

**Waste Treated Seed Disposal Rule: Pre-Hearing Response to Comments**

RD-04806; OAH Docket No. 23-9003-39350

Five comments were submitted to the Office of Administrative Hearing's eComments website by February 14, 2025, in response to the Minnesota Pollution Control Agency's (MPCA's) Dual Notice of Intent to Adopt Rules published December 30, 2024. Many of the comments submitted included multiple components. The agency has provided its preliminary responses to those comments below. The MPCA will respond to comments received during the rule hearing and the post-hearing comment period in a future response to comments document.

The MPCA received 124 requests for the MPCA to hold a hearing regarding its proposal to adopt rules governing Waste Treated Seed, with opposition to the entire set of rules as proposed.

**1. Rule Texts Comments****A. Part 7035.3700 Waste Treated Seed, Subp. 4. Prohibitions. A.**

**Comment (Landstrom-1):** Lee Landstrom stated "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."

**Response:** As discussed on page 28 of the Statement of Need and Reasonableness, specifically relating to proposed Minn. R. 7035.3700, Subp. 4, Item A, Subi. (3), burial of solid wastes resulting from farming operations on the land used for farming must be allowed by the MPCA and in this rulemaking under previously existing Minnesota statute. The proposed rule does however apply strict and consequential conditions to such burial. Violation of any provisions of the proposed rule are already subject to investigation and enforcement by the MPCA under previously existing provisions of Minn. Stat. Chs. 115A and 116. Therefore, no new enforcement authorities or tools need to be created specifically for, nor added to, the proposed rules. Regarding protection of groundwater, already explicitly required by the Legislature, the MPCA weighed the relative risks of waste treated seed and other farming-derived wastes subject to burial on land used for farming and determined that the measures promulgated in this rulemaking appropriately balance necessary environmental protection and burden, cost, and complexity for affected regulated persons.

B. Part 7035.3700 Waste Treated Seed, Subp. 4. Prohibitions. B.

**Comment (Landstrom-2):** Lee Landstrom stated “This also sounds like a bad idea. Allowing neonics into fuel that is going to be burned and released into the air?”

**Response:** Under existing rules and statutes, and as explicitly clarified in the proposed rule, waste treated seed is an industrial solid waste in Minnesota. Also, under pre-existing rules and statutes, industrial solid wastes and municipal solid wastes may be burned in permitted Waste-To-Energy (WTE) facilities. Existing WTE facilities in Minnesota either “mass-burn” minimally-processed industrial and municipal solid wastes, or burn fuel derived from industrial and municipal solid waste that has been extensively processed to remove as much recyclable material as possible and to remove identifiable problem materials, and then size-reduced, called “refuse-derived fuel,” or RDF. Both mass solid waste and RDF already include extremely low volumes of various chemicals, including a minimal amount of pesticides, from such sources as residues in discarded household and business products and waste packaging from many products, all of which would be solid waste in Minnesota. The WTE facilities are already monitoring for expected emissions and are permitted for these unavoidable and minimal amounts of such wastes. The MPCA clarifies that disposal of the parent pesticides or other seed treatment chemicals themselves, many of which would be regulated hazardous wastes when discarded, is not allowed under this rulemaking.

2. Proposed Revision Comments

C. Comments related to WTS burial setbacks

**Comment (Pollinator Friendly Alliance-1):** Laurie Schneider from the Pollinator Friendly Alliance (PFA) stated “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...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".

**Comment (Xerces Society for Invertebrate Conservation-1, American Bird Conservatory-1):** In a joint statement both entities stated “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<sup>1</sup>. As a result, neonicotinoids are present in Midwestern waterways throughout the year, often at levels that pose risk to aquatic species <sup>2,3</sup>. 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.”

**Comment (Margot Monson-1):** Margot Monson stated “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.”

**Comment (Falkum-1):** Nancy Lee Falkum stated “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 [sic] clean water if we continue to pollute the earth’s water with known harmful contaminants such as neonicotinoids!”

**Response:** As discussed on page 28 of the Statement of Need and Reasonableness, the MPCA balanced the need to provide protection for small wells of limited use for individual users against the potential burden for a person operating land used for farming to define the complete hydrogeology, including all water resources, in the potential zone of influence of operations on their land. The MPCA determined the latter would be an extreme burden not supported by the expected risk of burial of small, isolated volumes of waste treated seed on that land. The MPCA therefore considered specific setback distances and believes that existing setbacks for contaminated soils presenting similar potential risks to private wells was an appropriate balance of environmental protection and reasonable expectations. The MPCA also believes that the Legislature intended through the Session Law and preexisting statutory language that farm-derived solid wastes remain eligible for conditional and safe burial on the land used for farming where the wastes were generated. The MPCA determined that applying an increased setback distance of 1000 feet to all wells, including small, limited-use private

wells, would effectively preclude burial on many farmlands in the state, contradicting the MPCA's understanding of the Legislature's directions.

D. Comments related to WTS Burial on Wellhead Protection Areas

**Comment (Pollinator Friendly Alliance-2):** Laurie Schneider from the PFA stated "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."

**Comment (Xerces Society for Invertebrate Conservation-2, American Bird Conservatory-2):** In a joint statement both entities stated "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."

**Comment (Margot Monson-2):** Margot Monson stated, "In addition, there should be specific clarification of where setback begins and ends for burial on wellhead protection areas."

**Comment (Falkum-2):** Nancy Lee Falkum stated "MPCA should be clear about wellhead protection areas, karst geology and drain tile locations as to where WTS can be buried."

**Response:** The setback distances are defined by the corresponding definitions of the terms used in the proposed rule. The terms "public water supply" and "water-supply well" are concretely defined terms that can be identified as points on a map accessible to a person operating land used for farming and to the public. The term "wellhead protection area" proposed in the comments to be applied to waste treated seed burial site setback distances is an area that may be required to be delineated by municipalities, or other public or private water supply operators based on a complete hydrogeological study of an existing or proposed well. Wellhead protection areas are regulated and interpreted by the Minnesota Department of Health, not the MPCA. As discussed previously, the MPCA appropriately balanced the limited expected risk of burial of relatively small volumes of waste treated seed by a person operating land used for farming on that land with the burden and regulatory uncertainty of applying delineations prepared for other reasons and applied setbacks of specific distances related to the relative risks.

**Response to karst area concerns:** Burial of waste treated seed on karst geology is explicitly prohibited in the proposed rule.

E. Comments related to best practices on on-farm burial

**Comment (Pollinator Friendly Alliance-3):** Laurie Schneider from the PFA stated “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.”

**Comment (Xerces Society for Invertebrate Conservation-3, American Bird Conservatory-3):** In a joint statement both entities stated “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.”

**Comment (Margot Monson-3):** Margot Monson stated, “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-ethanolplant-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.”

**Comment (Falkum-3):** Nancy Lee Falkum stated “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.”

**Response:** The proposed rule establishes specific enforceable standards for burial of waste treated seed by a person operating land used for farming on that land in accordance with existing statute not within the scope of this rulemaking. The term “best practices” generally relates to recommendations to an industry or for methods believed generally beneficial, however as such are not typically able to be required or enforceable. The proposed rules already specify for burial sites: horizontal and vertical setback distances from surface waters, ground waters, and the surface; prohibited geology; prohibited landforms; and water presence, and narrative directions for final site contouring and sloping. The MPCA considered the comment for additional best practices, including maximum volume per area, but determined that such specification would either require very complex site-specific modeling or criteria, or would require the MPCA to establish limits without justification of risk related to volume per area, which would not be supportable. Therefore, the MPCA declines to add additional new limits related to volume per burial site area beyond the already proposed setbacks and other limits.

F. Comments related to the WTS waste stream

**Comment (Pollinator Friendly Alliance-4):** Laurie Schneider from the PFA stated “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 number 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.”

**Comment (Xerces Society for Invertebrate Conservation-4, American Bird Conservatory-4):** In a joint statement both entities stated “We ask MPCA to track WTS quantities entering the waste stream. We appreciate the clarification that disposal facility operators accepting WTS must 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.”

**Response:** The MPCA considered a new requirement for solid waste management facilities to explicitly track waste treated seed volumes entering their facility and determined it was unnecessary. As noted in the comments, solid waste management facilities receiving waste

treated seed must already identify whether their facility can safely and appropriately receive and manage quantities of waste treated seed. However, the MPCA believes that facilities can and likely may meet this requirement through means other than specific tracking of waste treated seed as a separate recorded waste stream. As an example, facilities may plan the size of new gas collection systems or assess the capacity of existing gas collection systems by using worst case scenarios for the many waste streams that can or would be expected to release substantial volumes of gas over the life of a land disposal facility, of which waste treated seed is only one, and expected to be a minor one. The MPCA believes that requiring a new specific data collection requirement to land disposal facilities would therefore be an unnecessary burden, and the MPCA declines to add this new requirement. Finally, the MPCA notes that neither the Session Law nor successive budget legislation required the MPCA to collect such data nor has appropriated any new staff to the MPCA to receive and analyze such new collected data, and therefore requiring facilities to collect it would be unsupported.

**Comment (Margot Monson-4):** Margot Monson stated “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.”

**Response:** The comment supports the requirements and allowances already contained in the proposed rule.

#### G. Comments related to labeling requirements

**Comment (Pollinator Friendly Alliance-5):** Laurie Schneider from the PFA stated “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.”

**Comment (Xerces Society for Invertebrate Conservation-5, American Bird Conservatory-5):** In a joint statement both entities stated “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."

**Comment (Margot Monson-5):** Margot Monson stated "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."

**Comment (Falkum-4):** Nancy Lee Falkum stated "Consistent labeling of harmful contaminants, such as neonicotinoids, and correct and 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."

**Response:** Under existing federal statutes and regulations, and under existing state statutes, the U.S. Environmental Protection Agency (EPA) and the Minnesota Department of Agriculture (MDA) have the authority to, and are responsible for, pesticide labeling and treated seed product labeling. The MPCA has no authority to independently establish any pesticide nor treated seed product label requirements. While the MPCA would of course support and consult with the EPA and/or MDA in revision of existing or development of new treated seed packaging and labeling standards, such is beyond both the scope of this rulemaking and the MPCA's authority as defined by the Legislature.

#### H. Comments related to the reclassification of spilled seed

**Comment (Pollinator Friendly Alliance-6):** Laurie Schneider from the PFA stated "Spilled seed not recovered for planting should be defined as WTS. We recommend classifying spilled seed that is not recovered for subsequent planting as WTS, subject to the disposal regulations developed by MPCA."

**Comment (Xerces Society for Invertebrate Conservation-2, American Bird Conservatory-2):** In a joint statement both entities stated "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 regulations<sup>4</sup>. We recommend classifying spilled seed that is not recovered for subsequent planting as WTS, subject to the disposal regulations developed by MPCA."



**Comment (Margot Monson-6):** Margot Monson stated “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.”

**Comment (Falkum-5):** Nancy Lee Falkum stated “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.”

**Response:** The proposed rule explicitly defines waste treated seed as any treated seed that will not be planted according to the label directions for the purpose of growing live plants. Spilled treated seed that is not recovered, whether spilled during transportation, cross-loading, or during planting preparation, if not recovered and properly planted, has not been planted for the purpose of growing live plants according to the label directions and is therefore already regulated under the terms of the proposed rule as waste treated seed. Waste treated seed is already required to be properly disposed under the proposed rule. During drafting of the proposed rule, the MPCA did consider common treated seed handling practices and their effects in relation to the potential need for specific provisions in the proposed rule. The MPCA determined that adding detailed provisions related to spilled treated seed would add significant additional complexity and burden to treated seed handlers and end users without actually adding new environmental protections. In addition, use and handling of treated seed as a product is beyond the scope of this rulemaking. Therefore, the MPCA concluded that new provisions related specifically to spilled treated seed would not be appropriate.

### **3. Fact Sheet Comments**

#### **A. Comments related to wildlife and wildlife areas**

**Comment (Landstrom-3):** Lee Landstrom stated “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!”

**Comment (Margot Monson-7):** Margot Monson stated “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>... 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.”

**Response:** Planting of treated seed product in accordance with the label directions for the purpose of growing live plants is the intended use of this product and would not be disposal of waste, as long as the planting is legitimate and not a sham for avoiding proper disposal requirements. Many domesticated cropped plants are also used for related plantings, such as wildlife habitat, erosion control, and wind protection. Indeed, the Minnesota Department of Transportation (MnDOT) encourages planting of vegetation including annual row crops, as living snow fences. The proposed rule carefully defines waste treated seed as treated seed that will not be planted in accordance with the label directions for the purpose of growing live plants.

B. Comments related to packaging and wastewater related to packaging

**Comment (Landstrom-4):** Lee Landstrom stated “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.”

**Comment (Margot Monson-8):** Margot Monson stated, “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.”

**Response:** The proposed rule does not specify management of rinse water, also known as “rinsate” from treated seed containers. Disposable treated seed containers are explicitly defined as mixed municipal solid waste, based on their observed and expected risks during solid waste handling and disposal. Treated seed is an article manufactured by application of a treatment product, such as a pesticide as appears to be the primary concern of these comments, onto seed. The residues in containers and handling equipment would be of the treatment product in low volume, and rinsate from any removal of such residue would be of the treatment product in relatively very low concentration. The U.S. Environmental Protection Agency (EPA) already regulates management of rinsate from pesticide products, such as treatments that may be applied to treated seed. Label directions for such products explicitly allow application of rinsate from pesticide containers, expected to be of significantly higher concentration than rinsate from treated seed container residue, to cropland under the label directions for use of the parent pesticide product. This use is explained to allow maximum

effective use of the pesticide, thus lowering the total volume that must be released into the environment. Based on this preexisting federal allowance and the expected risks, the MPCA declined to create new, more restrictive requirements for rinsate from waste treated seed containers and equipment.

#### **4. Rulemaking Process Comments**

##### **A. Comments related to stakeholder engagement:**

**Comment (Berger-1):** Matthew Berger from Gislason & Hunter stated, “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. 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.”

**Response:** The MPCA has responded to the request under the Data Practices Act and has provided much of the requested data. The request was broader in scope than the information the agency relied upon to state the need and reasonableness of the proposed rule. The text of the proposed rule and the statement of need and reasonableness were published and available for public comment according to the procedural requirements in Minn. Stat. Ch. 14. The MPCA has not proposed to delay the public hearing. However, the MPCA does not object to an extension of the public comment period after the public hearing of up to 20 days in accordance with Minn. Stat. § 14.15, subd. 1.

#### **5. Statements of Support for proposed changes**

##### **A. Comments related to support of provisions of the rule:**

**Comment (Pollinator Friendly Alliance-7, Xerces Society for Invertebrate Conservation-7, American Bird Conservatory-7):** Laurie Schneider from the PFA, Rosemary Malfi from the Xerces Society for Invertebrate Conservation (Xerces), and E. Hardy Kern from the American Bird Conservatory (ABC), supported the proposed changes regarding; leaching mitigation,

covering seed immediately, composting prohibition, prohibited uses and reuses, open burning prohibition, burial prohibition, and prohibited burial locations.

B. Comments related to partial support for provisions of the rule:

**Comment (Xerces Society for Invertebrate Conservation-8, American Bird Conservatory-8):**

Rosemary Malfi from the Xerces, and E. Hardy Kern from the ABC, supported the proposed changes regarding open burning prohibition. In addition, both commenters stated “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.”

**Response:** The MPCA welcomes the statement of support for elements of the proposed rule. The proposed rule explicitly prohibits burning of waste treated seed except in a permitted energy recovery facility. The MPCA considered the comment and believes that the proposed language is clear and additional site-specific or person-specific discussion of burning restriction is unnecessary and would likely complicate application and enforcement of the already proposed prohibition.

**Comment (Pollinator Friendly Alliance-8, Xerces Society for Invertebrate Conservation-9,**

**American Bird Conservatory-9):** Laurie Schneider from the PFA, Rosemary Malfi from the Xerces, and E. Hardy Kern from the ABC supported the proposed changes regarding burial prohibition. In addition, PFA stated “However, MPCs [sic] needs to work with municipalities to determine which areas in the state have “reasonable access” and to educate those generators about proper disposal” and Xerces and ABC stated, “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”.

**Response:** The MPCA does not have the authority to determine what areas of the state do or do not have reasonable access to solid waste service for the purpose of burial of farm-derived wastes by a person operating land used for farming on that land. The Legislature by existing statute has designated that only County Boards must by their own resolution determine this presence or absence in each county individually. The Session Law did not change this authority nor authorize the MPCA to make such determinations. The proposed rule explicitly references this county resolution threshold.