

# 39350 Minnesota Pollution Control Agency Post-Hearing Comment Period for Waste Treated Seeds Rule

Closed Mar 26, 2025 · Discussion · 4 Participants · 1 Topics · 4 Answers · 0 Replies · 0 Votes

4

PARTICIPANTS

1

TOPICS

4

ANSWERS

0

REPLIES

0

VOTES

## SUMMARY OF TOPICS

### SUBMIT A COMMENT

 4 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.

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**Janette Dean** · Citizen · (Postal Code: unknown) · Mar 11, 2025 12:20 pm

 0 Votes

On behalf of the Sierra Club North Star Chapter's 50,000 members and supporters across Minnesota, the chapters' Forests and Wildlife Stewards Group and Water and Wetlands Stewards Group would like to share: a) our overall support of the Minnesota Pollution Control Agency's proposed rules for waste treated seed (WTS) disposal—meaning, disposal of plant seeds coated with pesticides such as neonicotinoids—with b) our support for the additional recommendations provided in the pre-hearing letter of recommendations submitted on February 14 by the Xerxes Society of Invertebrate Conservation, the American Bird Conservancy, and the Pollinator Friendly Alliance (see: [https://speakup-us-production.s3.amazonaws.com/uploads/attachment/file/67ae88af7d796507230007a0/Public\\_Comment\\_Waste\\_Treated\\_Seed\\_Disposal.pdf](https://speakup-us-production.s3.amazonaws.com/uploads/attachment/file/67ae88af7d796507230007a0/Public_Comment_Waste_Treated_Seed_Disposal.pdf) ). Our two Stewards groups also submitted this same main comment in our verbal testimony provided by Janette Dean at the proposed rule hearing on March 5.

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**Laurie Schneider** · Citizen · (Postal Code: unknown) · Mar 18, 2025 4:42 pm

 0 Votes

Please see our letter attached on behalf of POLLINATOR FRIENDLY ALLIANCE. We strongly support MPCA in creating rules for disposing of pesticide-treated seeds, which the legislature mandated they do when they passed HF1317. These rules help to safeguard people, wildlife, waterways, and groundwater.

## 39350 Minnesota Pollution Control Agency Post-Hearing Comment Period for Waste Treated Seeds Rule

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**Matthew Berger** · Citizen · (Postal Code: unknown) · Mar 25, 2025 3:17 pm

 0 Votes

Attached please find post-hearing comments that are submitted on behalf of Minn-Dak Farmers Cooperative, Minnesota Corn Growers Association, Minnesota Farm Bureau, Minnesota Soybean Growers Association, Red River Valley Sugarbeet Growers, and Minnesota Association of Wheat Growers regarding these proposed rules.

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**Lucas Rhoads** · Citizen · (Postal Code: unknown) · Mar 26, 2025 3:25 pm

 0 Votes

Please find attached comments on behalf of the Xerces Society for Invertebrate Conservation, American Bird Conservancy, and NRDC Action Fund



POLLINATOR FRIENDLY ALLIANCE  
PO BOX 934, STILLWATER, MN 55082

[WWW.POLLINATORFRIENDLY.ORG](http://WWW.POLLINATORFRIENDLY.ORG)

Feb. 27, 2025

## COMMENT

**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.**

We are submitting this written comment as part of the public hearing for MPCA's proposed Waste Treated Seed Rule (Revisor's ID R-4806; OAH docket number 23-9003-39350). We strongly support MPCA in creating rules for disposing of pesticide-treated seeds, which the legislature mandated they do when they passed HF1317. These rules help to safeguard people, wildlife, waterways, and groundwater.

### **We especially appreciate:**

Clarification and codification of prohibited uses and reuses of WTS, including burning; composting; animal feed for domesticated or wild animals; and oil processing, fuel, or fuel production, which includes ethanol.

Restrictions on the burial of treated seed, including provisions that prevent disposal on karst, wetlands, floodplains, and shorelands; and provisions that require disposal via landfill wherever municipal waste services are reasonably available.

### **We urge MPCA to strengthen its final rule in the following ways:**

Please include stronger burial prohibitions and setbacks as they relate to well water, especially in places where the underlying aquifer is at "moderate" to "high" risk of contamination from overlying land use.

Please include more detail about best management practices for burying WTS on farmland. The ongoing contamination event in Mead, Nebraska resulting from ethanol production with WTS should serve as a reminder to us all that improper disposal of WTS can have disastrous consequences for wildlife, water quality, and human health. These rules are necessary.

Signed,  
Laurie Schneider, Executive Director  
Pollinator Friendly Alliance

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.**

March 26, 2025

Dear Judge Todnem,

**The Xerces Society for Invertebrate Conservation, American Bird Conservancy (ABC), and the NRDC Action Fund**, respectfully submit these comments on MPCA's proposed amendment to rules governing waste treated seed (OAH Docket No. 23-9003-39350). We are submitting these comments in response to the post-hearing comment period.

We want to again 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 "SONAR"). We reiterate in these comments that we are largely in agreement with the regulations as proposed and we generally 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). We describe aspects of the rules that we especially appreciate in our [original comments](#).

However, and respectfully, there are some aspects of the rulemaking that we believe require additional clarity, if not strengthening. We stand by the intent of the suggested changes in our original comments, which aim to increase waterway protections and provide MPCA and partner agencies with data that would inform future practices. In response to the pre-hearing response from MPCA ("Exhibit L"), we offer these comments.

Below, we offer responses to [MPCA's preliminary response](#) (Exhibit L) to [our initial public comments](#) on the proposed rules.

1. **Initial recommendation:** We encouraged MPCA to work with municipalities to determine which areas in the state have "reasonable access" to solid waste service and to educate those generators about proper disposal.

- a. **MPCA response:** MPCA denied this request, claiming it does not have authority to “determine what areas of the state do or do not have reasonable access to solid waste services for the purpose of burial of farm-derived wastes...”. (Exhibit L, pg. 12)

b. **Our response:**

We agree that it is reasonable to limit burial of small quantities of WTS on-farm *when solid waste service is not available*. However, we ask MPCA to explain the basis for its assumption that only “small, isolated volumes” of seed will be buried on-farm and explain what constitutes a “small” and “isolated” volume.

Furthermore, if MPCA is unable to determine what areas have “reasonable access to solid waste service,” it should assume that on-farm burial will be widespread throughout the state and regulate on-farm disposal with this scope in mind. In other words, MPCA should take an extremely precautionary approach.

To be clear, MPCA has ample authority to restrict—or even prohibit—on-farm burial of seed. On SONAR pg. 15, MPCA states:

“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.”

MPCA repeats this argument in its pre-hearing response to comments. Exhibit L, p. 1. The agency appears to reference Minn. Stat. § 17.135, which states that “a permit is not required from a state agency” for burial of “solid waste generated . . . as part of a person’s farming operation.” *Id.* This statutory language states only that “a permit is not required,” and does not prohibit MPCA from limiting or prohibiting burial of a substance considered solid waste. Indeed, MPCA rightly proposes restrictions of on-farm burial of treated seed in 7035.3700, subp. 4(A)(3). But MPCA has the authority to ensure that on-farm burial does not result in contamination of the environment, even if that requires a prohibition of on-farm burial.

2. **Initial recommendations:**

- We asked MPCA to better define proper WTS burial on-farm, e.g. provide best management practices regarding distribution of WTS on-farm.
- We recommended MPCA require a WTS burial setback distance >200 ft for private wells that supply drinking water to humans or animals.

- We recommended that MPCA prohibit WTS burial on wellhead protection areas, particularly those classified as moderate to high risk of contamination from surface land uses.

**a. MPCA response:**

The MPCA declined to incorporate these recommendations.

With regard to setbacks, MPCA states it “...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.” (Exhibit L, pgs. 3-4).

MPCA clarified how setbacks are defined: water sources meeting certain definitions are identifiable as points on a map. MPCA stated that “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 [emphasis added] 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.” (Exhibit L, pg. 4)

With regard to BMPs, MPCA reiterated the requirements in the proposed rules relating to vertical and horizontal setbacks as well as prohibited geography, etc. and declined to provide additional specificity to WTS generators re: permissible volume of seed per area. MPCA indicated that it “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.”

**b. Our response:**

*i. Setbacks from private wells*

We maintain the position that MPCA should operate under the precautionary principle and require a setback distance of greater than 200 ft for private wells that are used for drinking water.

As MPCA acknowledges, we do not have data indicating how WTS generators typically distribute WTS during the burial process, nor the

volume that is typically buried in a single location. We maintain 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.

Throughout the SONAR, the assumption is made that buried WTS present no greater risk than seeds planted on the farm. The MPCA appears to assume on-farm burial will be "... small, isolated volumes of waste treated seed." (Exhibit L, pg. 3). **However, the proposed rule does not ensure this is the case.**

If there is a large quantity of WTS that a generator is permitted to bury on-farm, that generator needs information on how best to distribute WTS to avoid harm to waterways and wildlife.

MPCA states in Exhibit L (page6):

"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."

If MPCA is unable to help generators understand what a maximum volume per area should be for WTS, larger setbacks would help to account for this uncertainty and ensure they are sufficiently protective.

ii. *Rules for well head protection areas.*

In our initial comments, we suggested that it would be reasonable to prevent burial of seeds in areas [where underlying aquifers are at moderate to high risk of contamination](#) from overlying use. This recommendation was declined.

Again, the MPCA appears to assume on-farm burial will be "... small, isolated volumes of waste treated seed." (Exhibit L pg. 3). However, nothing in MPCA's proposed regulations ensures this will be the case and there are no data indicating how WTS generators distribute WTS during the burial process, nor the volume that is typically buried. Indeed, MPCA acknowledges the lack of information available in its response to Section E comments in Exhibit L (pg. 6).

MPCA also appears to suggest that setbacks cannot be calculated based on the boundaries of wellhead protection areas because those boundaries cannot be “identified as points on a map.” To the extent that is MPCA’s argument, it appears that a map of wellhead protection areas statewide, based on MDH data, is [readily available on a University of Minnesota website](#). Whether or not these boundaries are defined by MPCA, it appears logical to prohibit WTS burial within these uniquely vulnerable areas.

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 consider our recommendations.

Sincerely,

**Rosemary Malfi**, Ph.D., Policy Director, Xerces Society for Invertebrate Conservation.  
[rosemary.malfi@xerces.org](mailto:rosemary.malfi@xerces.org)

**E. Hardy Kern III**, MPA, Director of Government Relations, Pesticides and Birds Campaign, American Bird Conservancy. [ehardykern@abcbirds.org](mailto:ehardykern@abcbirds.org)

**Lucas Rhoads**, Senior Advisor, NRDC Action Fund, [lrhoads@nrdc.org](mailto:lrhoads@nrdc.org)



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March 25, 2025

Administrative Law Judge Suzanne Todnem  
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 Administrative Law Judge Todnem:

The Minnesota Pollution Control Agency proposes to adopt rules to regulate the disposal of waste treated seed. Below please find post-hearing comments that are submitted on behalf of Minn-Dak Farmers Cooperative, Minnesota Corn Growers Association, Minnesota Farm Bureau, Minnesota Soybean Growers Association, Red River Valley Sugarbeet Growers, and Minnesota Association of Wheat Growers regarding these proposed rules.

### **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). Treated seed is a seed that has been coated with a pesticide to protect the seed (and the plant that will grow from the seed) from pests and diseases, especially during the early stages of growth. As the testimony from several farmers during the hearing indicated, the availability and use of treated seed provides has improved crop health and yields and has reduced the total use of pesticides by allowing farmers to target the pesticide to the specific time and location where it is needed (as compared to the alternative of applying the pesticide to an entire field later in the growing season).

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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 Minnesota 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 (2024). Minnesota law also 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 and 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.03, subd. 1, 18B.06, subds. 1, 3 (2024). 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 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 (codified at Minn. Stat. § 18B.075).

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## COMMENTS

1. **The Minnesota Pollution Control Agency Has Not Established the Need for the Proposed Rule Regulating Waste Treated Seed.**

Before adopting a proposed rule, the Minnesota Pollution Control Agency must “establish[] the need for and reasonableness of the proposed rule.” *See* Minn. Stat. § 14.14, subd. 2 (2024). In its Statement of Need and Reasonableness for this proposed rule, the Minnesota Pollution Control Agency makes the bald assertion that it “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.” (SONAR, at p. 6.) But the alleged “requirements” on which the Minnesota Pollution Control Agency refers in this statement were not actual rules that were adopted through a formal rulemaking process that required the agency to establish the need for and reasonableness of the requirements – rather, as the agency acknowledges, the alleged “requirements” were merely informal guidance that were included in a fact sheet the agency published without public input or administrative or judicial review. (*See id.*) Thus, the Minnesota Pollution Control Agency has not established the need for the proposed rule as required under the Administrative Procedures Act.

The Minnesota Pollution Control Agency’s assertion that the proposed rule is needed is also based on false factual and legal premises. As to the factual basis, the Minnesota Pollution Control Agency asserted during the hearing on March 5, 2025, that it needs to regulate the disposal of waste treated seed because it estimates that 14,000 tons of waste treated seed are produced in Minnesota each year. This estimate, however, was not included in the Statement of Need and Reasonableness for the proposed rule. And when the agency was questioned regarding the facts and methodology that support this assertion, the agency broadly referred to data from Kansas, based on information related to an ethanol plant in Nebraska. As identified by Mr. Bruce Kleven during the hearing, the accuracy of this estimate is highly questionable as the estimate appears to assume that approximately 10 percent of the seed used each year to plant 8 million acres of corn and 7 million acres of soybeans would not be planted and would need to be managed as waste. Based on the significant costs that farmers incur for seed, and the careful management that farmers use when ordering seed to minimize these costs, these estimates appear highly unreasonable.

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After these factual concerns were raised, the Minnesota Pollution Control Agency indicated that it would provide more information about this factual premise in a supplement response to comments. This process, however, deprives the public of any opportunity to scrutinize, comment on, or rebut the underlying facts and process that the agency used to support this critical fact. Because the Minnesota Pollution Control Agency did not introduce in the Statement of Need and Reasonableness or the hearing sufficient evidence to support its factual premise, the agency has failed to establish a need for the proposed rule regulating waste treated seed.

As to the Minnesota Pollution Control Agency's legal premise on the need for the proposed rule, the agency previously stated 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 Mar. 24, 2025). 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 (2024). In 2017, the Center for Food Safety filed a petition with the Environmental Protection Agency claiming that the agency did not adequately assess the risks from pesticide-treated seeds and that the treated article exemption did not cover such treated seed without an adequate assessment of those alleged risks. But as the EPA

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thoroughly explained in its response to this petition, 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 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.

Because treated seeds are already highly regulated, and because the Minnesota Pollution Control Agency has failed to establish either a factual or a legal need for the proposed regulation of waste treated seed, the proposed rule should not be adopted.

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2. **The Minnesota Pollution Control Agency Does Not Have Jurisdiction to Regulate the Use, Handling, Storage, Distribution, or Disposal of Treated Seeds.**

As noted above, Minnesota law designated the Minnesota Department of Agriculture as “the lead state agency for the regulation of pesticides.” Minn. Stat. § 18B.03, subd. 1. As part of this delegation, the Commissioner of Agriculture is specifically empowered to “administer, implement, and enforce” the laws codified in Minnesota Statutes chapter 18B, *id.*, including the new law that regulates the use, storage, handling, distribution, and disposal “of seed treated with pesticide,” 2023 Minn. Laws ch. 60, art. 9, § 2 (codified at Minn. Stat. § 18B.075). Further, the Commissioner of Agriculture is directed by existing statute to “adopt rules to implement and enforce” the laws in Minnesota Statutes chapter 18B, including “rules to govern the distribution, use, storage, handling, and disposal of pesticides, rinsates, and pesticide containers.” Minn. Stat. § 18B.06, subs. 1, 3 (2022). In other words, Minnesota law clearly delegates all authority over pesticides—including pesticide-treated seeds—to the Minnesota Department of Agriculture and not to the Minnesota Pollution Control Agency.

Notwithstanding the clear delegation of authority over pesticides (including pesticide-treated seeds) to the Minnesota Department of Agriculture, the Minnesota Pollution Control Agency claims that it has statutory authority to adopt the proposed rules under Minnesota Statutes § 116.07, subdivisions 2(b), 2(d), 4(b), and 4(g) (2024). These provisions authorize the Minnesota Pollution Control Agency to regulate “solid waste” and “hazardous waste.” The term “solid waste” is defined as follows:

“Solid waste” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; concrete diamond grinding and saw slurry associated with the construction, improvement, or repair of a road when deposited on the road project site in a manner that is in compliance with best management practices and rules of the agency; sewage sludge; solid or dissolved material in domestic

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sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Minn. Stat. § 116.06, subd. 22 (2024). And solid waste is defined as follows:

“Hazardous waste” means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Minn. Stat. § 116.06, subd. 11 (2024). Waste treated seed is not “refuse, sludge, or other waste material” and therefore does not satisfy the statutory definition of either “solid waste” or “hazardous waste.”

We understand that the Minnesota Pollution Control Agency has been placed in a difficult position as a result of the law enacted during the 2023 Legislative Session directing the MPCA to adopt rules “providing for the safe and lawful disposal of waste treated seed” and “identify[ing] the regulatory jurisdiction of state agencies and local governments with regard to such seed.” 2023 Minn. Laws ch. 60, art. 3, § 28. Aside from significant constitutional questions regarding its validity, this law directly contradicts the existing laws that expressly delegate this authority to the Minnesota Department of Agriculture. Because of the untenable position in which this misguided law has placed

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the agency, we suggest that the proposed rulemaking should be limited to a rule that expressly identifies the Minnesota Department of Agriculture as the state agency that has exclusive regulatory jurisdiction over the use, storage, handling, distribution, and disposal of treated seeds as provided in Minnesota Statutes §§ 18B.03 and 18B.06. Any additional rulemaking would exceed the MPCA's legal authority and would be subject to legal challenge.

3. **The Minnesota Pollution Control Agency Should Defer Any Rulemaking, Other than the Simple Rule Identifying the Minnesota Department of Agriculture as the State Agency with Regulatory Jurisdiction Regarding Treated Seeds, until After the Environmental Protection Agency Completes Its Rulemaking Process.**

On October 12, 2023, the Environmental Protection Agency published an Advanced Notice of Proposed Rulemaking in which such agency indicates that it "is considering whether a rule under FIFRA to regulate certain use of treated seed and treated paint products or other administrative action is appropriate" based on concerns previously raised by citizens and several states. *See* 88 Fed. Reg. 70625. Because of the significant overlap of the issues identified in the federal notice and the state notice, and the risk that any rules adopted by the Minnesota Pollution Control Agency may conflict with or be preempted by federal rules that the EPA may adopt in the near future, we suggest that the MPCA should defer its proposed rulemaking—except as specifically required under the recently-enacted law that is described above—until after the EPA completes its rulemaking process.

\* \* \* \*

In short, pesticide-treated seeds are already highly regulated, both the federal Environmental Protection Agency and the Minnesota Department of Agriculture. The Minnesota Pollution Control Agency has not established a need to adopt further regulations governing the disposal of waste treated seed and does not have the legal authority to do so. The proposed rule should therefore be rejected.



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Thank you for your attention concerning this matter.

Very truly yours,



Matthew C. Berger

MCB:elm

cc: Loren Dauer, Minnesota Farm Bureau (*via e-mail only*)  
Joe Smentek, Minnesota Soybean Growers Association (*via e-mail only*)  
Bruce Kleven, Red River Valley Sugarbeet Growers, Minn-Dak Farmers  
Cooperative, and Minnesota Association of Wheat Growers (*via e-mail only*)  
Amanda Bilek, Minnesota Corn Growers Association (*via e-mail only*)