamination could prevent certification for years, regardless of the farmer's growing practices. Moreover, water contamination—which is widespread²⁹ and commonly connected with treated seed use³⁰—could hinder certification if a farmer uses pesticide-contaminated water. By contributing to soil and water contamination, improper disposal of waste treated seed can seriously harm organic producers.

²⁵ Dan Gunderson, Concern Grows Over Effects of Treated Seeds on Birds (Sep. 20, 2017), <https://www.mprnews.org/story/2017/09/20/concern-grows-over-effects-of-treated-seeds-on-birds>.

²⁶ [American Bird Conservancy](#), *Neonicotinoid Insecticides: Failing to Come to Grips with a Predictable Environmental Disaster* (June 2023).

²⁷ See, e.g., <https://www.sciencedirect.com/science/article/abs/pii/S0045653523004216>; Wood & Goulson, The Environmental Risks of Neonicotinoid Pesticides: A Review of the Evidence Post 2013, 24 Environ. Sci. Pollut. Res. Int. 21, 17285-17325 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5533829/#CR116>; Main et al., Reduced species richness of native bees in field margins associated with neonicotinoid concentrations in non-target soils, 287 Ag. Ecosys. & Env. 106693 (Jan. 1, 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0167880919303093>.

²⁸ MDA, PFMD Update 4 (September 2023), available at <https://www.mda.state.mn.us/sites/default/files/docs/2023-09/pfmdupdatesept2023.pdf>.

²⁹ See Berens et al. (2021), *supra* n. 18.

³⁰ See MDA (2023), *supra* n. 28; Hladik et al., Widespread occurrence of neonicotinoid insecticides in streams in a high corn and soybean producing region, USA, 193 Env. Pollution 189-96 (Oct. 2014), available at <https://www.sciencedirect.com/science/article/abs/pii/S0269749114002802>.

B. MPCA should develop a comprehensive program to help farmers safely dispose of waste treated seeds

Treated seeds should be disposed of *only* at facilities that have an approved Industrial Solid Waste Management Plan that explicitly addresses safe disposal of waste treated seed. This will help to limit environmental contamination and ecological and human health risk resulting from diffuse, untracked, and largely unregulated disposal of waste treated seed on farms. MPCA can accomplish this without unduly burdening farmers by implementing one or some combination of the following disposal programs:

- MPCA should require seed dealers to accept and arrange for proper disposal of waste treated seed, similar to requirements for pesticide containers found at Minn. Stat. § 18B.135. This is especially appropriate if dealers are advising farmers to purchase excess treated seed as a precautionary measure. *See supra* p. 2.
- MPCA could also develop a waste treated seed collection program modeled after MDA's waste pesticide collection program. *See* Minn. Stat. 18B.065.³¹

IV. At minimum, MPCA must place stricter restrictions on how farmers may dispose of treated seeds on-farm.

MPCA should not permit farmers to dispose of waste treated seed on-site. *See supra* p. 5. But if the agency permits this dangerous practice, it must, at minimum, more stringently regulate on-farm disposal. Specifically:

- Farmers should be explicitly prohibited from accepting waste treated from other generators for disposal. Otherwise, farmers or other landowners might accept huge quantities of waste treated seed from other generators, creating an intensely contaminated open dumping site for treated seeds coated with harmful pesticides. MPCA must ensure against this result.
- Farmers should be permitted to dispose of waste treated seed only on land that they own.
- Farmers should be required to keep records of the type and quantity of waste treated seed disposed of on-site, and should be required to disclose these records when selling or leasing the land.
- MPCA should strictly prohibit burial of waste treated seed within 200 feet of private wells, tile drain inlets, surface waters, *and property boundaries*. *Cf.* Minn. Stat. § 18B.07 subd. 2(b) (prohibiting application of pesticides in a manner that damages adjacent property). The agency should also codify its current guideline prohibiting burial within 1,000 feet of public water supply wells.
- MPCA should set a maximum quantity of treated seed that may be disposed of on-site to limit potential for mass contamination of soil, surface waters, and groundwater.

If a farmer is not capable of disposing of waste treated seeds in accordance with the restrictions set out above, the waste treated seeds must be disposed of at a facility capable of safely disposing of large volumes of pesticides.

³¹ *See also* MDA, Waste Pesticide Collection Program, <https://www.mda.state.mn.us/pesticide-fertilizer/waste-pesticide-collection-program> (last visited Jan. 18, 2024).

MPCA should also consider whether the above restrictions are sufficiently protective of groundwater within areas that are particularly susceptible to groundwater contamination, such as karst regions and the Central Sands area. MPCA should consider whether additional rules and protections are necessary, or if burial should be prohibited in vulnerable groundwater areas.

V. MPCA has primary enforcement authority over requirements for disposal of waste treated seed

Effective enforcement of rules governing waste treated seed disposal is critical. Without effective enforcement, a disaster such as the one in Mead, Nebraska may be repeated in Minnesota. Even if not, improper disposal of waste treated seed will contribute to already vast contamination of the state's environment with harmful pesticides. To help ensure against this result, the legislature has required MPCA in this rulemaking to "clearly identify the regulatory jurisdiction of state agencies and local governments with regard to [waste treated] seed." Laws of Minnesota 2023, chapter 60, article 3, section 28. MPCA should not only specify the jurisdiction of state agencies and local governments, but make clear that MPCA has unambiguous authority to enforce the promulgated rules.

MPCA has clear authority to enforce the requirements of this rulemaking under Minn. Stat. 115.071 and Minn. Stat. 116.072. MPCA may use these mechanisms to enforce "all rules . . . adopted or issued by the agency . . . for the prevention, control, or abatement of pollution." Minn. Stat. 115.071, subd. 1; *id.* subd. 6 ("A provision of law that may be enforced under this section may also be enforced under section 116.072."). MPCA was designated by the Legislature as the lead agency for promulgating these rules. And the proposed rulemaking is plainly designed to "prevent[], control[], or abate[]" pollution of Minnesota's environment with waste treated seed and the active ingredients used on these seeds. *Id.*

MPCA is also best positioned to enforce these rules because it has numerous tools at its disposal to ensure proper compliance. The legislature has granted MPCA the authority to use "criminal prosecution; action to recover civil penalties; injunction; action to compel performance; or other appropriate action" to enforce rules under its jurisdiction. Minn. Stat. § 115.071, subd. 1. MPCA may also issue administrative penalties to enforce these requirements. *Id.* § 115.071, subd. 6. Accordingly, MPCA should apply its clear and expansive enforcement authority to enforce these rules.

Respectfully submitted,

Lucas Rhoads
NRDC Action Fund
lrhoads@nrdc.org

Aaron Klemz
Chief Strategy Officer, MCEA
aklemz@mncenter.org

Submitted via OAH Rulemaking Comments Website

January 30, 2024

State of Minnesota Office of Administrative Hearings
600 N. Robert Street, P.O. Box 64620
St. Paul, MN 55164

RE: MPCA Request for Comments on Waste Treated Seed Rules, Revisor's ID No. R-04806; OAH Docket No. 23-9003-39350

To whom it may concern:

On behalf of Clean Energy Economy MN (CEEM), we are writing today to respond to the Minnesota Pollution Control Agency's (MPCA) request for comments on rulemaking for the disposal of treated seeds. Specifically, we are looking to clarify the type of incineration facilities eligible to burn treated seeds under the new law.

CEEM is an industry-led, nonpartisan, non-profit organization representing the business voice of energy efficiency and clean energy in Minnesota. We work to educate Minnesotans about the economic benefits of transitioning to a clean energy economy and are committed to delivering a 100% clean energy future where all Minnesota businesses and citizens will thrive. Our business membership is comprised of over 60 clean energy companies ranging from start-up businesses to Fortune 100 and 500 corporations that employ tens of thousands of Minnesotans across the state.

A CEEM member business, Koda Energy is classified as a biomass plant by the EPA, and not a solid waste incinerator. The limiting language in the current proposed rule could bring into question their ability to continue using treated seed as biomass fuel as they have been permitted to do by the MPCA in June of 2023.

A simple fix would add clarifying language making clear that properly permitted biomass-to-energy incineration facilities are allowed to burn treated seeds. A simple addition to the fourth bullet would correct this:

*"Burned, except in a permitted **[Biomass or]** Waste-To-Energy (WTE) incineration facility. Waste treated seed may not be burned openly, in corn or wood stoves, or in residential or commercial boilers, including by farmers.*

RECEIVED

By: OAH on 1/30/2024
George Damian Attachment

We thank you for the opportunity to share our comments today. If you have any questions, please let us know.

Sincerely,



George Damian
Director of Government Affairs
gdamian@cleanenergyeconomymn.org



January 30, 2024

TO: Mr. William Moore
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164

RE: Possible Amendments being Considered for Waste Treated Seeds Rules Governing Solid Waste and Hazardous Waste, Minnesota Rules, Chapters 7035 and 7045; Revisor's ID Number R-04806

OAH Docket No. 23-9003-39350

Dear Mr. Moore,

CropLife America ("CLA") and the American Seed Trade Association ("ASTA") appreciate the opportunity to comment on the Minnesota Pollution Control Agency's ("MPCA's") Request for Comments regarding possible rulemaking and amendment to Minnesota Administrative Rules Chapters 7035 and 7045, relating to waste treated seeds. Any regulations promulgated by MPCA would impose impacts on each organization's members, who, as to CLA, develop and sell pesticide products for agriculture and pest management in the United States and, as to ASTA, develop, produce, and distribute seeds for use in agriculture in the United States and abroad.

For reference, CLA and ASTA submitted joint comments to the August 28, 2023, Request for Comments Revisors ID Number R-04806 (sw-rule3-02a), on October 27, 2023. We again reiterate our initial comments that the MPCA treated seed disposal guidance document provides sufficient guidance to industry, consumers and growers regarding the proper use, limitations on use, and disposal of seed treated with pesticides¹. In short, we believe adoption of the language in the guidance document into MPCA's rules would satisfy the legislative directive contained in Minnesota Chapter 60, Article 3, Section 28 (2023).

Treated seed that will not be used for planting is already and appropriately considered industrial solid waste in Minnesota according to the guidance document, and therefore any new rules or amendments should be only considered under Minnesota Administrative Rules, Chapter 7035, Solid Waste. We have concerns with and caution against amending Minnesota Administrative Rules, Chapter 7045, Hazardous Waste as it pertains to the disposal of treated seeds. It would be inconsistent with federal law² to categorically categorize waste treated seeds as hazardous waste. "Hazardous waste", is a term carefully defined under federal waste management laws to apply only to certain substances, including certain but not all pesticides (40 C.F.R part 261). Regulating all treated seeds as hazardous waste under state law, irrespective of the applicability of federal law, has the potential to cause confusion for manufacturers,

¹ Treated seeds, Minnesota Pollution Control Agency, <https://www.pca.state.mn.us/sites/default/files/w-hw451.pdf>

² 40 CFR § 30.16 - Resource Conservation and Recovery Act (RCRA), <https://www.govinfo.gov/app/details/CFR-2014-title40-vol1/CFR-2014-title40-vol1-sec30-16/summary>



distributors, and the ultimate users of the product—a result at odds with the legislature’s intent in seeking action on this issue.

Disposing of waste treated seed as solid waste provides similar “cradle to grave” oversight as hazardous waste, and any suggestion that it does not ignores the stringent regulatory framework under which solid waste facilities are regulated in Minnesota, including requirements aimed at preventing pollution in the environment. See, e.g., Minnesota Administrative Rules 7035.2525 – 7025.2655 (Solid Waste Management Facility General Technical Requirements); see also Minnesota R. 7035.0350, (“The waste management goal of the state is to foster an integrated waste management system in a manner appropriate to the characteristics of the waste stream and thereby protect the state’s land, air, water, and other natural resources and the public health.”)³.

Market forces already incentivize seed manufacturers and distributors to appropriately calibrate the amount of treated seed sold and used, and common practice for excess bags of treated seed is for return to the provider. Requiring additional reporting and tracking of waste treated seeds would be expensive, unnecessary, would impose additional burdens on farmers and would complicate the regulatory framework for solid waste management facilities that are already subject to reporting requirements, including, “the quantity of each type of waste handled” at the facility.” See, e.g., Minnesota R. 7035.2585.

We believe the MPCA treated seed guidance, along with instructions on the seed bag tag, provide for the safe and lawful disposal of waste treated seed and adequately address use, storage, handling, distribution, and disposal of waste treated seed to avoid adverse impacts on humans, food, livestock, fish, or wildlife and ensure no unreasonable adverse effects on the environment. The seed bag tag and label contain handling requirements, wildlife warnings, storage, disposal, and container handling instructions.

We respectfully encourage MPCA to avoid imposing new and unnecessary regulatory burdens on the disposal of waste treated seed with any amendments to Chapter 7045. The current authority and regulatory resources adequately enable their safe use and disposal. Thank you for your consideration of our comments on these possible new rules.

Sincerely,

Riley Titus
CropLife America
rtitus@croplifeamerica.org
(202) 872-3856

Pat Miller
American Seed Trade Association
pmiller@betterseed.org
(512) 259-2118

³ Minnesota Administrative Rules, Chapter 7035, Solid Waste, <https://www.revisor.mn.gov/rules/7035/>



Discussion: 39667 Minnesota Pollution Control Agency Request for Comments on PFAS in Products Currently...

REQUEST FOR COMMENTS- PFAS in Products Currently Unavoidable Use Rule

Planned New Rules Governing Currently Unavoidable Use Determinations about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4837

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1 Responses



Lee Landstrom 23 days ago

Revisor's ID Number R-4837. PFAS Products. I write in favor of strengthening and clarifying the regulation of pesticide-coated seeds. Currently, these products are NOT regulated like other pesticides. As demonstrated in Mead, Nebraska, piles of these seeds polluted ground water and nearby bee hives with this deadly runoff. There are NOT adequate safeguards for public health. Furthermore, if these seeds are treated with neonicotinoid pesticides, they have been shown to be a great danger to human and wildlife health. The treated seeds must be regulated as to their proper safe use, handling and especially disposal - for the benefit of our environment and human health.

0 Reads

RILEY TITUS answered a Discussion

George Damian answered a Discussion

Rick Hansen answered a Discussion

Rick Hansen answered a Discussion



DISCUSSIONS

36778 Department of Agriculture Proposed Rules Without a Public Hearing

36467 Board of Assessors Dual Notice

37077 Department of Revenue Notice of Submission

39667 Minnesota Pollution Control Agency Request for Comments on PFAS in Products Currently Unavoidable Use Rule

39758 Minnesota Department of Employment and Economic Development Request for Comments

39350 Minnesota Pollution Control Agency Dual Notice of Intent to Adopt Rules

Closed Feb 14, 2025 · Discussion · 4 Participants · 1 Topics · 5 Answers · 0 Replies · 0 Votes

4

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TOPICS

5

ANSWERS

0

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Lee Landstrom · Citizen · (Postal Code: unknown) · Feb 11, 2025 4:08 pm

 0 Votes

1) "A. disposed of by burial, except: ... 8.7 (3) by a person who owns or operates land used for farming, if the waste.... 8.8 treated seed is generated as part of that person's farming operation and is buried on the land..."farming in a nuisance-free, pollution-free, and aesthetic manner". This burial is not a clean practice. The neonic (or other pesticide) covering can still leach into the groundwater. Even with the restriction sighted in lines 8.10-8.23, I fear there will continue to be much more contamination. The rules about disposal must be strict and have consequences and punishments. Individuals must not be allowed to poison the environment for their neighbors and future generations.
 2) " 9.11 F. used, donated, sold, or offered for oil processing or for fuel or fuel production, 9.12 except as allowed in Item B". This also sounds like a bad idea. Allowing neonics into fuel that is going to be burned and released into the air?
 3) On the Factsheet, I see that treated seed is allowed for wildlife habitat and wildlife feed plantings. Neonics are poisonous to birds and harmful to mammals. They should be forbidden from planting on (leased) wildlife plots. Who cares if the wildlife crops have some insect damage? Keep these toxic pesticides away from public lands!
 4) Factsheet: Packaging: rinse water from these bags should NOT be allowed to be applied onto croplands. This water is toxic, too, and will runoff into surface waters.

Laurie Schneider · Citizen · (Postal Code: unknown) · Feb 12, 2025 1:46 pm

 0 Votes

PLEASE SEE ATTACHED DOCUMENT FOR OUR COMMENTS.

Pollinator Friendly Alliance is a conservation organization involved in land restoration and

39350 Minnesota Pollution Control Agency Dual Notice of Intent to Adopt Rules

Closed Feb 14, 2025 · Discussion · 4 Participants · 1 Topics · 5 Answers · 0 Replies · 0 Votes


environmental work for a healthy Minnesota. Our extensive following is keenly aware of the toxic contamination caused by pesticide-treated seed to our water, land, and plants which cause illness for wildlife and humans. We respectfully submit these comments on MPCA's proposed amendment to rules governing waste treated seed (OAH Docket No. 23-9003-39350). Thank you for developing much needed new rules for the disposal of waste treated seed.

Rosemary Malfi · Citizen · (Postal Code: unknown) · Feb 13, 2025 6:05 pm

 0 Votes

The Xerces Society for Invertebrate Conservation and American Bird Conservancy respectfully submit these comments on the waste treated seed rule. Please see the attached document.

Rosemary Malfi · Citizen · (Postal Code: unknown) · Feb 14, 2025 9:31 am

 0 Votes

I am submitting the following comment on behalf of Nancy Lee Falkum, member of White Earth Band of Ojibwe. Nancy was unable to log in to the OAH system and has not heard back from the webmaster.

February 13, 2025

The Office of Administrative Hearings
Attention: Judge Suzanne Todnem
600 Robert St. North
St. Paul MN 55101

Re: Proposed Amendment to Rules Governing Waste Treated Seed, Minnesota Rules, chapter 7035, and 7045. Revisor's ID Number R-4806. OAH Docket No. 23-9003-39350.

Dear Judge Todnem,

As a member of the White Earth Band of Ojibwe, I would like to voice my concerns regarding the governing of waste treated seeds (WTS).

MPCA must require a WTS burial setback distance that is greater than 200 feet for private wells of drinking water for animals and humans. How are wildlife creatures to find clean water if we continue to pollute the earth's water with known harmful contaminants such as neonicotinoids!

Regarding best practices for on-farm burial of WTS: The MPCA will have to be very clear about the instructions for this process as the average person must hear or read something 8-16 times before it is fully retained. Please be clear about the quantity of WTS and how thick they can be spread. This must also include plans for future well and septic locations.

MPCA should be clear about wellhead protection areas, karst geology and drain tile locations as to where WTS can be buried.

Consistent labeling of harmful contaminants, such as neonicotinoids, and correct and

39350 Minnesota Pollution Control Agency Dual Notice of Intent to Adopt Rules

Closed Feb 14, 2025 · Discussion · 4 Participants · 1 Topics · 5 Answers · 0 Replies · 0 Votes

clear instructions for disposal of WTS are necessary. Package information should include the requirement that WTS be disposed of at municipal solid waste land disposal facilities.

Detailed instructions for the removal of WTS that has spilled during transportation or planting must be included. Spring is a vulnerable time for migrating birds and their use of stopover points that might be subject to contamination due to spillage could be harmful or deadly.

Thank you and the MPCA for attempting to keep humans and wildlife out of harm's way.

Sincerely,

Nancy Lee Falkum
White Earth Reservation Enrollment No.408B026986
212 Second Street East
Wabasha, Minnesota 55981
651-565-2360
Guthrie55981@gmail.com

Matthew Berger · Citizen · (Postal Code: unknown) · Feb 14, 2025 3:46 pm

 0 Votes

Please see the attached correspondence that has been sent to Daniel Gonzalez of the MPCA on February 14, 2025.

TO: The Office of Administrative Hearings
Attn: Judge Suzanne Todnem
600 Robert St N, St Paul, MN 55101

February 12, 2025

TO: Minnesota Pollution Control Agency
520 Lafayette Road North, St. Paul, MN 55155

Re: Proposed Amendment to Rules Governing Waste Treated Seed, Minnesota Rules, chapter 7035, and 7045. Revisor's ID Number R-4806. OAH Docket No. 23-9003-39350.

Dear Judge Todnem,

Pollinator Friendly Alliance is a conservation organization involved in land restoration and environmental work for a healthy Minnesota. Our extensive following is keenly aware of the toxic contamination caused by pesticide-treated seed to our water, land, and plants which cause illness for wildlife and humans. We respectfully submit these comments on MPCA's proposed amendment to rules governing waste treated seed (OAH Docket No. 23-9003-39350). Thank you for developing much needed new rules for the disposal of waste treated seed.

We recommend the following six revisions to the proposed amendment:

Definition: Waste treated seed (WTS) is pesticide-treated seed that is no longer needed and is considered industrial waste.

MPCA should require a WTS burial setback distance that is greater than 200 ft for private wells that supply drinking water to humans or animals. As MPCA acknowledges, burial of WTS is the least preferred option for disposal because this can further contribute to surface and groundwater contamination. Neonicotinoids, which are applied as seed treatments to some of Minnesota's most abundant crops (corn, soy, wheat) often end up in waterways. Most of the neonics applied to seeds are *not* absorbed by the growing plants, leaving 80–98% of the pesticides in the soil, where they can then move into surface or groundwater. Neonicotinoids are a pesticide of concern in Minnesota. Given the high solubility of neonicotinoids, and in the absence of good data showing how seed burial (vs. planting) may affect pesticide infiltration of waterways, It is therefore reasonable to assume that seeds buried en masse at a single location only 200 ft away from a water well is not sufficiently protective. MPCA should operate under the precautionary principle and increase this distance; we recommend 1000 ft, which MPCA uses for other water sources. In Minnesota, neonics are a "surface water pesticide of concern".

<https://www.mda.state.mn.us/surface-water-pesticides-concern>

MPCA should prohibit WTS burial on wellhead protection areas. The proposed amendment requires a setback distance of 1000 feet from public water supplies. We would like MPCA to clarify where the setback begins and ends.

MPCA must better define best practices for WTS burial on-farm. If there is a large quantity of WTS that a generator is permitted to bury on-farm, that generator needs information about best practices for minimizing harm to waterways and wildlife. MPCA discusses burial depth and setbacks, but it does not discuss appropriate concentrations of seed per area.

We ask MPCA to track WTS quantities entering the waste stream. If the facility must determine how much waste treated seed it can accept, we presume the facility has to track how much seed they receive in order to know if they are approaching an established cap. It therefore seems reasonable for MPCA to collect information on the amount of seed coming into waste facilities. This information is important for understanding the scale of WTS disposal in MN and whether additional policies are needed to address this waste stream.

We ask MPCA to work with MDA to develop consistent labeling for treated seed in MN as it relates to disposal requirements. As MPCA describes, currently there is no enforceable label for treated seeds and the labels that do exist are often vague and inconsistent. We strongly support the creation of consistent labels for treated seed in MN that convey the state's disposal requirements.

Spilled seed not recovered for planting should be defined as WTS. Observational studies on Minnesota farmland have found that growers are not properly mitigating spilled neonicotinoid-coated seed during the course of planting, directly exposing wildlife to toxic chemicals and underscoring the need for regulations. We recommend classifying spilled seed that is not recovered for subsequent planting as WTS, subject to the disposal regulations developed by MPCA.

We support the following proposed changes in the amendment:

Leaching mitigation. It is declared that waste treated seed (WTS) is classified as industrial solid waste. This means that generators must send WTS to disposal facilities that are equipped with a liner and leachate management to avoid soil and groundwater contamination.

Covering seed immediately. We strongly support the new requirement for mixed municipal solid waste land disposal facilities to place immediate cover on WTS to prevent harm to wildlife, such as birds and deer, that might forage on pesticide-coated seeds.

Composting prohibition. We support the added provisions that clearly state that WTS is categorically excluded from all composting operations, including at mixed municipal solid waste disposal sites.

Prohibited uses and reuses. We support provisions stating that WTS may not be used, donated, sold, or offered for animal feed, and we appreciate the clarification that this applies to wildlife. We support provisions that explicitly prohibit the use of WTS for oil processing, fuel, or fuel production. These regulations are essential for preventing the disastrous consequences witnessed in Mead, Nebraska when WTS was used for ethanol production resulting in byproducts with astronomical levels of pesticides. The byproducts were then spread on local fields as soil conditioners or via irrigation, contaminating the surrounding area and its waterways with harmful levels of pesticides. Community members, pets and wildlife became ill. Cleanup has been costly, and it is taking years to complete.

Open burning prohibition. We support provisions that prohibit open burning of WTS.

Burial prohibition. We generally support the provisions that prohibit burial of treated seed. We find the provision exempting “a person who owns or operates land used for farming, if the waste treated seed is generated as part of... [the farming operation]” to be reasonable because the regulations specifically state that this exemption does not apply if there is reasonable access to “regularly scheduled pickup of solid waste.” However, **MPCS needs to work with municipalities to determine which areas in the state have “reasonable access” and to educate those generators about proper disposal.**

Prohibited burial locations. We support provisions that prohibit WTS burial on karst, wetlands, floodplains, and shorelands. We support the regulations that specify some required best practices for burial (e.g. contouring of the burial site), which help to prevent wildlife poisoning, contamination from runoff, and groundwater infiltration.

We hope you will consider these important rules to keep our water, land, communities, people and wildlife healthy and safe. Thank you for your work.

Respectfully,

Laurie Schneider, Executive Director, Pollinator Friendly Alliance
laurie@pollinatorfriendly.org, 651-503-9904

Attn: Judge Suzanne Todnem
The Office of Administrative Hearings
600 Robert St N, St Paul, MN 55101

Re: Proposed Amendment to Rules Governing Waste Treated Seed, Minnesota Rules, chapter 7035, and 7045. Revisor's ID Number R-4806. OAH Docket No. 23-9003-39350.

Feb 14, 2025

Dear Judge Todnem,

The Xerces Society for Invertebrate Conservation, American Bird Conservancy, and Pollinator Friendly Alliance respectfully submit these comments on MPCA's proposed amendment to rules governing waste treated seed (OAH Docket No. 23-9003-39350). **The Xerces Society** is an international nonprofit that uses science-driven methods to protect invertebrate wildlife and their habitat; we work directly with farmers across Minnesota to safeguard pollinator populations. **American Bird Conservancy** is an international non-profit that seeks to conserve birds and habitats across the Americas. ABC staff work actively with Minnesota agencies and residents to advance bird conservation practices and issues.

First, we want to thank MPCA for the time and effort that went into developing new rules and language that clarifies existing or implied rules governing the proper disposal of waste treated seed in the state of Minnesota. We also appreciate the thoroughness of the explanations for changes laid out in the "Statement of Need and Reasonableness" (hereafter "SNR"). We are largely in agreement with the regulations as proposed and we support how MPCA has defined its regulatory authority to create and enforce the proposed rules (*Justification for Minn. R. 7035.3700, Subp. 5 & Subp. 6*, SNR pgs. 34-35).

- I. We wish to expressly convey our support for the following changes or language clarifications in the proposed amendment:
 - Leaching mitigation. It is declared that waste treated seed (WTS) is classified as industrial solid waste (Minn. R. 7035.3700 Subp. 2, SNR pg. 23). Excluding some generators who may bury WTS on their own farmland, this means that generators must send WTS to disposal facilities that are equipped with a liner and leachate management system (see SNR pg. 27, Minn R. 7035.3700, Subp. 4, Item A, Subi. (1)). This reasonably addresses the concern we raised in our initial public comment about soil and groundwater contamination.
 - Covering seed immediately. We strongly support the new requirement for mixed municipal solid waste land disposal facilities to place immediate cover on WTS (Minn. R. 7035.2815, Subp. 6, Item A, SNR pg. 21) to prevent harm to wildlife, such as birds and deer, that might forage on pesticide-coated seeds. This was a priority concern in our initial comments to MPCA, and we are glad to see this addressed in statute.

- Composting prohibition. We support the added provisions that clearly state that WTS is categorically excluded from all composting operations, including at mixed municipal solid waste disposal sites. (SNR pgs 20-21, Minn R. 7035.2525, Subp.2, Items A &L)
- Prohibited uses and reuses. We appreciate the thought that MPCA put into the need for explicitly stating prohibited uses in the regulations in a manner that is clear to readers (*Justification for Minn. R. 7035.3700, Subp. 4, Items D, E, and F*, SNR pg. 31). We support provisions stating that WTS may not be used, donated, sold, or offered for animal feed, and we appreciate the clarification that this applied for wildlife. We support provisions that explicitly prohibit the use of WTS for oil processing, fuel, or fuel production. These regulations are essential for preventing the disastrous consequences witnessed in Mead, Nebraska when WTS was used for ethanol production resulting in byproducts with astronomical levels of pesticides. The byproducts were then spread on local fields as soil conditioners or via irrigation, contaminating the surrounding area and its waterways with harmful levels of pesticides. Clean up has been costly and it is taking years to complete.
- Open burning prohibition. We support provisions that prohibit open burning of WTS. **We request that MPCA further clarify that waste generated from farms are covered by the prohibition in the statutory language** (Minn R. 7035.3700, Subp. 4, Item B). This restriction is clear in the justification (SNR), but it is less clear in the regulations themselves.
- Burial prohibition. We generally support the provisions that prohibit burial of treated seed (Minn R. 7035.3700, Subp. 4, Item A). We find the provision exempting “a person who owns or operates land used for farming, if the waste treated seed is generated as part of... [the farming operation]” to be reasonable because the regulations specifically state that this exemption does not apply if there is reasonable access to “regularly scheduled pickup of solid waste.” (Minn R. 7035.3700, Subp. 4, Item A (3), SNR pg. 30). **We encourage MPCA to work with municipalities to determine which areas in the state have “reasonable access” and to educate those generators about proper disposal.**
- Prohibited burial locations. We support provisions that prohibit WTS burial on karst, wetlands, floodplains, and shorelands. We support the regulations within Minn R. 7035.3700, Subp. 4, Item A (3) that specify some required best practices for burial (e.g. contouring of the burial site), which help to prevent wildlife poisoning, contamination from runoff, and groundwater infiltration.

II. Below we outline recommended revisions or additions to the proposed amendment for MPCA’s consideration for incorporation into the final rules. These are as follows:

- **MPCA should require a WTS burial setback distance that is greater than 200 ft for private wells that supply drinking water to humans or animals. As**

MPCA acknowledges, burial of WTS is the least preferred option for disposal because this can further contribute to surface and groundwater contamination. Neonicotinoids, which are applied as seed treatments to some of Minnesota's most abundant crops (corn, soy, wheat) often end up in waterways. Most of the neonics applied to seeds are *not* absorbed by the growing plants, leaving 80–98% of the pesticides in the soil, where they can then move into surface or groundwater¹. As a result, neonicotinoids are present in Midwestern waterways throughout the year, often at levels that pose risk to aquatic species^{2,3}. Broader studies across the Midwest have noted elevated pulses of neonics in waterways during crop planting, attributed to seed treatments (Hladik et al. 2014, Berens et al. 2021). Given the high solubility of neonicotinoids, and in the absence of good data showing how seed burial (vs. planting) may affect pesticide infiltration of waterways, it is reasonable to assume that seeds buried en masse at a single location only 200 ft away from a water well is not sufficiently protective. MPCA should operate under the precautionary principle and increase this distance; we recommend 1000 ft, which MPCA uses for other water sources.

- **MPCA should prohibit WTS burial on wellhead protection areas.** The proposed amendment requires a setback distance of 1000 feet from public water supplies. We would like MPCA to clarify where the setback begins and ends. For example, MN Department of Public health [has mapped well protection areas and drinking water supply management areas](#). It is reasonable to prohibit burial of seeds in these areas, especially in areas where the underlying aquifer is at “moderate” to “high” risk of contamination from overlying land use. We ask MPCA to strengthen this aspect of the amended rules.
- **MPCA must better define best practices for WTS burial on-farm.** If there is a large quantity of WTS that a generator is permitted to bury on-farm, that generator needs information about best practices for minimizing harm to waterways and wildlife. MPCA discusses burial depth and setbacks, but it does not discuss appropriate concentrations of seed per area. *Throughout the SNR, the assumption is made that buried seed present no greater risk than seeds planted on the farm. We argue that the level of risk is dependent on the quantity of seed that is being buried, the size of the area over which that seed is buried, and how that seed is distributed.* These aspects of disposal for eligible generators need to be addressed in the final rules.
- **We ask MPCA to track WTS quantities entering the waste stream.** We appreciate the clarification that disposal facility operators accepting WTS must

¹ Alford & Krupke 2017. Translocation of the neonicotinoid seed treatment clothianidin in maize. PLoS One, 12(3):e0173836. doi: 10.1371/journal.pone.0173836.

² Hladik et al. 2018. Year-round presence of neonicotinoid insecticides in tributaries to the Great Lakes, USA. Environmental Pollution 235:1022–1029, doi: 10.1016/j.envpol.2018.01.013

³ Schepker et al.. 2020. Neonicotinoid insecticide concentrations in agricultural wetlands and associations with aquatic invertebrate communities. Agriculture, Ecosystems & Environment 287:106678, doi: 10.1016/j.agee.2019.106678

determine the maximum volume of waste treated seed the facility can accept daily (see SNR pg. 21, Minn. R. 7035.2815, Subp. 11, Item F, (2)). If the facility has to determine how much waste treated seed it can accept, we presume the facility has to track how much seed they receive in order to know if they are approaching an established cap. It therefore seems reasonable for MPCA to collect information on the amount of seed coming into waste facilities. This information is important for understanding the scale of WTS disposal in MN and whether additional policies are needed to address this waste stream.

- **We ask MPCA to work with MDA to develop consistent labelling for treated seed in MN as it relates to disposal requirements.** We fully concur with MPCA's description of the status of treated seed labelling in the U.S. starting SNR pg. 34. The Xerces Society and American Bird Conservancy responded to EPA's Advanced Notice of Public Rule-Making regarding treated seed (Docket EPA-HQ-OPP-2023-0420-0001) and [made several recommendations for label requirements enforceable under FIFRA](#). As MPCA describes, currently there is no enforceable label for treated seeds and the labels that do exist are often vague and inconsistent. They may also be in conflict with the rules established by MPCA. We appreciate MPCA's efforts to get the word out as described on SNR pg. 40 *and* we strongly support the creation of consistent labels for treated seed in MN that convey the state's disposal requirements.
- **Spilled seed not recovered for planting should be defined as WTS.** Observational studies on Minnesota farmland have found that growers are not properly mitigating spilled neonicotinoid-coated seed during the course of planting, directly exposing local wildlife to toxic chemicals and underscoring the need for regulations⁴. We recommend classifying spilled seed that is not recovered for subsequent planting as WTS, subject to the disposal regulations developed by MPCA.

We again thank MPCA for the time and effort invested in developing reasonable WTS disposal rules that can be clearly understood in statute. We appreciate what you have produced and hope the agency will take our recommended improvements under consideration.

Sincerely,

Rosemary Malfi, Ph.D., Policy Director, on behalf of the Xerces Society for Invertebrate Conservation. rosemary.malfi@xerces.org

E. Hardy Kern III, MPA, Director of Government Relations, Pesticides and Birds Campaign, on behalf of the American Bird Conservancy. ehardykern@abcbirds.org

⁴ Roy CL, Coy PL, Chen D, Ponder J, Jankowski M. Multi-scale availability of neonicotinoid-treated seed for wildlife in an agricultural landscape during spring planting. *Sci Total Environ*. 2019 Sep 10;682:271-281. doi: 10.1016/j.scitotenv.2019.05.010.

Rules Governing Waste Treated Seed

Feb 14, 2025

To: The Office of Administrative Hearings

Attn: Judge Suzanne Todnem

600 Robert St No

St Paul, MN 55101

Re: Proposed Amendment to Rules Governing Waste Treated Seed, MN Rules, Chapter 7065 and 7045. Revisor's ID Number R-4806. OAH Docket No.23-9003-39350.

Dear Judge Todnem:

I am an entomologist whose research has involved studying aquatic insects that are bioindicators of water quality. Currently I am also a board member of Pollinator Friendly Alliance, a conservation organization that works on using native plants to restore land, creating healthy habitats for invertebrates, birds, and other wildlife.

Research has reported that some species of pollinators and birds have been declining as the ubiquitous use of pesticides has increased in the last 2 decades. The use of pesticide treated seeds in rural landscapes has led to chemical contamination of soils, drinking water and aquatic habitats as well as causing illness in humans and wildlife.

Wildlife and human health effects associated with neonicotinoid pesticides:

https://ntp.niehs.nih.gov/ntp/results/pubs/rr/reports/rr15_508.pdf

Effects of neonicotinoid insecticides on white-tailed deer:

<http://www.pbs.org/newshour/health/safety-concerns-mount-over-neonicotinoid-pesticides-in-unexpected-places>

I wish to address some portions of the MPCA Proposed Amendment to Rules Governing Waste Treated Seeds(WTS).

Prohibitions for burial of WTS.

If WTS is buried on private property it may contaminate the soil, ground or surface water or be carried to adjacent waterways or properties. The neonicotinoids (neonics) are the most commonly used chemicals used to coat corn, soybeans and wheat seeds, but as much as 90% are not absorbed by the plants and have been frequently documented ending up in the soil and water.

MPCA acknowledges that burial of WTS is the least preferred option, and in MN, neonics are a “surface water pesticide of concern”.

<https://www.mda.state.us/surface-water-pesticide-concern>

Since MPCA uses 1000 ft as the distance required to prevent the spread of neonics used near water, therefore WTS must be buried at least 1000’ from any private wells used for drinking water for humans or animals. In addition, there should be specific clarification of where setback begins and ends for burial on wellhead protection areas.

WTS should never be buried or disposed of in geologically sensitive karst or aquatic habitats such as wetlands, floodplains, or shorelands to prevent any wildlife poisoning, contamination from runoff, or groundwater infiltration.

Kuechle, K.J. et al. Seed treatments containing neonicotinoids and fungicides reduce aquatic insect richness and abundance in midwestern USA-managed floodplain wetlands. Environ Sci Pollut Res 29, 45261-45275 (2022).

<https://doi.org/10.1007/s11356-022-18991-9>

Due to unregulated dumping of WTS on the grounds of at the AltEn Ethanol Plant in Mead, NB in 2021, there were gaseous explosions causing major contamination of the soil, water and air for miles around the plant. In addition, 20 honey bee research hives within 1 mile of the ethanol plant was destroyed. Although mitigation began, there was a 2nd incident that year, and after 4 years of mitigation the plant closed. **MN cannot risk such degradation of our soil, water and wildlife.**

Ethanol from treated seed pollutes Mead, Nebraska:

<https://www.theguardian.com/us-news/2021/jan/10/mead-nebraska-ethanol-plant-pollution-danger>

Therefore, there must be specific allowances for concentrations of seed per acre in order to determine the appropriate scale for WTS disposal in any given facility, and WTS should not be legally used as management options in ethanol production or other fermentation.

There are no current requirements for the labeling of bags of treated seed. The MDA and MPCA should develop clear and consistent labels for proper disposal requirements.

If water is used to rinse out the seed packages, it should not be applied to crops because the rinse water is also potentially toxic to wildlife.

In typical planting operations, there are often leftover and/or spilled seeds, which if eaten by birds or other wildlife may be toxic.

Roy CL, et al. Multi-scale availability of neonicotinoid-treated seed for wildlife in an agricultural landscape during spring planting. Sci Total Environ. 2019 Sep 10; 682:271-281. doi:10.1016/j.scitotenv.2019.05.010

Any leftover or spilled treated seeds should be defined as WTS and never be allowed to remain in place, nor be scattered in Wildlife Management Areas as has frequently been done as food for deer. Research in 2019 discovered neonics in 61 % of 799 deer spleens turned in by hunters from across MN.

As long as WTS is classified as industrial solid waste, it must be only be sent to facilities designed with liners for leachate management in order to prevent soil and groundwater contamination.

If there are scheduled pickups of solid waste, with “reasonable access for farm operations”, it seems reasonable that WTS could be safely disposed of in this manner.

All WTS delivered to solid waste disposal facilities must be immediately and securely covered to prevent foraging by wildlife.

In addition, and due to the fact that the neonics and other chemicals may remain the soil for years, WTS should never be permitted in any composting facilities, including mixed municipal solid waste disposal sites.

Open burning of WTS should be prohibited on all public or private landscapes.

Thank you for your important work on this serious topic.

Sincerely,

Margot Monson, entomologist, beekeeper

22 Ludlow Ave

St. Paul, MN 55108

GISLASON & HUNTER LLP
ATTORNEYS AT LAW

Matthew C. Berger

Also admitted in Iowa

507-354-3111

mberger@gislason.com

February 14, 2025

VIA EMAIL ONLY

daniel.gonzalez@state.mn.us

Daniel Gonzalez
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

Re: Waste Treated Seeds – Public Data Request Under the Minnesota Data Practices Act, Minnesota Statutes §§ 13.01 *et seq.*
Our File No. 30970-10

I represent several organizations comprised of agricultural producers throughout Minnesota. On July 19, 2024, I submitted a request to the Minnesota Pollution Control Agency on behalf of these organizations requesting public data under the Minnesota Data Practices Act, Minnesota Statutes §§ 13.01 *et seq.*, related to the agency's regulation of waste treated seeds. After months of delay, the MPCA finally contacted my office (after multiple attempts from our office to contact the agency and get an update on the status of our request) with a request to discuss the scope of the requests. That discussion has occurred. But despite assurances that the MPCA was processing our requests and would be producing responsive data "soon," we have not yet received any data responsive to our request.

Our request was specifically prepared and submitted to obtain information that the organizations I represent intend to use in providing comments during this rulemaking process. And the request was submitted well in advance of the MPCA's publication of the proposed rules and this comment period in an effort to ensure that my clients would have the necessary information at the appropriate time. The agency's failure to timely respond to our request for public data hinders my clients' ability to fully evaluate and comment on the proposed rule. It is not appropriate for the MPCA to push forward with this rulemaking while, at the same time, continuing to withhold public data that is directly related to this rulemaking and that should have been provided to us months ago.

GISLASON & HUNTER LLP

Page 2

Daniel Gonzalez
Minnesota Pollution Control Agency
February 14, 2025

In light of the MPCA's failure to provide a meaningful and timely response to our request under the Minnesota Data Practices Act, I hereby request that the public comment period be extended, or that any public hearing on the proposed rules be delayed or extended, until after the agency fully responds to our information request. Public participation in this process is extremely important, and the agency's failure to timely provide the requested information is directly and negatively affecting the ability of my clients and their members to fully participate in the public comment and hearing process.

If the MPCA is not willing to voluntarily take these actions, we will consider alternative legal or administrative remedies to ensure that my clients and their members are able to exercise their legal rights to fully participate in this rulemaking process.

Thank you for your attention concerning this matter.

Very truly yours,



Matthew C. Berger

MCB:elm

cc: Office of Administrative Proceedings (*via the Rulemaking eComments website*)

RECEIVED

By: OAH on 1/29/2025

Exhibit I-3

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



Name:

Ross Hamre

Address:

24100 430th St SW

Beltrami, MN 56517

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



Name:

Lane Schwitters

Address:

4040 160th Ave SE

Raymond, MN 56282

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FEB 14 2025
Office of Administrative Hearings

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Signature: _____



Name: _____

Eric Wilson

Address: _____

85257 220TH ST

Renville MN 56284

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FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

RC

Ryan Carlson

1010 HWY 12 SE

Murdock MN, 56271

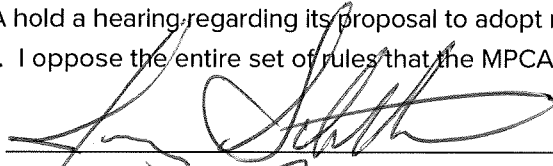
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FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____


TERRY SCHWITTERS
8065 120TH AVE SE
CLARA CITY, MN 56222

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: Drew Keeler

Name: Drew Keeler

Address: 380 Nathan LN
Chaplin, MN 55310

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: 

Name:

Ben Storm

Address:

1608 Co Rd 142 SE

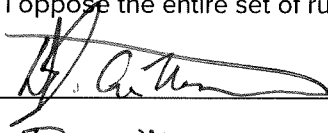
Dover, MN 55939

FEB 14 2025

Office of Administrative Hearings

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Signature:



RECEIVED

Name:

Doug Manson

FEB 14 2025

Address:

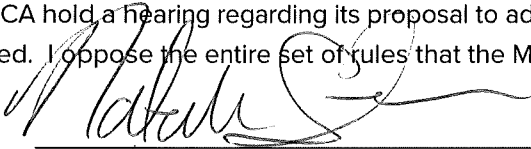
1020 Innovation Lane

Mankato, MN 56001

Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



Name:

Natalie Storm

Address:

1608 Co Rd 142 S

Dover, MN 55929

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FEB 14 2025

Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



Name:

BRIAN WERNER

Address:

200 UNIVERSITY Ave

#901

Minneapolis, MN 55414

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

RECEIVED

FEB 14 2025

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Signature: _____

Name: _____

Address: _____

Jim Kellogg

Jim Kellogg

17353 710th Ave

Taopi MN 55977

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

Tim A Warbel
Tim A Warbel
45438 541 St
Courtland, MN
56021

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FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Lauren E. Smith

Name: _____

Lauren Senouk

Address: _____

*50415 150th Street**Ostrander, MN 55964*

Office of Administrative Hearings

RECEIVED
FEB 14 2025

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Donna Nelson

Name: Donna Nelson

Address: Grove City, MN

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FEB 14 2025
Office of Administrative Hearings

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Signature: Dale Prokosch

Name: Dale Prokosch

Address: 81985 380th Street
Bird Island, MN 55310

RECEIVED
FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____



Jim O'CONNOR

15880 SE 74th AVE

Blooming Prairie, MN 55917

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

Chad Willis

Chad Willis

5231 Hwy 12 NE

Willmar, MN 56201

RECEIVED
FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____



Nathaniel Hultgren

11996 15th Ave SW

Raymond MN 56282

Office of Administrative Hearings

FEB 14 2025

RECEIVED

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Signature: _____

Name: _____

Address: _____

John H.

John Himle

13908 Emerald Ridge

Mnka, MN

Office of Administrative Hearings

FEB 14 2025

RECEIVED

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Signature: _____



Name: _____

DUANE EPLAND

Address: _____

107 MAIN ST. W

TWIN LAKES MN

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

[Handwritten Signature]

Andrew Mages

4411 17th St S

Moorhead MN 56560

Office of Administrative Hearings

FEB 14 2025

RECEIVED

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Signature: _____

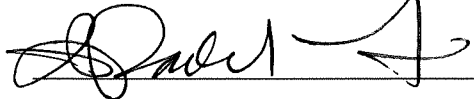
Name: _____

Address: _____

Kubow
Krisa Willis
5231 Hwy 12 NE
Willmar MN 56201


Office of Administrative Hearings
FEB 14 2025
RECEIVED

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Signature: 
Name: Rachel Arneson
Address: 505 4th Ave E
Halstad MN 56548

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: 
Name: Nathan Green
Address: 15162 Highway 66
St. Thomas, ND 58276

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:



Name:

Ross Pope

Address:

13285 State Hwy 220 NW
East Grand Forks MN 56721

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

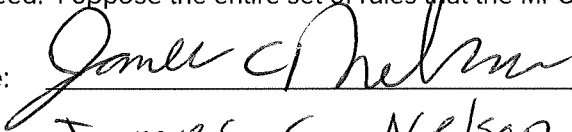
Address: _____

Jared Kover
29 Galen Ct NW
East Grand Forks MN 56720

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:



Name:

James C. Nelson

Address:

4567 70th Ave S
 Moorhead, MN 56560

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: Greg Cotton Greg Cotton

Name: Greg Cotton

Address: 304 163rd Ave SE
Hillsboro, ND 58045

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:



Name:

Harrison Weber

Address:

1401 32nd Street SW
Fargo, ND 58103

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____



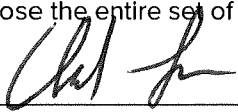
Name: _____

Wade Hanson

Address: _____

24274 280th St SW
Crookston, MN 56716Office of Administrative Hearings
FEB 14 2025
RECEIVED

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Signature: 

Name: Chad Larson

Address: 1302 22ND ST NW
East Grand Forks, MN 56721

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____



Name: _____

Austin Lessard

Address: _____

6668 148th Ave NE

Grafton, ND 58237

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:

Judy HaagRECEIVED
FEB 14 2025

Name:

Judy Haag

Office of Administrative Hearings

Address:

Eden Valley 55329

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Signature:

Dwight Dahlgren

Name:

Dwight Dahlgren

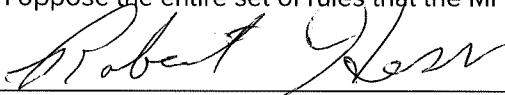
Address:

73328 190th StreetDassel, MN 55325cell612 201 7751

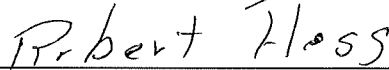
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FEB 14 2025
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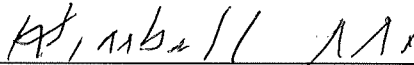
Signature: _____



Name: _____



Address: _____



Office of Administrative Hearings

RECEIVED
FEB 14 2025

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Signature: _____

Name: _____

Address: _____

John Adelopp
John Adelopp

8484 135th ST

Kimball MN 55353

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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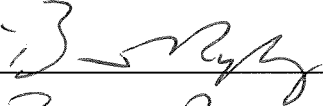
Signature: Dean E. Nelson
Name: Dean E. Nelson
Address: Grove City Mn. 56243

RECEIVED
FEB 14 2025

Office of Administrative Hearings

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Signature: _____



Name: _____

Brian Ryberg

Address: _____

16659 667th Ave

Buffalo Lake, MN 55314

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____

John F. Gruenes

Name: _____

Jack Gruenes

Address: _____

*Watkins, MN***RECEIVED**
FEB 14 2025
Office of Administrative Hearings

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Signature:

Bradley Minnick

Name:

BRADLEY MINNICK

Address:

COSMOS MNMeeker County

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: Russell M. Peterson
Name: Russ Peterson
Address: Grove City

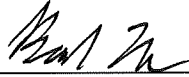
RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____



Name: _____

BRANDON FAST

Address: _____

600 2ND AVENUE

MT. LAKE MN 56159

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: Bruce Peterson

Name: Bruce Peterson

Address: Northfield MN

RECEIVED

FEB 14 2025

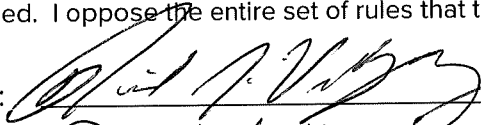
Administrative Hearings

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Signature: _____

Name: _____

Address: _____



David J. VanKloppersburg

2045 20th Ave SE

Montevideo, MN 56265

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature:



Name:

John Maggs

Address:

38268 Co Rd 175

Belgrade MN 56312

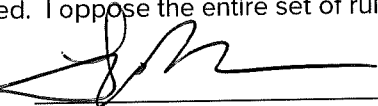
320 248 1908

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: 

Name:

Les Anderson

Address:

2700 200th
Cannon Falls MN

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____



RECEIVED

Name: _____

Angela Guentzel

FEB 14 2025

Address: _____

32172 490th St

Kasota MN 56050

Office of Administrative Hearings

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Signature: James Kanten

Name: James Kanten

Address: 6070 110th Ave NW
Milan, MN 56242

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

Dana Allen-Tully
Dana Allen-Tully
1007 Bush Court SW
Evota, MN 55934

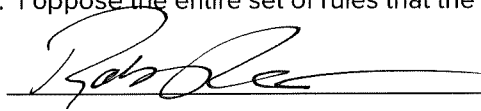
RECEIVED
FEB 14 2025
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Signature: _____

Name: _____

Address: _____



Rob Tate

4325 County 24 Blvd.

Cannon Falls, MN 55009

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature:

Bryan Biegler

Name:

Bryan Biegler

Address:

718 151st St.Lake Wilson, MN 56151

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature:

Wesley A. Bedt

Name:

Wesley A. Bedt

Address:

73780 270thStreetSt. James MN 56081

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

Jordan Geblish
30427 Cty Hwy 10
Vesta, MN 56292

RECEIVED
FEB 14 2025
Office of Administrative Hearings

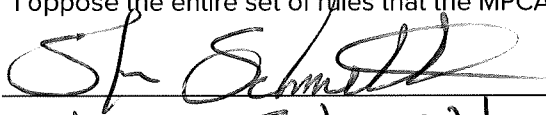
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Signature: Douglas Scheibe
Name: Douglas Scheibe
Address: 76904 US Hwy 71
Olivia MN 56277
dscheibe/66@gmail.com
320 295-6040

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:



Name:

Steve Schmitt

Address:

PO BOX 240

Eden Valley Mn 55329

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: Janice Peterson

Name: Janice Peterson

Address: 82641 130th St
Sacred Heart
MN 56085

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____



Name: _____

Gregg Muehler

Address: _____

4403 Blue Stem Way

Moorhead, MN 56560

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: Tom Haag

Name: TOM HAAG

Address: 16849 Camelot Ln
Elk Valley MN 55329

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Myron D. Petru

Name: _____

Myron D. Petru

Address: _____

*82641 130th St**Sacred Heart Mn 56285*

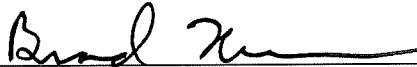
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Signature:



Name:

Brad Neumann

Address:

29175 230th Street

Wabasso, MN 56293

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature:

Ed Markowitz Jr

Name:

Ed Markowitz Jr

Address:

Litchfield, Mn

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____



Name: _____

Brent Baldwin

Address: _____

8244 144th Ave NE

St. Thomas ND 58274

RECEIVED

FEB 14 2025

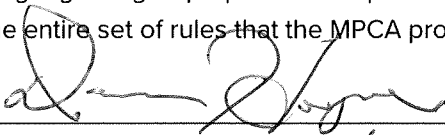
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Signature: _____

Name: _____

Address: _____



DARREN Hognme

321 Elm St.

KANDREW

RECEIVED

2051

FEB 14 2025

Office of Administrative Hearings

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Signature: _____



Name: _____

Andrew Ruden

Address: _____

81570 County Road 22


Hector, MN 55342

RECEIVED

FEB 14 2025

Public Hearings

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Signature: 

Name:

Grant Ascherman

RECEIVED

Address:

640 Hwy 59 NW

Holloway, MN 56249

FEB 14 2025

Office of Administrative Hearings

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Signature: Ben Larson

Name: Ben Larson

Address: 35781 State Hwy 220 S
Climax, MN 56523

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: Name: Bill LaPlanteAddress: Litchfield MN

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature:



Name:

Pat Sullivan

RECEIVED

Address:


66561 Co Rd 5

FEB 14 2025

Franklin mn 55337

Office of Administrative Hearings

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Signature:  RECEIVED

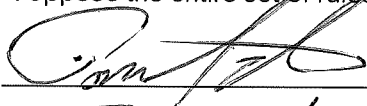
Name: GARY DONKERS FEB 14 2025

Address: 8384 230th STE Office of Administrative Hearings

FARIBAULT MN 55021

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



RECEIVED

Name:

Tom Frisch

FEB 14 2025

Address:

P.O. Box 145

Administrative Hearings

Dumont, mn 56236

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Robert Lindeman RECEIVED
Name: Robert Lindeman FEB 14 2025
Address: 15172 30th St Office of Administrative Hearings
Brownston Mn 55312

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____

Name: _____

Address: _____

RECEIVED
RECEIVED

FEB 14 2025
FEB 14 2025

Office of Administrative Hearings
Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____

Name: _____

Address: _____

RECEIVED

FEB 14 2025

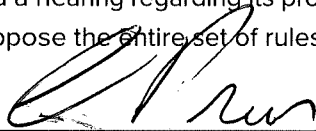
Office of Administrative Hearings

15452 140th St NE

Thief River Falls, MN 56701

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____



RECEIVED

Name: _____

Corey Prins

FEB 14 2025

Address: _____

227 Savannah Heights Blvd
Lynd, MN 56157

MPCA Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:

Rodd Beyer

RECEIVED

Name:

Rodd Beyer

FEB 14 2025

Address:

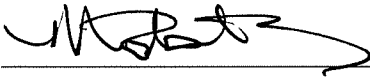
406 10th St N

Wheaton, MN 56296

Office of Administrative Hearings

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Signature: _____



RECEIVED

Name: _____

Mark Roberts

FEB 14 2025

Address: _____

1020 Innovation Lane - Administrative Hearings

Marketo M. School

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:

Rose Wendinger

RECEIVED

Name:

Rose Wendinger

FEB 14 2025

Address:

36399 720th Ave

St. James, MN

ative Hearings

56081

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Andrew Karan RECEIVED
Name: Andrew Karan FEB 14 2025
Address: 36399 720th Ave
Saint James, MN 56081

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:

Theresa D Gillie

Name:

THERESIA GILLIE

Address:

2573 290th AveHallock MN 56728

RECEIVED

FEB 14 2025

Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Scott Miller

Name: Scott Miller

Address: 46226 Jefferson Shore Dr.

Cleveland, MN 55017

Office of Administrative Hearings

RECEIVED FEB 14 2025

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Rebecca Sip RECEIVED

Name: Rebecca Sip

Address: 2718 Co. Hwy. 19 FEB 14 2025

Ada, MN 56510 Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____

Richard Lambert

Name: _____

Richard Lambert

Address: _____

*2926 300th Ave**Hollock, MN 56228*

Office

Administrative Hearings

RECEIVED

FEB 14 2025

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____



RECEIVED

Name: _____

DREW LYON

FEB 14 2025

Address: _____

1112 N. 4th St

Office of Administrative Hearings

MAKATO, MIN 56001

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Tom Donnay

Name: Tom Donnay

Address: Watkins

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: Karen Kohl

Name: Karen Kohl

Address: Litchfield MA

Office of Administrative Hearings

RECEIVED

FEB 14 2025

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Signature: Frank F Marshall

Name: Frank F Marshall

Address: Grove City, MN

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature:



Name:

Lance Piepenburg

RECEIVED

Address:

29856 CSAH 31

FEB 14 2025

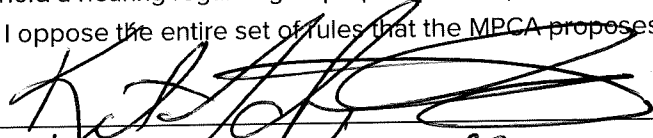
Litchfield 55355

Office of Administrative Hearings

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Signature: John Hultersturm RECEIVED
Name: John Hultersturm
Address: 22366 640th Ave FEB 14 2025
Litchfield, MN 55355 Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Name: Kurt SchimekAddress: 71002 CSA #21

RECEIVED

FEB 14 2025

Administrative Hearings

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Signature:

Roland A. Heid

Name:

Roland HEID

Address:

DASSELRECEIVEDFEB 14 2025Office of Administrative Hearings

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Signature: Tamilee Adolph

Name: Tamilee Adolph

Address: Kimball, MN 55353

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

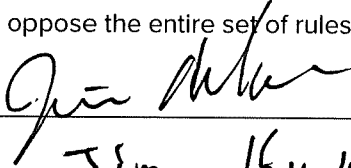
Office of Administrative Hearings

FEB 14 2025

RECEIVED

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Signature:



Name:

Jim Kurowski

Address:

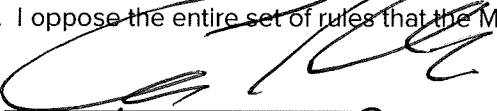
17485 Co Rd. 6

Strathcona MN 56759

218 689 3663

RECEIVED
FEB 14 2025
Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: 

Name:

Andrew Palk

Address:

11827 220th Ave

Strathcona MN

56259

RECEIVED

FEB 14 2025

Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Joel Schreurs
Name: Joel Schreurs RECEIVED
Address: 2157 City Hwy 8 FEB 14 2025
Tyler Mn. 56178
Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.


Signature: Mike Skang RECEIVED
Name: Mike Skang FEB 14 2025
Address: 21498 420th St. SW
Beltrami Mn
56517
Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____

Name: _____

Address: _____


Ryan Mackenthun
11564 Nickel Ave
Brownton, MN 55312

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

Darin Johnson
14412 550th Ave
Wells, MN 56097

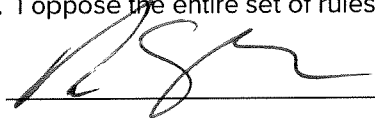
Office of Administrative Hearings
FEB 14 2025
RECEIVED

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Signature: _____

Name: _____

Address: _____



Tom Slonecker

29240 General Trail

Madison Lake MN

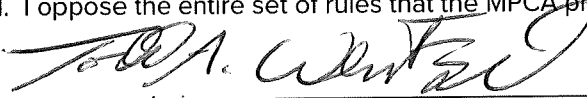
Office of Administrative Hearings
FEB 14 2025

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6

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



Name:

Todd A. Wentzel

Address:

1150 30th St SE

Murdock, MN 562

Office of Administrative Hearings

FEB 14 2025

REC

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:

Name:

Address:

Justin Remus

26240 205th Ave
New Ulm, MN 56073

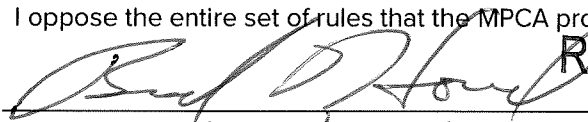
Office of Administrative Hearings

FEB 14 2025

RECEIVED

FIVE

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:  RECEIVED

Name: Brad Hovel FEB 14 2025

Address: 34440 Co 25th Office of Administrative Hearings
Cannon Falls, MN 55809

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:

Robert Worth

Name:

Robert Worth

Address:

408 So Fremont StLake Benton mn 56149RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

Joseph Smerka

105 Eginton Rd

Mankato MN

56001

RECEIVED
FEB 14 2025

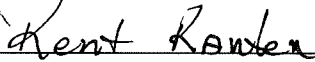
Office of Administrative Hearings

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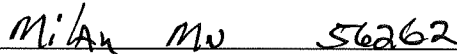
Signature: _____



Name: _____



Address: _____



RECEIVED

FEB 14 2025

Initiative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Robert E. Wehse

Name: Robert E. Wehse

Address: 1173 28th Ave

Westbrook Inn 56187

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____

Name: _____

Address: _____

RECEIVED**FEB 14 2025**_____
of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____

Name: _____

Address: _____

John Swanson

John Swanson

13818 Elmer Harris Dr
Mentor Mn 56736

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: _____



RECEIVED

Name: _____

James Johstad

FEB 14 2025

Address: _____

24529 440th ST SE
Belknap MN 56517
Office of Administrative Hearings

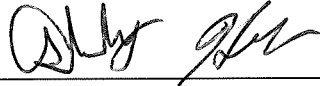
Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Sara Wynia
Name: Sara Wynia
Address: 1850 121st St
Slayton, MN 56172

RECEIVED
FEB 14 2025

Office of Administrative Hearings

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Signature: 

Name: Ashley Hahn

Address: 65679 24th St
Litchfield MN 55355

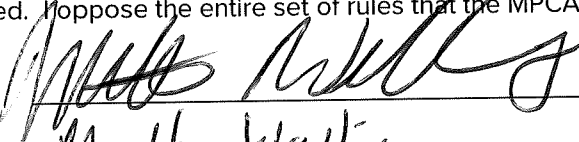
RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:

Name:

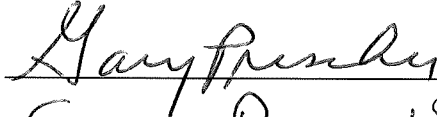
Address:


Matt Welling
39342 CSAH 2S
Paynesville, MN 56362

RECEIVED
FEB 14 2025
Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature:



Name:

Gary Prescher

Address:

56924 108th Street
Wells, MN 56097

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature: _____

Ruby Moe

Name: _____

Rodney Moe

Address: _____

*58292 330 St.**WALTON, MN**55982*

RECEIVED

FEB 14 2025

Office of Administrative Hearings

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____



RECEIVED

Name: _____

Daniel Gerlach

FEB 14 2025

Address: _____

15241 540th Ave

Office of Administrative Hearings

Austin MN 55912

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Alan G Adams RECEIVED
Name: Alan G Adams FEB 14 2025
Address: 57772 110 TH ST Office of Administrative Hearings
Cosmos MN 56228

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: Douglas Adams

Name: _____

Address: Cosmos

RECEIVED
FEB 14 2025
Office of Administrative Hearings

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Signature:



RECEIVED

Name:

Thomas Schmitt

FEB 14 2025


Address:

37238 MN Hwy 22

Office of Administrative Hearings

Eden Valley, MN 55329

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Signature: 

Name: Kevin Libbesmeier

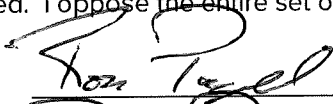
Address: 2567 140TH ST
WATKINS MN 55389

RECEIVED
314 2025

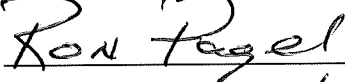
ive Hearings

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Signature:



Name:



Address:



RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: Eliot A. Brenick

Name: Eliot A. Brenick

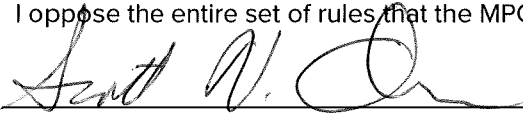
Address: Litchfield, MN

RECEIVED

FEB 14 2025

Office of Administrative Hearings

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Signature: 

Name: Scott V. Olson

Address: Litchfield, MN

RECEIVED

FEB 14 2025

Office of Administrative Hearings

RECEIVED

By: OAH on 1/29/2025

Exhibit I-3

Pursuant to the Dual Notice of Intent to Adopt Rules that the Minnesota Pollution Control Agency published in the *State Register* on December 30, 2024, I request that the MPCA hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed. I oppose the entire set of rules that the MPCA proposes to adopt.

Signature: _____



Name: _____

Ross Hamre

Address: _____

24100 430th St SW

Beltrami, MN 56517

- J. If the Chief Judge has authorized the agency to omit from the Notice of Hearing published in the State Register the text of any proposed rule, a copy of the document authorizing the omission
 - a. Not Applicable

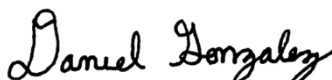
- K. Any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting this rule:
- a. K-1: Certificate of Sending the Notice and the Statement of Need and Reasonableness to Legislators and the Legislative Coordinating Commission.
 - b. K-2: Certificate of Sending the Proposed Rules to the Commissioner of the Minnesota Department of Agriculture.
 - c. K-3: Certificate of Consulting with Minnesota Management and Budget in Compliance with Minnesota Statutes, Section 14.131.
 - d. K-4: Certificate of Consulting with Minnesota Department of Agriculture and the University of Minnesota.
 - e. K-5: Letter sent to the Office of Administrative Hearings Requesting a Hearing after receiving more than 25 requests for hearing

Minnesota Pollution Control Agency

**CERTIFICATE OF SENDING THE NOTICE AND THE STATEMENT OF NEED
AND REASONABLENESS TO LEGISLATORS AND THE LEGISLATIVE
COORDINATING COMMISSION**

**Proposed Rules Governing Waste Treated Seed, Minnesota Rules,
Revisor's ID Number 04806**

I certify that on December 30, 2024, when the Department mailed Notice of Intent to Adopt Rules under Minnesota Statutes, section 14.14 or 14.22, I sent a copy of the Notice and the Statement of Need and Reasonableness to certain Legislators and the Legislative Coordinating Commission by sending an electronic copy via email. I mailed these documents to comply with Minnesota Statutes, section 14.116. A copy of the cover letter is attached to this Certificate.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Daniel Gonzalez
Rule Coordinator

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
Cc: [Johnson, Tom \(MPCA\)](#); lcc@lcc.mn.gov
Bcc: rep.samantha.yang@house.mn.gov; rep.paul.anderson@house.mn.gov; rep.rick.hansen@house.mn.gov; rep.josh.heintzeman@house.mn.gov; sen.aric.putnam@senate.mn; sen.torrey.westrom@senate.mn; sen.foung.hawj@senate.mn; sen.justin.eichorn@senate.mn
Subject: FW: Dual notice of intent to adopt rules — Waste treated seed disposal rule
Date: Monday, December 30, 2024 1:47:00 PM
Attachments: [leg.pdf](#)
[sw-rule3-02f.pdf](#)
[sw-rule3-02g.pdf](#)
[sw-rule3-02e.pdf](#)
[image001.png](#)

Good afternoon,

Please see the notice (below) and attachments regarding Proposed Amendments to MPCA Rules Governing Waste Treated Seed – Waste Treated Seed Disposal Rule; Revisor's ID Number Revisor's ID Number R-4806; OAH Docket No. 23-9003-39350. Please feel free to reach out to me with any questions you may have.

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



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From: Minnesota Pollution Control Agency <mpca@public.govdelivery.com>

Sent: Monday, December 30, 2024 10:31 AM

To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>

Subject: Dual notice of intent to adopt rules — Waste treated seed disposal rule

Minnesota Pollution Control Agency logo on white background



Proposed rules



Dual notice of intent to adopt rules — Waste treated seed disposal rule

Dec. 30, 2024

MPCA's legal notice of its intent to waste treated seed disposal rules

The Minnesota Pollution Control Agency (MPCA) has issued a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID R-04806, OAH docket number 23-9003-39350, for the Waste Treated Seed Disposal rulemaking:

- Proposed Amendment to Minnesota Rules, chapters 7035 and 7045

The MPCA published this notice in the Dec. 30, 2024, edition of the [State Register](#). The notice is also available on the MPCA's website: [Waste Treated Seed Rule](#).

What this means

The MPCA is proposing small, noncontroversial 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 seed in a fact sheet on our website, first published in April 2022, and revised in Dec. 2023.

The MPCA does not believe that the proposed amendments make substantial changes or impose significant new requirements. The MPCA established the need for each of the existing requirements here collated and clarified at the time it

originally adopted or significantly amended the rules, and no further justification is necessary.

Next steps

As a result of this notice, a new comment period has opened. You can submit your questions, comments, and feedback on the proposed rule to the administrative law judge (ALJ) assigned to this rulemaking. You can also submit a request for a hearing as part of your comment or separately. Please submit your written comments to the ALJ online, using the Office of Administrative Hearings' [rulemaking e-comments website](#).

The comment period and the opportunity to request a hearing closes at 4:30 p.m. on Feb. 14, 2025.

[Comment here!](#)

You can find more information on this rulemaking at the [Waste treated seed disposal rule webpage](#).

The Minnesota Pollution Control Agency is a state agency committed to ensuring that every Minnesotan has healthy air, sustainable lands, clean water, and a better climate.

MPCA logo



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Certificate of Sending the Proposed Rule to the Commissioner of the Minnesota Department of Agriculture

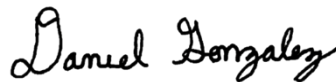
Minnesota Pollution Control Agency

Division of Resource Management

**Proposed Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045;
Revisor's ID Number 04806**

I certify that on December 5, 2024, at St. Paul, Ramsey County, Minnesota, I gave notice to the Commissioner of the Minnesota Department of Agriculture regarding the upcoming Dual Notice of Intent to Adopt Rules Without a Public Hearing for the Waste Treated Seed Rule. I accomplished this by, sending an emailed addressed to Doug Spanier of the Minnesota Department of Agriculture, accompanied by the Revisor's certified copy of the proposed Waste Treated Seed Rule.

A copy of the email is attached to this Certificate.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style with a horizontal line underneath it.

Daniel Gonzalez
Rule Coordinator

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Spanier, Doug \(MDA\)](#)
Subject: Waste Treated Seed Rule - R-04806
Date: Thursday, December 5, 2024 11:14:00 AM
Attachments: [RD4806 - Waste Treated Seed.pdf](#)
[image001.png](#)

Hi Doug,

The MPCA is notifying the Department of Agriculture Commissioner of rulemaking that may affect farming operations. The MPCA intends to submit a Dual Notice of Intent to Adopt Rules Without a Public Hearing for the Waste Treated Seed Rule this month. Attached is the Waste Treated Seed Rule text. I am happy to answer any questions you may have. Thank you!

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

Minnesota Pollution Control Agency**Proposed Permanent Rules Relating to Waste Treated Seeds****7035.0300 DEFINITIONS.**

Subpart 1. **Scope.** As used in parts 7035.0300 to 7035.2915 and 7035.3700, the following terms have the meanings given them in this part.

[For text of subparts 2 and 3, see Minnesota Rules]

Subp. 3a. **Agricultural products.** "Agricultural products" has the meaning given in Minnesota Statutes, section 273.13, subdivision 23, paragraph (i).

[For text of subparts 4 to 16, see Minnesota Rules]

Subp. 17. **Community water supply.** "Community water supply" has the meaning given it "community water system" in part 4720.0100 4725.0100, subpart 23a.

[For text of subparts 18 to 37, see Minnesota Rules]

Subp. 37a. **Farming.** "Farming" means producing agricultural products. Farming does not include:

A. processing, refining, packaging, or transporting agricultural products; or

B. providing spraying or harvesting services for agricultural products.

[For text of subparts 38 to 65, see Minnesota Rules]

Subp. 66. **Monitoring well.** ~~"Monitoring well" has the meaning given it in part 4725.0100, subpart 30a~~ means an excavation of any depth that otherwise meets the definition given "environmental well" in Minnesota Statutes, section 103I.005, subdivision 8a.

[For text of subparts 67 to 85, see Minnesota Rules]

Subp. 86. **Public water supply.** "Public water supply" has the meaning given "public water system" in part 4720.0100 4725.0100, subpart 37b.

[For text of subparts 87 to 98, see Minnesota Rules]

Subp. 98a. **Shoreland.** "Shoreland" has the meaning given in part 6120.2500, subpart 15.

[For text of subparts 99 to 105, see Minnesota Rules]

Subp. 105a. **Source-separated organic material.**

[For text of items A and B, see Minnesota Rules]

C. Source-separated organic material does not include:

(1) septage; ~~or~~

(2) sewage sludge, as defined in part 7041.0100, subpart 49; or

(3) waste treated seed.

[For text of subparts 105b to 108, see Minnesota Rules]

Subp. 108a. **Surface water or surface waters.** "Surface water" or "surface waters" has the meaning given "surface waters" in part 7050.0130, subpart 6.

[For text of subparts 109 to 111d, see Minnesota Rules]

Subp. 111e. **Treated seed.** "Treated seed" means seed that is treated, as defined in Minnesota Statutes, section 21.81, subdivision 28.

[For text of subparts 112 to 116, see Minnesota Rules]

Subp. 116a. **Waste treated seed.** "Waste treated seed" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 37a. Waste treated seed includes treated seed that will not be planted for the purpose of growing live plants in accordance with the instructions on the treated seed container label. Treated seed planted for the purpose of growing live plants in accordance with the instructions on the treated seed container label is not waste treated seed.

3.1 *[For text of subpart 117, see Minnesota Rules]*

3.2 Subp. 117a. **Water-supply well.** "Water-supply well" has the meaning given in part
3.3 4725.0100, subpart 50a.

3.4 *[For text of subparts 118 to 121, see Minnesota Rules]*

3.5 **7035.2525 SOLID WASTE MANAGEMENT FACILITIES GOVERNED.**

3.6 *[For text of subpart 1, see Minnesota Rules]*

3.7 Subp. 2. **Exceptions.** Parts 7035.2525 to 7035.2915 do not apply to the following
3.8 solid waste management facilities or persons, except as indicated:

3.9 A. backyard compost sites must comply with only part 7035.2836, subpart 5, item
3.10 M;

3.11 *[For text of items B to K, see Minnesota Rules]*

3.12 L. small compost sites must ~~only~~ comply with only parts 7035.2535, subpart 1,
3.13 items A to E; 7035.2555; ~~and~~ 7035.2565; and 7035.2836, subpart 5, item M.

3.14 **7035.2535 GENERAL SOLID WASTE MANAGEMENT FACILITY**
3.15 **REQUIREMENTS.**

3.16 *[For text of subparts 1 to 4, see Minnesota Rules]*

3.17 Subp. 5. **Industrial solid waste management.** All industrial solid waste delivered to
3.18 a solid waste management facility must be managed by the owner or operator to protect
3.19 human health and the environment. The industrial solid waste management plan required
3.20 under part 7001.3300 must address items A to C, except that the industrial solid waste
3.21 management plan for a municipal solid waste combustor ash land disposal facility need not
3.22 comply with items B and C.

3.23 *[For text of item A, see Minnesota Rules]*

4.1 B. The plan must address how the following categories of waste will be managed
4.2 to comply with the requirements of item A, subitems (2) to (4), and, for waste treated seed
4.3 under subitem (13), with part 7035.3700:

4.4 *[For text of subitems (1) to (11), see Minnesota Rules]*

4.5 (12) spent activated carbon filters; ~~and~~

4.6 (13) waste treated seed; and

4.7 ~~(13)~~ (14) any other wastes that can be identified.

4.8 *[For text of items C to E, see Minnesota Rules]*

4.9 *[For text of subpart 6, see Minnesota Rules]*

4.10 **7035.2815 MIXED MUNICIPAL SOLID WASTE LAND DISPOSAL FACILITIES.**

4.11 *[For text of subparts 1 to 5, see Minnesota Rules]*

4.12 Subp. 6. **Intermittent, intermediate, and final cover system.** The owner or operator
4.13 of a mixed municipal solid waste land disposal facility must design and maintain a cover
4.14 system capable of minimizing infiltration of precipitation into the fill areas, preventing
4.15 surface water ponding on fill areas, controlling gas movement, preventing erosion of surface
4.16 and side slopes, reducing wind erosion and wind blown litter, minimizing the creation and
4.17 movement of dust, retaining slope stability, reducing effects of freeze-thaw and other weather
4.18 conditions, maintaining vegetative growth while minimizing root penetration of the low
4.19 permeability cover layer, and discouraging vector and burrowing animal intrusion into the
4.20 site. A complete cover system must consist of intermittent, intermediate, and final covers
4.21 as outlined in items A to E.

4.22 A. The owner or operator must place an intermittent cover upon all exposed solid
4.23 waste in accordance with the approved operation and maintenance manual for the site. The
4.24 owner or operator shall submit to the commissioner for approval a proposed cover system

that addresses the frequency and depth of placement and the material to be used as cover. The frequency of placement may be no less than once per week, except that waste treated seed must be covered immediately after being placed on the working face. The cover depth must be sufficient to cover the waste completely and must be at least six inches if soil or similar material is used. The commissioner, in approving the proposed cover system, must consider the characteristics of the proposed cover material, the characteristics of the solid waste, the leaching potential of the solid waste, the design and operation of the facility, and the potential for nuisance conditions if other than daily cover is proposed.

[For text of items B to E, see Minnesota Rules]

[For text of subparts 7 to 10, see Minnesota Rules]

Subp. 11. **Gas monitoring, collection, and treatment system.** The concentration of any explosive gas must not exceed its lower explosion limit at the property boundary or 25 percent of its lower explosion limit in and around facility structures or any other on-site monitoring point. A gas monitoring, collection, and treatment system must be designed to meet the requirements of items A to G.

[For text of items A to E, see Minnesota Rules]

F. The size of the gas collection system must be based on the volume and type of waste to be received at the site.

(1) The owner or operator must determine the need for a gas collection system and discuss in the engineering report how the need was determined. The commissioner shall review the determination during the permit review process and again at closure. Approval of a gas monitoring system without collection at the time of permitting shall not limit future requirements determined necessary by the commissioner based on the volume of gas generated at the facility, the proximity to residential or business property, or problems

experienced at the facility in maintaining vegetative growth or accumulation of gas in site structures.

(2) If waste treated seed is accepted at the facility, the operator must determine the maximum volume of waste treated seed that the facility can accept daily based on the size of the gas collection system.

[For text of item G, see Minnesota Rules]

[For text of subpart 12, see Minnesota Rules]

Subp. 13. **Operation and maintenance requirements.** A mixed municipal solid waste land disposal facility must be operated by a certified operator, as defined in parts 7048.0100 to 7048.1300. A certified operator must be present during the time that the facility is open to accept waste. The facility operations must meet the requirements of items A to W, at a minimum.

A. Solid waste must be spread and compacted in layers two feet or less in depth. When waste treated seed is placed on the working face, the operator must spread the waste treated seed across the working face to maintain slope stability and minimize localized settlement.

[For text of items B to W, see Minnesota Rules]

[For text of subparts 14 to 16, see Minnesota Rules]

7035.2836 COMPOST FACILITIES.

[For text of subparts 1 to 4, see Minnesota Rules]

Subp. 5. **Operation requirements for solid waste compost facility.** The owner or operator of a compost facility shall submit an operation and maintenance manual to the commissioner for approval with the facility permit application. The manual must include a

personnel training program plan, a leachate management plan, and a compost sampling plan and must comply with the operation requirements in items A to ~~L~~ M.

[For text of items A to L, see Minnesota Rules]

M. Waste treated seed must not be composted.

[For text of subparts 6 to 11, see Minnesota Rules]

7035.3700 WASTE TREATED SEED.

Subpart 1. Scope. This part applies to any person managing waste treated seed, including persons who own or operate land used for farming, dealers and other sellers of treated seed, owners or operators of a solid waste management facility, and any other person disposing of waste treated seed.

Subp. 2. Status. Waste treated seed managed as specified in this part is industrial solid waste. When managed as specified in this part, waste treated seed is exempt from the requirements of chapter 7045. Discarded containers that held treated seed are mixed municipal solid waste.

Subp. 3. Requirements. Waste treated seed must be managed in compliance with this part and with:

A. Minnesota Statutes, section 18B.075, which relates to pesticide-treated seed;

B. Minnesota Statutes, section 21.86, subdivision 2, paragraph (h), which relates to seeds treated with neonicotinoid pesticide; and

C. Minnesota Statutes, section 115A.993, which relates to prohibited disposal methods.

Subp. 4. Prohibitions. Waste treated seed must not be:

A. disposed of by burial, except:

8.1 (1) at a mixed municipal solid waste land disposal facility under part
8.2 7035.2815;

8.3 (2) at a land disposal facility with a liner and a leachate management system
8.4 that has been approved by the commissioner to accept waste treated seed. Land disposal
8.5 facilities accepting waste treated seed under this subitem must comply with part 7035.2815,
8.6 subparts 6, 11, and 13; or

8.7 (3) by a person who owns or operates land used for farming, if the waste
8.8 treated seed is generated as part of that person's farming operation and is buried on the land
8.9 used for farming in a nuisance-free, pollution-free, and aesthetic manner. This subitem does
8.10 not apply if regularly scheduled pickup of solid waste is reasonably available at the person's
8.11 farm, as determined by resolution of the county board of the county where the land used
8.12 for farming is located. Burial under this subitem must:

8.13 (a) be located more than 200 feet from any water-supply well used for
8.14 human or animal drinking water and be more than 1,000 feet from any public water supply;

8.15 (b) not be on land that is karst;

8.16 (c) not be within a wetland, floodplain, or shoreland;

8.17 (d) be no deeper than five feet above the water table;

8.18 (e) be deep enough or sufficiently backfilled to provide final cover of at
8.19 least two feet of soil, with the top foot capable of sustaining vegetative growth; and

8.20 (f) have the final cover contoured and sloped consistent with the planned
8.21 ultimate use of the burial location, to divert surface water drainage around and away from
8.22 the burial location and to prevent erosion, with a minimum two percent and maximum 20
8.23 percent slope;

9.1 B. burned, except in an energy recovery facility that is issued an air quality permit
9.2 by the commissioner to burn:

9.3 (1) industrial solid waste that is explicitly identified in the permit to be or to
9.4 include waste treated seed;

9.5 (2) mixed municipal solid waste; or

9.6 (3) refused-derived fuel prepared from mixed municipal solid waste;

9.7 C. composted;

9.8 D. used, donated, sold, or offered for human food;

9.9 E. used, donated, sold, or offered for animal feed, such as feed for livestock,
9.10 poultry, or wildlife; or

9.11 F. used, donated, sold, or offered for oil processing or for fuel or fuel production,
9.12 except as allowed in item B.

9.13 Subp. 5. **Preemption.** Unless explicitly superseded by controlling federal law,
9.14 instructions on treated seed container labels relating to disposition or disposal of waste
9.15 treated seed or disposition or disposal of treated seed containers do not preempt the
9.16 requirements of this part.

9.17 Subp. 6. **Regulatory jurisdiction.**

9.18 A. The agency has jurisdiction to implement and enforce this part, chapter 7035,
9.19 and chapter 7045.

9.20 B. The Department of Agriculture has jurisdiction to implement and enforce
9.21 chapter 1505 and Minnesota Statutes, chapters 18B and 21, including requirements for
9.22 registration and use of pesticides used to treat seeds and labeling of treated seed containers.

C. Local units of government that have entered into delegation agreements with the Department of Agriculture under parts 1505.4000 to 1505.4130 have jurisdiction to enforce requirements of the Department of Agriculture that are specified in their respective delegation agreements.

D. Local units of government have jurisdiction to regulate management of industrial solid waste and mixed municipal solid waste as specified in their respective solid waste ordinances, as provided in Minnesota Statutes, chapters 115A, 400, and 473. Local regulation must be consistent with this part but may further restrict location or manner of waste treated seed burial.

7045.0020 DEFINITIONS.

[For text of subparts 1 to 58b, see Minnesota Rules]

Subp. 58c. **Monitoring well.** "Monitoring well" means an excavation of any depth that otherwise meets the definition given "environmental well" in Minnesota Statutes, section 103I.005, subdivision 8a.

[For text of subparts 59 to 82, see Minnesota Rules]

Subp. 83. **Shoreland.** "Shoreland" has the meaning given in Minnesota Statutes, section 103F.205, subdivision 4, and rules adopted pursuant to that section part 6120.2500, subpart 15.

[For text of subparts 84 to 88, see Minnesota Rules]

Subp. 88a. **Surface water or surface waters.** "Surface water" or "surface waters" has the meaning given "surface waters" in part 7050.0130, subpart 6.

[For text of subparts 89 to 96a, see Minnesota Rules]

Subp. 96b. **Treated seed.** "Treated seed" has the meaning given in part 7035.0300, subpart 111e.

11.1 [For text of subparts 97 to 102c, see Minnesota Rules]

11.2 Subp. 102d. **Waste treated seed.** "Waste treated seed" has the meaning given in part
11.3 7035.0300, subpart 116a.

11.4 [For text of subparts 103 to 105, see Minnesota Rules]

11.5 Subp. 105a. **Water-supply well.** "Water-supply well" has the meaning given in part
11.6 4725.0100, subpart 50a.

11.7 [For text of subparts 106 to 109, see Minnesota Rules]

11.8 **7045.0120 EXEMPTIONS AND SPECIAL REQUIREMENTS.**

11.9 [For text of subpart 1, see Minnesota Rules]

11.10 Subp. 2. **Special requirements.** The following waste is exempt from the general
11.11 requirements of this chapter if managed as specified:

11.12 [For text of items A to E, see Minnesota Rules]

11.13 F. universal waste managed under part 7045.1400; ~~and~~

11.14 G. hazardous waste containing radioactive waste when it meets the eligibility
11.15 criteria and conditions of Code of Federal Regulations, title 40, part 266, subpart N,
11.16 Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation
11.17 and Disposal, as amended. This exemption also pertains to:

11.18 (1) any mixture of a waste and an eligible radioactive mixed waste; and

11.19 (2) any waste generated from treating, storing, or disposing of an eligible
11.20 radioactive mixed waste.

11.21 Waste exempted under this item must meet the eligibility criteria and specified
11.22 conditions in Code of Federal Regulations, title 40, sections 266.225 and 266.230 (for
11.23 storage and treatment), as amended, and 266.310 and 266.315 (for transportation and

12.1 disposal), as amended. Waste that fails to satisfy these eligibility criteria and conditions is
12.2 regulated as hazardous waste~~;~~ and

12.3 H. waste treated seed and discarded containers that held treated seed, if the waste
12.4 treated seed and containers are managed under chapter 7035, including part 7035.3700.

12.5 **TERM CHANGE.** In Minnesota Rules, chapters 7035 and 7045, the terms "water supply
12.6 well" and "water supply wells" are changed to "water-supply well" and "water-supply wells,"
12.7 respectively.

12.8 **RENUMBERING INSTRUCTION.** In Minnesota Rules, part 7035.0300, the subparts
12.9 listed in column A are renumbered as the subparts listed in column B:

12.10	<u>Column A</u>	<u>Column B</u>
12.11	<u>Subpart 111a</u>	<u>Subpart 111f</u>
12.12	<u>Subpart 111b</u>	<u>Subpart 111g</u>
12.13	<u>Subpart 111c</u>	<u>Subpart 111h</u>
12.14	<u>Subpart 111d</u>	<u>Subpart 111i</u>

12.15 In Minnesota Rules, part 7045.0020, subpart 102c, is renumbered as subpart 102e.

Certificate of Consulting with Minnesota Management and Budget in Compliance with Minnesota Statutes, Section 14.131

Minnesota Pollution Control Agency

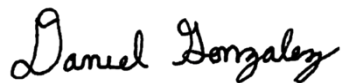
Division of Resource Management

**Proposed Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045;
Revisor's ID Number 04806**

I certify that on December 5, 2024, at St Paul, Ramsey County, Minnesota, I gave notice to the Commissioner of the Minnesota Management and Budget in compliance with Minnesota Statutes, section 14.131, by electronically mailing a letter with these documents:

1. The Governor's Office Proposed Rule and SONAR Form, signed by Commissioner Kessler.
2. The 12/05/24 Revisor's draft of the proposed rule.
3. The 12/05/24 SONAR draft.

A copy of the email is attached to this Certificate.

A handwritten signature in black ink that reads "Daniel Gonzalez". The signature is written in a cursive style with a horizontal line underneath it.

Daniel Gonzalez
Rule Coordinator

From: [Gonzalez, Daniel \(He/Him/His\) \(MPCA\)](#)
To: [Merz, Ryan \(MMB\)](#)
Subject: RE: Waste Treated Seed Rule - R-04806
Date: Monday, December 23, 2024 10:27:00 AM
Attachments: [image001.png](#)
[{CleanCopy}2ndGOForm\(AdministrativeRuleProposedRuleAndSONARForm\) c2411151.docx](#)
[10222024_DualNoticeForm1.docx](#)
[WasteTreatedSeedSONAR\(withoutText\).pdf](#)

Hi Ryan,

I apologize for these missed attachments. See attached for the SONAR and Governor's Office Form. Thank you!

From: Merz, Ryan (MMB) <Ryan.Merz@state.mn.us>
Sent: Monday, December 23, 2024 10:20 AM
To: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>
Subject: RE: Waste Treated Seed Rule - R-04806

Hi Daniel,

I am finally getting around to reviewing the request below. I am only seeing the proposed draft rules attached, not the SONAR draft or the SONAR forms. Are those other documents available? They are helpful in reviewing.

Ryan

From: Gonzalez, Daniel (He/Him/His) (MPCA) <Daniel.Gonzalez@state.mn.us>
Sent: Thursday, December 5, 2024 11:17 AM
To: Merz, Ryan (MMB) <Ryan.Merz@state.mn.us>
Subject: Waste Treated Seed Rule - R-04806

December 5th, 2024
 Ryan Merz
 Executive Budget Officer
 Minnesota Management and Budget

In the Matter of the Proposed Rules Relating to Waste Treated Seed Disposal; Revisor's ID Number 04806; [OAH Docket No. 23-9003-39350]

Dear Ryan Merz:

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the commissioner of Minnesota Management and Budget "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

Enclosed for your review are copies of the following documents on proposed rules relating to Waste Treated Seed:

1. The Governor's Office Proposed Rule and SONAR Form, signed by Commissioner Kessler.
2. The 12/05/24 Revisor's draft of the proposed rule.
3. The 12/05/24 SONAR draft.

I have sent copies of these documents to the Governor's Office.

If you have any questions or concerns, please contact me at daniel.gonzalez@state.mn.us.

Sincerely,

Daniel Gonzalez (he/him/his)

Rule Coordinator

daniel.gonzalez@state.mn.us

651-757-2267



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Certificate of Consulting with Minnesota Department of Agriculture and University of Minnesota in Compliance with Laws of Minnesota 2023, chapter 60, article 3, section 28

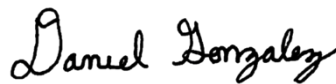
Minnesota Pollution Control Agency

Division of Resource Management

Proposed Rules Relating to Waste Treated Seed, Minnesota Rules, Chapter 7035 and 7045; Revisor's ID Number 04806

I certify that on August 30, 2023, February 29, 2024, and March 19, 2024, at St. Paul, Ramsey County, Minnesota, MPCA staff consulted with staff from the Minnesota Department of Agriculture (MDA) and the University of Minnesota (U of M) in accordance with Laws of Minnesota 2023, chapter 60, article 3, section 28. Representatives from the MDA and U of M included:

- University of MN Extension (U of M Extension)
 - Jolene Warnke, Pesticide Safety Environmental Education (PSEE) Program Mgr.
 - Tana Haugen-Brown, Educator & Co-Coordinator, PSEE
 - Linda Johns, Associate Director & Coordinator, PSEE
- Minnesota Department of Agriculture (MDA)
 - Jane Boerboom, Pesticide and Fertilizer Mgmt.
 - Rajinder Mann, Pesticide and Fertilizer Mgmt.
 - Theresa Cira, Pesticide and Fertilizer Mgmt.
 - Michael Merriman, Plant Protection



Daniel Gonzalez
Rule Coordinator



VIA EFILING

February 27, 2024

The Honorable Judge Suzanne Todnem
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Amendments to MPCA Rules Governing Waste Treated Seed Disposal Rule; Request to Schedule a Rules Hearing; Revisor's ID Number R-4806; OAH Docket No. 23-9003-39350

Dear Judge Todnem:

The Minnesota Pollution Control Agency requests that you please schedule a hearing under Minnesota Statutes, sections 14.131 to 14.20. The hearing is for the MPCA's proposed rules on waste treated seed disposal. The MPCA requests that you conduct the hearing on Wednesday, March 5, 2025, beginning at 3:00 pm, via WebEx.

Enclosed for your review are the documents required under Minnesota Rules, part 1400.2080, subpart 5:

1. The Dual Notice of Hearing issued. The MPCA will notify you if the hearing is canceled.
2. A copy of the proposed rules, with a certificate of approval as to form by the Revisor.
3. A Statement of Need and Reasonableness.

The Additional Notice Plan for this rule was submitted February 27, 2025. If you have any questions or concerns, please contact me at daniel.gonzalez@state.mn.us or 651-757-2267.

Sincerely,

A handwritten signature in black ink that reads 'Daniel Gonzalez'.

Daniel Gonzalez
MPCA Rule Coordinator