

May 12, 2025

VIA EMAIL ONLY

Representative Jim Nash, Co-Chair
State and Local Government Finance and
Policy
Centennial Office Building
658 Cedar St.
Saint Paul, MN 55155
rep.jim.nash@house.mn.gov

VIA EMAIL ONLY

Senator Tou Xiong, Chair
State and Local Government Committee
3203 Minnesota Senate Bldg.
St. Paul, MN 55155
sen.tou.xiong@senate.mn

VIA EMAIL ONLY

Representative Ginny Klevorn, Co-Chair
State and Local Government Finance and
Policy
Centennial Office Building
658 Cedar St.
St. Paul, MN 55155
rep.ginny.klevorn@house.mn.gov

**Re: *In the Matter of Planned New Rules Governing Waste Treated
Seeds, Minnesota Rules, ch. 7035.3700 - 7035.3900; Revisor's
ID Number 04806***
OAH 23-9003-39350; Revisor R-04806

Dear Representative Nash, Representative Klevorn, and Senator Xiong:

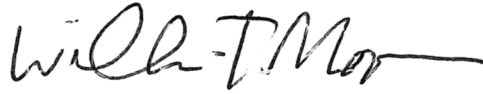
Pursuant to Minn. Stat. § 14.16, the Office of Administrative Hearings is required to send to the legislative policy committees with primary jurisdiction over state governmental operations a copy of the statement of reasons for disapproval of agency rules. Enclosed please find the Report of the Chief Administrative Law Judge and Administrative Law Judge Suzanne Todnem's Report on review of rules and memorandum for the above-referenced rules.

Under Minnesota law, the Minnesota Pollution Control Agency may resubmit the rule to the Chief Administrative Law Judge for review after changing it, or may request that the Chief Administrative Law Judge reconsider the disapproval. If the Minnesota Pollution Control Agency does not wish to follow the suggested actions of the Chief

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Administrative Law Judge to correct the defects found, the Minnesota Pollution Control Agency may follow the process outlined in Minn. Stat. § 14.15, subd. 4.

Sincerely,

A handwritten signature in black ink, appearing to read "William Moore", with a long horizontal stroke extending to the right.

WILLIAM MOORE
Rules Coordinator
Telephone: (651) 361-7893

Enclosure

cc: Daniel Gonzalez, Minnesota Pollution Control Agency
Yolanda Letnes, Minnesota Pollution Control Agency

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment
to Rules Governing Waste Treated Seed,
Minnesota Rules, Chapters 7035 and
7045

**REPORT OF CHIEF
ADMINISTRATIVE LAW JUDGE
ON REVIEW OF RULES**

This matter came before the Chief Administrative Law Judge pursuant to Minn. Stat. § 14.15, subds. 3, 4 (2024), and Minn. R. 1400.2240 subp. 4 (2023). These authorities require the Chief Administrative Law Judge to review an administrative law judge's finding that a proposed agency rule is defective and should not be approved.

The administrative law judge found the Minnesota Pollution Control Agency (MPCA or Agency) proposed amendments to Minn. R. chs. 7035 and 7045 are defective and should not be approved because:

- **Approval of Dual Notice:** The MPCA did not request approval of its Dual Notice from the administrative law judge. Minn. R. 1400.2080, subp. 5 (2023).
- **List of registered stakeholders:** The MPCA did not send the Dual Notice to the MPCA's list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Minn. Stat. § 14.14, subd. 1a(a) (2024).
- **Agricultural area:** The MPCA did not hold a hearing in an agricultural area of the state. Minn. Stat. § 14.14, subd. 1b (2024).
- **Additional notice:** The MPCA did not demonstrate that it made reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed. Minn. Stat. § 14.14, subd. 1a(a).
- **Setback Distances:** The MPCA has not demonstrated, by an affirmative presentation of facts, the need for and reasonableness of the proposed setback distance. Minn. Stat. § 14.14, subd. 2 (2024).

SUMMARY OF CONCLUSIONS

The Chief Administrative Law Judge **AGREES** with the administrative law judge that the following procedural errors are not harmless pursuant to Minn. Stat. § 14.51, subd. 5 (2024):

- **List of registered stakeholders:** The MPCA did not send the Dual Notice to the MPCA's list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Minn. Stat. § 14.14, subd. 1a(a).
- **Agricultural area:** The MPCA did not hold a hearing in an agricultural area of the state. Minn. Stat. § 14.14, subd. 1b.

Because these procedural errors are not harmless, the Chief Administrative Law Judge recommends the MPCA withdraw its current rulemaking proposal and begin anew.

If the MPCA elects to withdraw its current rulemaking proposal and begin anew, the Chief Administrative Law Judge urges the MPCA to seek approval from the Office of Administrative Hearings of its Dual Notice and Additional Notice Plan prior to publishing the Dual Notice, as required by Min. R. 1400.2800, subp. 5. The Chief Administrative Law Judge also urges the MPCA to demonstrate, by an affirmative presentation of facts, the need for and reasonableness of the proposed setback distance.

If the MPCA elects not to withdraw its current rulemaking proposal, it must submit the proposed rules to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees with primary jurisdiction over state governmental operations for review pursuant to Minn. Stat. § 14.15, subd. 4.

Based on the foregoing, MPCA's proposed rules remain **DISAPPROVED**.

Dated: May 12, 2025

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JENNY STARR
Chief Administrative Law Judge

MEMORANDUM

List of registered stakeholders. The agency must “maintain a list of persons who have registered with the agency to receive notice of rule proceedings.”¹ Persons may register to receive notice to their electronic mail address or their U.S. postal mail address.² The agency must give notice of its intention to adopt rules to all persons on the list.³

First, the MPCA sent a GovDelivery message regarding the Notice of Intent on December 30, 2024. There is no indication in the record that the December 2024 Dual Notice was sent by mail to the persons who had earlier enrolled to receive these notices by first class mail. The record does not demonstrate whether all 13 had later enrolled with the agency to receive notices by electronic mail or were simply forgotten in the days before publication of the notice in the *State Register*. As a result, the MPCA cannot demonstrate that “at least 30 days before the date set for the hearing, [it gave] notice of its intention to adopt rules by United States mail or electronic mail to all persons on *its list*”⁴

Second, the documentation shows that the December 2024 Dual Notice was emailed to a subset of rulemaking subscribers specific to “waste treated seeds.” Other documentation included in the record shows that this subset of rulemaking subscribers grew throughout the rulemaking process.⁵ This growth is consistent with the MPCA’s description of the notice process in the SONAR, which states:

The MPCA utilizes a self-subscription service for interested and affected [persons] 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 Chief Administrative Law Judge commends the agency for leveraging the latest technologies to efficiently reach and engage stakeholders across the state on the proposed rules. This does not, however, remove the requirement to include those who enrolled to receive rulemaking notices *before* a particular project became “active” and had its own “self-subscription service.” Section 14.14 requires the agency to maintain a list of persons who have registered with the agency to receive notice of any rule proceedings. The December 2024 Dual Notice was required to be shared with that list

¹ Minn. Stat. § 14.14, subd. 1a(a).

² *Id.*

³ *Id.*

⁴ *Id.* (emphasis added).

⁵ See Exhibits (Exs.) A-1b and A-2b (showing the subset included 106 recipients on August 28, 2023, and grew to 321 recipients by December 26, 2023).

and not limited to individuals who later self-subscribed to receive notifications specific to “waste treated seeds.”

As pointed out by Judge Todnem, these omissions are procedural defects. A procedural defect can be considered a harmless error under Minn. Stat. § 14.15, subd. 5 (2024), if: “(1) the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or (2) the agency has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.”

Neither of those requirements is satisfied in this case. Undoubtedly – absent some other information that is not in the rulemaking record – 13 people did not receive the paper notifications that they had earlier requested. And, as to those stakeholders, no cure seems to have been applied by the agency. These errors are not harmless.

Agricultural area. Under Minn. Stat. § 14.14, subd. 1b, when “a public hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state.”⁶ The MPCA held one public hearing virtually, on March 5, 2025. The proposed rules affect farming operations, and those operations are referenced repeatedly in the proposed rule.⁷ Yet, the MPCA did not hold a hearing in an agricultural area of the state.

Again, the agency is to be commended for leveraging the latest technologies, including virtual hearing technology, to efficiently reach and engage stakeholders across the state on the proposed rules. However, the latest methods should not, and cannot, supplant the requirements imposed by the legislature on to the rulemaking process. The legislature insists that rulemakings which relate to farming operations include at least one hearing that occurs in person, in “an agricultural area of the state.”⁸ As Judge Todnem correctly concluded, the agency’s failure to meet this requirement is not a “harmless error.”

Additional notice. Under Minn. Stat. § 14.14, subd. 1a(a), the agency is obliged to send rulemaking notices to two groups of people: (1) those who have enrolled with the agency and signified their interest in receiving such notices, and “additionally” (2) those “persons or classes of persons who may be significantly affected by the rule being proposed” The agency may provide this additional notice “in newsletters, newspapers, or other publications, or through other means of communication.” *Id.*

The purpose of the additional notice requirement is to move agencies beyond the confines of their “14.14 mailing lists.” The statute does not require that *all* the groups listed

⁶ Minn. Stat. § 14.14, subd. 1b.

⁷ See *generally* Ex. C (Revisor Draft 4806).

⁸ Minn. Stat. § 14.14, subd. 1b.

in Minn. Stat. § 14.131(1) (2024) are notified. Rather, the statute requires that agencies make a reasonable effort to move beyond its list of those who enrolled with the agency to receive notices. This requirement prompts agencies to consider the impact of the rulemaking from the point of view of regulated parties; a key goal of the Administrative Procedure Act.⁹

The MPCA's outreach to "recycling associations, environmental advocacy associations, and the chamber of commerce" was a substantive move beyond the contours of its "14.14 list." As such, it is likely that the MPCA did meet the reasonable-effort standard and additional notice requirements of Minn. Stat. § 14.14, subd. 1a.

In her report, Judge Todnem concluded that the MPCA did not meet the reasonable-effort standard and additional notice requirement. In reaching this conclusion, Judge Todnem's analysis links the agency's description of "the classes of persons who probably will be affected by the proposed rule," required under Minn. Stat. § 14.131(1), with the "additional persons" who are to be sought out by the agency, and provided notice, under Minn. Stat. § 14.14, subd. 1a.¹⁰ The linkage is interesting – and certainly would be a good practice for those agencies that want to meet or exceed the additional notice requirement. But the linkage cannot be required where the legal standard is "reasonableness." The linkage, as applied by Judge Todnem, goes beyond that standard.

Nevertheless, the MPCA is encouraged in future rulemaking efforts to follow the submission procedures of Minn. R. 1400.2060¹¹ and Minn. R. 1400.2080 (2023), and submit its Dual Notice and Additional Notice Plan for review before the Dual Notice is sent out to stakeholders. The purpose of the legal review of notices and notice plans is to prompt this kind of exchange between agencies and the Administrative Law Judge when there is still time to do what is right.¹²

⁹ See *generally* Minn. Stat. § 14.002 (2024) ("[T]he legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals").

¹⁰ See Report of the Administrative Law Judge, at 9.

¹¹ Under Minn. R. 1400.2060, subp. 1, if an agency requests approval of its additional notice plan, "it must make the request and receive approval before it publishes the request for comments or the notice of proposed rules."

¹² The MPCA is also encouraged to reply to OAH communications. On December 10, 2024, prior to the Dual Notice and Additional Notice Plan being published, OAH's Administrative Rules and Application Specialist asked by email, "Do you know when MPCA plans to submit the dual notice for ALJ review pursuant to 1400.2080 Subp. 5?" There was no reply to this question. On January 29, 2025, after the Dual Notice and Additional Notice Plan was published, OAH's specialist wrote by email, explaining the typical process "once the agency receives ALJ approval of the hearing notice/dual notice pursuant to 1400.2080, Subp. 5," and asking the MPCA for an update. No update was provided.

Mootness. In Finding Number 20 of her report, Judge Todnem determined:

The MPCA filed with the Administrative Law Judge a Request for Hearing on February 27, 2025. The filing is not contemplated in the MAPA and the hearing had already been scheduled and noticed in the Dual Notice; the Administrative Law Judge did not issue a response to the moot filing.¹³

It is possible that Judge Todnem used the word “moot” in its conversational sense, because the MPCA filed its request nearly two months after it had already notified the public that the hearing would occur on March 5, 2025. For a few reasons, however, characterizing MPCA’s late filing as “moot” lacks clarity.

First, when used by courts mootness is a term of art. It has a particular and specialized meaning. The mootness doctrine is a flexible, discretionary doctrine of case management. It is “not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved.”¹⁴ Indeed, a matter is still “functionally justiciable if the record contains the raw material (including effective presentation of ... the issues raised) traditionally associated with effective judicial decision-making.”¹⁵

Second, rulemaking is quasi-legislative: “essentially legislative in character but not within the legislative power.”¹⁶ As such, rulemaking proceedings are not adversarial; there are not opposing sides. Ideally, rulemaking is a shared enterprise of citizens, the authoring agency, and the Office of Administrative Hearings, working together toward regulations that are reasonable and lawful.¹⁷

The filings in this matter, although filed late, could have served a useful purpose. Closer review could have sparked dialogue between the MPCA and the Office of Administrative Hearings. That dialogue might have, for example, identified the shortcomings involved with not scheduling an in-person hearing in an agricultural area. Such dialogue is appropriate in a quasi-legislative setting and would have lived up to our shared purpose of “efficient, economical, and effective government administration” that “increase[s] public participation in the formulation of administrative rules.”¹⁸ The vision for the Office of Administrative Hearings – to be an “energetic, responsive, and respected

¹³ Report of the Administrative Law Judge, at 6.

¹⁴ *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984).

¹⁵ *Id.*

¹⁶ *Quasi-legislative*, Merriam-Webster, <http://merriam-webster.com/dictionary/quasi-legislative> (last visited May 12, 2025). See also *Minnesota Administrative Procedure* 16.5.1 (David Schultz, ed. 2022), <https://mitchellhamline.edu/minnesota-administrative-procedure/chapter-16-introduction-to-rulemaking/> (referring to “rulemaking or quasi-legislative agency action”).

¹⁷ See Minn. Stat. § 14.001(5) (2024) (providing that one purpose of the Administrative Procedure Act is to “increase public participation in the formulation of administrative rules”).

¹⁸ Minn. Stat. § 14.001 (2024).

service provider” to state government – calls upon administrative law judges to be leaders in such dialogue.

Setback Distances. Because a series of new filings are needed before the proposed rules, or a later version of those rules, can be approved, it is worthwhile to briefly address the kind of proof that is required to make an “affirmative presentation of facts” under Minn. Stat. § 14.14, subd. 2 and Minn. R. 1400.2100 (2023).

A proposed rule is reasonable if the agency can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”¹⁹ By contrast, a proposed rule will be deemed arbitrary and capricious where the agency’s choice is based upon whim, is devoid of articulated reasons,²⁰ or “represents its will and not its judgment.”

In *Manufactured Housing Institute v. Pettersen*, the Commissioner of Health was tasked with setting, through rulemaking, the maximum level of ambient formaldehyde that would be permitted in new housing units.²¹ Formaldehyde was used “as a bonding agent in building materials, such as plywood and particle board, which [were] commonly used in manufacturing mobile homes.”²²

In its review, the Minnesota Supreme Court concluded that a rule setting the level of ambient formaldehyde at 0.5 parts per million was arbitrary and capricious when there was “no explanation of how the conflicts and ambiguities in the evidence are resolved, no explanation of any assumptions made or the suppositions underlying such assumptions, and no articulation of the policy judgments.”²³ The agency could not articulate why a 0.5-parts-per-million standard was preferable to 0.8-parts-per-million or a still lower threshold.²⁴ As a result, the supreme court remanded and instructed the agency to explain the reasoning behind the proposed standard.²⁵

Accordingly, MPCA’s explanation of why it selected particular lengths for the setbacks from water sources, as opposed to other possible alternatives, will be essential to marshalling an affirmative presentation of facts in support of its preferred approach.

J. S.

¹⁹ *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 241-44 (Minn. 1984)

²⁰ *Mammenga v. Agency Hum. Serv.*, 442 N.W.2d 786, 789 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

²¹ *Manufactured Hous. Inst.*, 347 N.W.2d at 243.

²² *Id.*

²³ *Id.* at 246.

²⁴ *Id.* at 245.

²⁵ *Id.* at 246.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment
to Rules Governing Waste Treated Seed,
Minnesota Rules, Chapters 7035 and
7045

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

This matter came before Administrative Law Judge Suzanne Todnem for a rulemaking hearing on March 5, 2025. The public hearing was held remotely through an interactive video conference on the WebEx platform.

The Minnesota Pollution Control Agency (MPCA or Agency) proposes amendments to Minn. R. chs. 7035 and 7045 to comply with Laws of Minnesota 2023, chapter 60, article 3, section 28, which requires that the MPCA adopt rules providing for the safe and lawful disposal of waste treated seed.¹

The hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act (MAPA).² The purpose of this process is to ensure that state agencies meet all requirements established by law for adopting rules.

The hearing process permits agency representatives and the Administrative Law Judge to hear public comments regarding the impact of the proposed rules and what changes might be appropriate. Further, the hearing process provides the public an opportunity to review, discuss, and critique the proposed rules, and to ensure a fully developed rulemaking record. In addition to the comments received at the public hearings, the public was permitted to submit written comments into the record.

The Agency must establish that: (1) it complied with all procedural requirements for rulemaking; (2) the proposed rules are within the Agency's statutory authority; (3) the proposed rules are necessary and reasonable; and (4) any modifications to the rule made after the proposed rules were initially published in the *State Register* are within the scope of the matter that was originally noticed and not substantially different unless the Agency has complied with the procedures set forth in Minn. R. 1400.2110 (2023).³

¹ Exhibit (Ex.) D at 6 (Statement of Need and Reasonableness (SONAR)).

² Minn. Stat. §§ 14.131 to 14.20 (2024).

³ Minn. Stat. §§ 14.05, .14, .25, .26, .50; Minn. R. 1400.2100 (2023).

The Agency panel at the public hearing included: Joshua Burman, Pollution Control Specialist for the MPCA; David J. Stellmach, MPCA legal counsel; and Daniel Gonzalez, the MPCA's rule coordinator.⁴

Approximately 20 members of the public attended the hearing. The proceedings continued until the ending time designated in the Notice of Intent and all interested persons, groups, or associations had an opportunity to be heard. Six members of the public made statements or asked questions during the hearing.⁵ Nineteen written comments were received prior to the hearing during the Dual Notice public comment period.⁶ No written comments from the public were made or introduced as exhibits at the hearing.⁷

After the close of the hearing, the Administrative Law Judge kept the rulemaking record open for another 20 calendar days – until March 25, 2025⁸ – to permit interested persons and the Agency to submit written comments. Three public comments were submitted to the Office of Administrative Hearings during the post-hearing comment period. The hearing record remained open an additional five business days to permit interested parties and the Agency an opportunity to reply to the post-hearing comments.⁹ The hearing record closed on April 1, 2025.¹⁰

SUMMARY OF CONCLUSIONS

The MPCA established it has the statutory authority to adopt the proposed rules. The MPCA did not establish that it complied with all procedural requirements of law and rule. There are defects that deprived persons or entities of an opportunity to participate meaningfully in the rulemaking process. Therefore, the Administrative Law Judge **DISAPPROVES** the proposed rules.

Based upon all the record, including the Agency's exhibits, and the oral and written comments received, the Administrative Law Judge makes the following:

⁴ Ex. D at 45.

⁵ See Public Hearing Transcript (Tr.) (Mar. 5, 2025).

⁶ Exs. I-1 – I-3 (Comments received during Request for Comment #1; Comments received during Request for Comment #2; Comments received during Request for Notice of Intent to Adopt).

⁷ See Tr.

⁸ Tr. at 7, 10, 59 and 63. The Agency website and the eComment page erroneously listed a comment closing date of March 26, 2025.

⁹ See Minn. Stat. § 14.15, subd. 1 (2024).

¹⁰ Tr. at 10, 59 and 63. The Agency website and the eComment page erroneously listed a closing date of April 3, 2025. One rebuttal comment was filed on March 26, 2025.

FINDINGS OF FACT

I. Background Regarding the Proposed Rules

1. The MPCA is proposing amendments to Minn. R. chs. 7035 and 7045 prompted by a legislative mandate.¹¹ The Minnesota legislature directed that the MPCA,

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.¹²

2. Minn. R. ch. 7035 establishes the requirements applicable to the management of solid waste. Minn. R. 7035.0300, subp. 100, defines “solid waste” as “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” absent numerous exceptions, such as hazardous waste.

3. Minn. R. ch. 7045 establishes the requirements applicable to the management of hazardous waste. Minn. R. 7045.0020, subp. 33, gives “hazardous waste” the same meaning given to the term in Minn. Stat. § 116.06, subd. 11. Minn. Stat. § 116.06, subd. 11, defines “hazardous waste” as:

[A]ny 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.¹³

4. In April 2022, the MPCA published a fact sheet with guidance regarding management of treated seed (Fact Sheet) including proper disposal of waste treated seed and packaging.¹⁴ The Fact Sheet was revised in December 2023.¹⁵

¹¹ Ex. D at 6.

¹² 2023 Minn. Laws ch.60, art.3, §28. This law became effective August 1, 2023.

¹³ Minn. Stat. § 116.06, subd. 11.

¹⁴ Ex. D at 6.

¹⁵ *Id.*

II. Rulemaking Authority

5. In addition to the legislature’s 2023 mandate to the MPCA to adopt rules for treated seed waste disposal, the MPCA has statutory rulemaking authority in Minn. Stat. §§ 115A.06, subd. 2, and 116.07, subds. 2(b) and (d), and 4(b) and (g).¹⁶

6. Minn. Stat. § 116.07, subd. 2(b), requires that the MPCA “adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste.” The MPCA has statutory authority to adopt, amend, and rescind rules for the collection, transportation, storage, processing and disposal of solid waste in Minn. Stat. § 116.07, subd. 4(b).¹⁷

7. The MPCA has statutory authority in Minn. Stat. § 116.07, subds. 2(d) and 4(g), to adopt, amend and rescind rules regulating hazardous waste.¹⁸ The MPCA exercised this authority in Chapter 7045 and proposes the amendments in this rulemaking.¹⁹

8. Minn. Stat. § 115A.06, subd. 2, requires the Commissioner of the MPCA to “promulgate rules in accordance with chapter 14 to govern the agency’s activities and implement [chapter 115A].” The legislature prohibited certain disposal methods for waste treated seed in Minn. Stat. § 115A.993.

9. The MPCA has the statutory authority to adopt the proposed rules under Minn. Stat. §§ 115A.06, 116.07.

III. Procedural Requirements of Minn. Stat. Ch. 14 and Minn. R. Ch. 1400

A. Request for Comments

10. Minn. Stat. § 14.101 (2024) requires that an agency, at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing, solicit comments from the public on the subject matter of a proposed rulemaking. Such notice must be published in the *State Register*.²⁰

11. On August 28, 2023, the MPCA published a Request for Comments in the *State Register* seeking comments on the planned amendments.²¹ The MPCA sought

¹⁶ *Id.* at 8-11.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ Minn. Stat. § 14.101.

²¹ Ex. A-1a; Ex. A-1b (Aug. 28, 2023, Request for Comments).

comments on possible new rules in Minnesota Rules chapter 7035.²² The MPCA also sent a GovDelivery²³ message regarding the Request for Comments to 106 recipients.²⁴

12. On December 26, 2023, the MPCA published a second Request for Comments in the *State Register* seeking comments on possible amendments to Minnesota Rules chapters 7035 and 7045.²⁵ The MPCA sent a GovDelivery message regarding the second Request for Comments on December 26, 2023, to 321 recipients.²⁶ The December Request for Comments was mailed to 13 persons without email addresses on December 22, 2023.²⁷

13. Both the August 28, 2023, and the December 26, 2023, Requests for Comments were published at least 60 days prior to the publication of the Notice of Intent to Adopt Rules, as discussed below.

B. Publication of Notice of Intent to Adopt Rules

14. Minn. Stat. § 14.22 (2024), and Minn. R. 1400.2080, subp. 6 (2023), require that an agency publish a dual notice of intent to adopt rules in the *State Register* at least 33 days prior to the end of the comment period.²⁸

15. The MPCA published a notice of its 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 a hearing are received (Dual Notice) in the December 30, 2024, *State Register*.²⁹ The comment period closed at 4:30 p.m. on February 14, 2025.³⁰ The Dual Notice scheduled a virtual hearing to take place by video conference on March 5, 2025, and included information on how to join the hearing via the internet or telephone.³¹ The Dual Notice also provided information on how to submit comments and requests for a hearing on the proposed rules.³² The Dual Notice was published within 18 months of the 2023 legislative mandate to adopt rules addressing the safe and lawful disposal of waste treated seed.

²² Ex. A-1a.

²³ GovDelivery appears to be a communication platform used by the Agency to send rulemaking notices.

²⁴ Ex. A-1b.

²⁵ Ex. A-2b.

²⁶ *Id.*

²⁷ Ex. A-2c (Certificate of Mailing the Request for Comments in Compliance with Minnesota Statutes § 14.101).

²⁸ Minn. Stat. § 14.22.

²⁹ Ex. F-1c (Dual Notice *State Register* publication).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

16. At least ten calendar days were between the end of the comment period and the day of the hearing.³³

17. An agency must request approval of its notice of hearing by an administrative law judge prior to service.³⁴

18. The MPCA did not request approval of a draft of the Dual Notice with the Administrative Law Judge prior to its publication in the *State Register*. As a result, the Administrative Law Judge was not able to advise the agency as to when, where, and how many hearings should be held in order to allow for participation by all affected interests³⁵ and did not review or approve the Dual Notice.³⁶

19. On February 20, 2025, the MPCA filed a Notice of Hearing to Those Who Requested a Hearing (Notice of Hearing) with the Administrative Law Judge. The MPCA attached a copy of the Dual Notice, the October 14, 2024, draft of the proposed rules, and the Statement of Need and Reasonableness.³⁷

20. The MPCA filed with the Administrative Law Judge a Request for Hearing on February 27, 2025.³⁸ The filing is not contemplated in the MAPA and the hearing had already been scheduled and noticed in the Dual Notice; the Administrative Law Judge did not issue a response to the moot filing.

21. The Dual Notice contained all information required under Minn. R. 1400.2080 and was published more than 30 days before the close of the comment period.³⁹

C. Notice Requirements

1. Notice to Official Rulemaking List

22. Minn. Stat. § 14.14, subd. 1a, requires that each agency maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings.⁴⁰

³³ See *Id.*

³⁴ Minn. R. 1400.2080, subp. 5.

³⁵ See Minn. R. 1400.2080, subp. 5.

³⁶ See rulemaking record, *generally*.

³⁷ Notice of Hearing to Those Who Requested a Hearing (Feb. 20, 2025). The Notice of Hearing and attachments that the Agency filed with the Administrative Law Judge was not submitted into the record as an exhibit at the hearing. The Notice of Hearing that was sent to the Waste Treated Seed mailing list and tribal contacts on February 27, 2025, is in Ex. G-1.

³⁸ Request for Hearing from MPCA to Administrative Law Judge (Feb. 27, 2025) (on file with the Minn. Office Admin. Hearings).

³⁹ Ex. F-1a; Minn. R. 1400.2080.

⁴⁰ Minn. Stat. §14.14, subd. 1a.

23. The MPCA provided its notice intentions to “publish a Dual Notice in the State Register [sic] and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice” in its SONAR.⁴¹

24. Early in the process, while MPCA was working with the University of Minnesota Extension (UMN) and the Minnesota Department of Agriculture (MDA), the UMN contacted approximately 6,138 subscribers to its Pesticide Safety and Environmental Education (PSEE) program.⁴² The PSEE program includes commercial, non-commercial, private and structural pesticide applicators.⁴³

25. On September 29, 2023, the UMN emailed PSEE subscribers regarding the August 28, 2023, Request for Comments.⁴⁴

26. On November 8, 2023, MDA provided the MPCA with email and contact lists for seed treatment applicators, companies and agricultural groups.⁴⁵ The MPCA sent an email to these lists regarding this rulemaking and included a self-subscribe link.⁴⁶

27. On November 27, 2023, the MPCA worked with MDA to provide notice of the August 28, 2023, Request for Comments to 2,728 recipients of MDA’s Pesticide and Fertilizer Update Newsletter.⁴⁷

28. The MPCA emailed notice of the upcoming December 2023 Request for Comments to 2,431 recipients from MDA’s lists.⁴⁸ The email included links to the August Request for Comments’ comments page, the rule webpage, and a link to self-subscribe to receive future rule-related notices.⁴⁹

29. On December 30, 2024, the MPCA sent a GovDelivery message to 1,243 subscribers of the “Rulemaking: Waste treated seeds” list.⁵⁰ The GovDelivery message included a link to the *State Register* edition in which the Dual Notice and a copy of the proposed rule was published and a link to the MPCA’s waste treated seed rule website that contained links to the Dual Notice and the proposed rule.⁵¹

30. On February 11, 2025, the MPCA sent a reminder to GovDelivery message with the subject line, “REMINDER: Comment Period ending Feb. 14 for Dual notice of

⁴¹ Ex. D at 7.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* The date of this communication is not in the record.

⁴⁹ Ex. D at 8.

⁵⁰ Ex. F-1b (Certificate of Emailing the Dual Notice of Intent to Adopt Rules to the Rulemaking Mailing List).

⁵¹ *Id.*

intent to adopt rules – Waste treated seed disposal rule” to 1,308 subscribers to the waste treated seeds list.⁵²

31. The MPCA emailed an electronic communication to the waste treated seeds mailing list and MPCA tribal contacts on February 27, 2025, informing its recipients that the MPCA received 25 or more written requests for a hearing and that the hearing will be held on March 5, 2025, at 3:00 p.m.⁵³

32. The Dual Notice was not provided to a list of all persons who have registered with the agency as described in Minn. Stat. § 14.14, subd. 1a(a). The MPCA required individuals to self-subscribe to the waste treated seeds GovDelivery lists. Such a list does not meet the requirements of Minn. Stat. § 14.14, subd. 1a(a). Further, the MPCA mailed by U.S. Mail the December 2023 Request for Comments to 13 recipients, but the record does not show that the Dual Notice was sent to the 13 recipients.⁵⁴

2. Additional Notice

33. Minn. Stat. § 14.14, subd. 1a(a), requires that an agency make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intent to adopt rules. Such notice may be made in newsletters, newspapers, or other publications, or through other means of communication.⁵⁵ This notice is referred to as “additional notice” and is detailed by an agency in its additional notice plan.⁵⁶

34. Minn. Stat. § 14.131 requires that an agency include in its Statement of Need and Reasonableness (SONAR) a description of its efforts to provide additional notice. Alternatively, the agency must detail why additional notification efforts were not made.⁵⁷

35. An agency may request approval of its additional notice plan by an administrative law judge prior to service.⁵⁸

36. The MPCA requested approval of its additional notice plan by the Administrative Law Judge on February 27, 2025, after it had published the Dual Notice in

⁵² *Id.*

⁵³ Ex. G-1. The Certificate of Emailing a Notice of Hearing to Rulemaking List in Ex. G-1 states that an electronic copy of the Notice of Hearing was sent to the Waste Treated Seed mailing list and tribal contacts, but the attachments are not consistent with the certificate. Instead, a GovDelivery message was sent but not the Notice of Hearing as described in the Certificate of Emailing a Notice of Hearing to Rulemaking List.

⁵⁴ Exs. F-1a and F-1b.

⁵⁵ Minn. Stat. § 14.14, subd. 1a(a).

⁵⁶ See Minn. R. 1400.2060.

⁵⁷ Minn. Stat. § 14.131.

⁵⁸ Minn. R. 1400.2060.

the *State Register*.⁵⁹ The Judge denied the request for approval in an order dated February 28, 2025.⁶⁰

37. The SONAR includes a description of the MPCA's intended additional notification efforts (Additional Notice Plan).⁶¹ The Additional Notice Plan consists of various municipality associations, waste associations, recycling associations, environmental advocacy associations, and the chamber of commerce.⁶²

38. The MPCA identified the following classes of persons likely to be affected by the proposed rule: treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers.⁶³

39. The MPCA worked with MDA and UMN on outreach efforts for two years⁶⁴ leading up to the SONAR but did not provide the Dual Notice to the MDA lists or UMN lists contacted in 2023.⁶⁵ Instead, the MPCA provided the Dual Notice to the self-subscribed waste treated seeds GovDelivery list.

40. An agency must place into the hearing record "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."⁶⁶

41. The MPCA filed multiple versions of its exhibits on February 28, 2025, March 5, 2025, and March 20, 2025.⁶⁷ Although each exhibit list indicates there is no exhibit H and no exhibit H was entered into the record at the hearing, the March 5, 2025, version of the exhibits contained an Exhibit H, Certificate of Additional Notice Plan.⁶⁸ Exhibit H indicates the MPCA did provide additional notice to the recipients in the additional notice plan described in the SONAR.⁶⁹ The additional notice plan described in the SONAR does not include the classes of persons likely to be affected by the proposed rule identified by the MPCA. Specifically, the additional notice plan did not include treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers.⁷⁰

⁵⁹ Request for Review and Approval of Additional Notice Plan (Feb. 27, 2025).

⁶⁰ Order on Request for Review and Approval of Additional Notice Plan (Feb. 28, 2025).

⁶¹ Ex. D at 41-42.

⁶² *Id.* at 42.

⁶³ *Id.* at 37-38.

⁶⁴ *Id.* at 23.

⁶⁵ See Exs. D at 41-42, F-1b, G-1.

⁶⁶ Minn. R. 1400.2220, subp. 1(K).

⁶⁷ See Tr.

⁶⁸ Ex. H. The Certificate of Additional Notice Plan states a copy of each of the emails is attached to the Certificate, but no such emails were attached.

⁶⁹ Ex. H; Ex. D at 41-42.

⁷⁰ Ex. D at 41-42.

42. The MPCA did not fulfill its obligation to make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving additional notice as required in Minn. Stat. § 14.14, subd. 1a(a).

3. Notice to Legislators

43. Under Minn. Stat. § 14.116, an agency is required to send a copy of the Notice of Intent to Adopt and the SONAR to certain legislators at the time it mails its Notice of Intent to Adopt to persons on its rulemaking list and pursuant to its Additional Notice Plan.

44. On December 30, 2024, the MPCA mailed or emailed a copy of the Dual Notice and SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the proposed rules, and to the Legislative Coordinating Commission.⁷¹

45. The MPCA fulfilled its notification responsibilities under Minn. Stat. § 14.116.

4. Notice to the Legislative Reference Library

46. Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3, require the agency to send a copy of the SONAR to the Legislative Reference Library when the Notice of Intent to Adopt is mailed.

47. On December 30, 2024, the MPCA mailed a copy of the SONAR to the Legislative Reference Library.⁷²

48. The MPCA fulfilled its responsibilities under Minn. Stat. § 14.131.

D. Impact on Farming Operations

49. Minn. Stat. § 14.111 imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any proposed rule changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.

⁷¹ Ex. K-1 (Certificate of Sending the Notice and the Statement of Need and Reasonableness to Legislators and the Legislative Coordinating Commission).

⁷² Ex. E (Certificate of Mailing SONAR to the Legislative Reference Library).

50. On December 5, 2024, less than 30 days prior to the publication of the proposed rules in the *State Register*, the MPCA mailed a certified copy of the Revisor's approved draft rules to the Commissioner of Agriculture.⁷³

51. When a hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state.⁷⁴

52. No public hearing was conducted in an agricultural area of the state.

53. The MPCA did not satisfy the requirements under Minn. Stat. §§ 14.111 and 14.14, subd. 1b.

E. Requests for Hearing and Comments

54. The MPCA received six comments and 123 unique requests for a hearing, exceeding the 25 request threshold.⁷⁵

55. On February 27, 2025, the MPCA sent a Notice of Hearing to the waste treated seeds GovDelivery mailing list and tribal contacts.⁷⁶

F. Rule Hearing

56. The Administrative Law Judge conducted a virtual public rulemaking hearing on March 5, 2024.⁷⁷

57. In support of its request for approval to adopt the proposed rules, the MPCA submitted the following documents into the record:

Ex. A-1a: Requests for Comments Published in the State Registers on August 28, 2023;

Ex. A-1b: Certificate of Mailing Notice of Request for Comment #1;

Ex. A-2a: Requests for Comments Published in the State Registers on December 26, 2023;

Ex. A-2b: Certificate of Mailing Notice of Request for Comment #2 (E-mail);

⁷³ Ex. K-2 (Certificate of Sending the Proposed Rules to the Commissioner of the Minnesota Department of Agriculture).

⁷⁴ Minn. Stat. § 14.14, subd. 1b.

⁷⁵ Ex. I-3. Note: 124 requests for hearing are in the record but one request is a duplicate.

⁷⁶ Ex. G-1.

⁷⁷ See Tr., *generally*.

Ex. A-2c: Certificate of Mailing Notice of Request for Comment #2 (U.S. Mail);

Ex. C: Proposed Rule;

Ex. D: Statement of Need and Reasonableness (SONAR);

Ex. E: Certificate of Mailing SONAR sent to the Legislative Reference Library;

Ex. F-1a: Notice as emailed on December 30, 2024;

Ex. F-1b: Certificate of emailing Notice to Rulemaking Mailing List;

Ex. F-1c: Notice as published in the State Register on December 30, 2024;

Ex. G-1: Certificate of Mailing the Notice of Hearing to the Rulemaking Mailing List;

Ex. G-2: Certificate of Accuracy of the Mailing List;

Ex. I-1: Comments received during Request for Comment #1;

Ex. I-2: Comments received during Request for Comment #2;

Ex. I-3: Comments received during Request for Notice of Intent to Adopt;

Ex. K-1: Certificate of Sending the Notice and the Statement of Need and Reasonableness to Legislators and the Legislative Coordinating Commission;

Ex. K-2: Certificate of Sending the Proposed Rules to the Commissioner of the Minnesota Department of Agriculture;

Ex. K-3: Certificate of Consulting with Minnesota Management and Budget in Compliance with Minnesota Statutes, Section 14.131;

Ex. K-4: Certificate of Consulting with Minnesota Department of Agriculture and the University of Minnesota; and

Ex. K-5: Letter sent to the Office of Administrative Hearings Requesting a Hearing after receiving more than 25 requests for hearing.⁷⁸

58. David J. Stellmach, MPCA's legal counsel, offered the Agency's exhibits⁷⁹ and addressed the procedural requirements for rulemaking.⁸⁰ Joshua Burman, Environmental Specialist Senior for the MPCA, made a presentation explaining the need and reasonableness of the rule.⁸¹

59. Approximately 20 members of the public attended the hearing. The proceeding continued until all interested persons, groups, or associations present had an opportunity to be heard concerning the proposed rules.

60. Six members of the public made statements or asked questions during the hearing.⁸² Nineteen written comments were received prior to the hearing.⁸³ No members of the public offered written comments as exhibits for the hearing record. Three members of the public submitted written comments after the hearing and one rebuttal comment from the public was received.

61. The hearing record closed on April 1, 2025,⁸⁴ the deadline for submitting rebuttal comments.⁸⁵ The MPCA filed a document it labeled Exhibit M on April 3, 2025, with the Office of Administrative Hearings.⁸⁶ No other comments were received.

IV. Statutory Requirements for the SONAR

A. Regulatory Factors

62. The MAPA requires an agency adopting rules to address eight factors in its SONAR to the extent the agency, through reasonable effort, can ascertain the information.⁸⁷ Those factors are:

⁷⁸ Tr. at 12-15. See Minn. Stat. § 14.14, subd. 2a and Minn. R. 1400.2220.

⁷⁹ As stated above, exhibit H was not entered into the record at the hearing but appears in the March 5, 2025, version of the filed exhibits. Similarly, no exhibit L was entered into the record at the hearing but appears only in the March 5, 2025, version of the filed exhibits. Exhibit L is a document entitled, "Waste Treated Seed Disposal Rule: Pre-Hearing Response to Comments."

⁸⁰ Tr. at 8-11.

⁸¹ Tr. at 16-37.

⁸² See Tr.

⁸³ Exs. I-1 – I-3 (Public Comments).

⁸⁴ The hearing record closed April 1, 2025, at the close of the rebuttal comment period.

⁸⁵ Tr. at 10, 59, 63.

⁸⁶ The MPCA filed a document it labeled "Exhibit M" on April 3, 2025. Due to a clerical error on the comment portal site and the MPCA's rulemaking webpage, the rebuttal comment period closing date was listed as April 3, 2025. The MPCA's April 3, 2025, filing was after the close of the hearing date and was improperly filed not as a comment but as an exhibit.

⁸⁷ Minn. Stat. § 14.131.

- 1) 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;
- 2) 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;
- 3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- 4) 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;
- 5) 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;
- 6) 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;
- 7) 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; and
- 8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.⁸⁸

1. Classes of Persons Affected, Benefitted, or Bearing Costs of the Proposed Rule

63. The MPCA identified that 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.⁸⁹

⁸⁸ Minn. Stat. § 14.131.

⁸⁹ Ex. D at 37-38.

64. The MPCA stated it does not expect the proposed rule to significantly increase costs or regulatory burdens because the proposed rule “effectively bring[s] together and clarif[ies] already-existing requirements and prohibitions.”⁹⁰

65. The MPCA expects that all Minnesota citizens will benefit from the proposed rule because it improves clarity and understanding of proper waste treated seed management across the state, which will reduce risk of harm to citizens and the environment.⁹¹

2. Probable Costs to the Agency and Other Agencies for Implementation and Enforcement and the Effect on State Revenues

66. The MPCA does not believe that any of the proposed amendments will have any direct effect on State revenue and will provide the benefit of maintaining rules that are accurate and reflect current requirements.⁹²

67. The MPCA does not believe there will be additional costs to the MPCA or other state agencies to implement or enforce the proposed amendments.⁹³

3. Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rule

68. The MPCA determined that rulemaking is the least costly method to achieve the proposed rule because the legislature mandated the MPCA to adopt rules.⁹⁴

69. The MPCA also asserted that because the legislature explicitly mandated rulemaking, the MPCA must accept that the legislature has already considered alternate methods and has determined that rulemaking is most appropriate.⁹⁵ The Administrative Law Judge disagrees with the MPCA’s assumption that the legislature already considered alternate methods but finds that the legislature’s narrow directive to adopt rules satisfies this analysis requirement.

4. Description of Alternative Methods for Achieving the Purpose of the Proposed Rule Considered by the Agency and Why Alternatives Were Rejected

70. The MPCA stated the guidance provided in the MPCA Fact Sheet issued in April 2022 was the agency’s alternate method for achieving the purpose of the proposed

⁹⁰ *Id.* at 38.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

rule.⁹⁶ The MPCA interpreted the legislature mandating rulemaking in May 2023 to mean that the legislature determined the Fact Sheet was insufficient. The MPCA further concluded that it must reject alternative methods outside of rulemaking.⁹⁷

5. Probable Costs of Complying with Proposed Rules, Including the Portion of the Total Costs Borne by Identifiable Categories of Affected Parties

71. The MPCA identified the majority of persons affected by this rule as persons who deal regularly with treated seed, including treated seed manufacturers, dealers, agricultural cooperatives, retailers, and farmers.⁹⁸

72. The MPCA again stated that the requirements in the proposed rules are already in existing requirements and prohibitions.⁹⁹ The MPCA explained that the proposed amendments will not significantly increase costs because they clarify already-existing requirements and prohibitions.¹⁰⁰ This is an incomplete analysis that ignores the requirements in the proposed rule that are not found elsewhere.¹⁰¹ For example, the MPCA did not address whether the broader definition of “monitoring well,”¹⁰² defining “farming” and “waste treated seed,”¹⁰³ excluding waste treated seed from source-separated organic material,¹⁰⁴ the prohibited disposal methods of waste treated seed,¹⁰⁵ and immediate covering of waste treated seed.¹⁰⁶

6. Probable Costs or Consequences of not Adopting the Proposed Rules, Including Costs Borne by Individual Categories of Affected Parties

73. The MPCA again stated that the requirements in the proposed rules are already in existing requirements and prohibitions.¹⁰⁷

74. The MPCA stated that because the legislature has mandated this rulemaking, the cost or consequences of not adopting the proposed rule would be at the

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Ex. D.

¹⁰⁰ Ex. D at 38

¹⁰¹ *Id.* at 16-37. See Ex. L (Agency Response to Dual Notice Comments). Exhibit L was not read into the record at the hearing but was included in the March 5, 2025, version of the exhibits. Because the exhibit was filed with the Administrative Law Judge, exhibit L is accepted into the hearing record.

¹⁰² Ex. C at 1, proposed rule 7035.0300, subp. 66.

¹⁰³ Ex. C at 1 and 2, proposed rule 7035.0300, subps. 37a and 116a.

¹⁰⁴ Ex. C at 2, proposed rule 7035.0300, subp. 105a.

¹⁰⁵ Ex. C at 7, proposed rule 7035.3700, subp. 4.

¹⁰⁶ Ex. C at 5, proposed rule 7035.2815, subp. 6(A).

¹⁰⁷ Ex. D at 38.

discretion of the legislature to achieve its intended purpose.¹⁰⁸ The MPCA further asserted that the cost would not be significant because the proposed requirements and prohibitions already exist elsewhere. This is an incomplete analysis that ignores the requirements in the proposed rule that are not found elsewhere.¹⁰⁹

7. Assessment of Differences Between Proposed Rules and Existing Federal Regulations

75. The MPCA stated that there are currently no enforceable federal regulations directly applicable to management of waste treated seed.¹¹⁰

76. The MPCA noted that while it is aware of federal regulations of the Environmental Protection Agency (EPA) and U.S. Department of Agriculture that regulate some aspects of treated seed handling, including manufacture and proper intended use, these standards do not directly regulate disposal of waste treated seed.¹¹¹

8. Cumulative Effect of the Rule with Other Federal and State Regulations

77. Because, as noted above, federal law does not regulate disposal of waste treated seed and the proposed amendments “bring together and clarify existing state rule and statutory requirements,” the MPCA concluded that the proposed amendments are not expected to have a significant cumulative effect.¹¹²

78. The MPCA has met its obligation to complete the six of the eight assessments, set forth in Minn. Stat. § 14.131, in the text of its SONAR

B. Performance-Based Regulation

79. The MAPA requires an agency to describe in its SONAR how it has considered and implemented the legislative policy supporting performance-based regulatory systems.¹¹³ A performance-based rule is one that emphasizes superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.¹¹⁴

80. The MPCA explained that it believes the performance-based alternatives have already been considered because many of the requirements and prohibitions in the proposed rule already exist. The MPCA explained that the proposed rule compiles and

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 16-37. See Ex. L.

¹¹⁰ Ex. D at 39.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Minn. Stat. §§ 14.002, .131.

¹¹⁴ Minn. Stat. § 14.002.

clarifies existing regulatory requirements and does not modify how prescriptive or flexible the rules are.¹¹⁵

81. There is no exception in the MAPA that relieves an agency from MAPA requirements when an agency modifies existing rules or adopts rules it believes are duplicative of existing rules.¹¹⁶ The agency cannot rely on the assumption that the requirement or analysis has already been completed.

82. The Administrative Law Judge finds that the Agency has not described how it has considered and implemented legislative policy in supporting performance-based regulatory systems in its SONAR.

C. Consultation with the Commissioner of Minnesota Management and Budget

83. Minn. Stat. § 14.131 requires that agencies consult with the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government.

84. On December 23, 2024, the MPCA sent an e-mail to MMB containing the proposed rules.¹¹⁷ MMB's response, if any, is not part of the record.

85. The Agency has consulted with the Commissioner of MMB as required by Minn. Stat. § 14.131.

D. Summary of Requirements Set Forth in Minn. Stat. § 14.131

86. The Agency has not met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems, and the fiscal impact on units of local government.

E. Cost to Small Businesses and Cities under Minn. Stat. § 14.127

87. Minn. Stat. § 14.127 requires agencies 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: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” Agencies must make

¹¹⁵ Ex. D at 42.

¹¹⁶ This does not include the other rulemaking procedures in MAPA such as exempt or expedited rulemaking in Minn. Stat. §§ 14.386, 388, .389 or .3895.

¹¹⁷ Ex. K-3 (Certificate of Consulting with Comm'r of MMB). The MPCA initially contacted MMB on December 5, 2024, but failed to attach the documentation required in Minn. Stat. § 14.131 until December 23, 2024. Therefore, December 23, 2024, is the complete, effective date that the MPCA consulted with MMB.

this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.¹¹⁸

88. The MPCA does not believe that small businesses and cities “will face significant new costs in complying with the standards” because the proposed rules “effectively collate and clarify already-existing requirements.”¹¹⁹ The MPCA did not determine if the costs will not exceed \$25,000 for any one small business or statutory or home rule charter city that has less than ten full-time employees.¹²⁰ The Administrative Law Judge has no determination to review and approve or disapprove.

F. Adoption or Amendment of Local Ordinances

89. Under Minn. Stat. § 14.128, agencies must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. Agencies must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.¹²¹

90. The MPCA stated that 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.¹²²

91. The MPCA did not provide any explanation to support its statement. Many local governments have ordinances addressing solid waste disposal. The extensive number of local government-related associations in the additional notice plan support this assumption. The MPCA did not explain why local units of government will not be required to amend their local ordinances despite the fact that many local ordinances regulate waste disposal.

92. The MPCA’s determination is disapproved.

G. Consideration of Material Matters and Economic Factors

93. In addition to the evaluations of costs required in Minn. Stat. § 14.131, the MPCA is required by Minn. Stat. §§ 115.43, subd. 1, and 116.07, subd. 6 (2024), to give due consideration to:

¹¹⁸ Minn. Stat. § 14.127, subds. 1 and 2.

¹¹⁹ Ex. D at 43.

¹²⁰ See Ex. D at 43.

¹²¹ Minn. Stat. § 14.128, subd. 1. Moreover, a determination that the proposed rules require adoption or amendment of an ordinance may modify the effective date of the rule, subject to some exceptions. Minn. Stat. § 14.128, subds. 2 and 3.

¹²² Ex. D at 43.

[T]he 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 therefrom and shall take or provide for such action as may be reasonable, feasible and practical under the circumstances.¹²³

94. The MPCA again stated that the requirements in the proposed rules are already in existing requirements and prohibitions. The MPCA considered the economic factors associated with the proposed amendments in that framework and does not anticipate the proposed rule will present a burden on any municipality or affect the establishment, maintenance, operation and expansion of business, commerce, trade, industry, or traffic.¹²⁴

95. The MPCA gave due consideration to the factors required by Minn. Stat. §§ 115.43, subd. 1, and 116.07, subd. 6.

H. Comparison to Federal and Other State Standards

96. In addition to the regulatory analysis in Minn. R. chapter 14, the MPCA has a special obligation under Minn. Stat. § 116.07, subd. 2(f) (2024). In any rulemaking that seeks to adopt standards for air quality, solid waste, hazardous waste, or water quality, the MPCA must assess any differences and the need and reasonableness of each difference between the proposed rule and:

- i. existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, 33 U.S.C. § 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921(b)(1);
- ii. similar standards in states bordering Minnesota; and
- iii. similar standards in states within the United States Environmental Protection Agency (EPA) Region 5.

97. The proposed rule is consistent with federal regulation of non-hazardous solid waste.¹²⁵ Subtitle D of the Resource Conservation and Recovery Act (RCRA) establishes regulations that ban open dumping of waste and sets minimum federal criteria for the operation of municipal waste and industrial waste landfills.¹²⁶ Waste treated seed is an industrial solid waste under existing Minnesota laws and the proposed rule and may

¹²³ Minn. Stat. §§ 115.43, subd. 1, 116.07, subd. 6.

¹²⁴ Ex. D at 43.

¹²⁵ *Id.* at 43-44.

¹²⁶ *Id.* at 44.

be managed in municipal waste or industrial waste landfills.¹²⁷ The proposed rule comports with and does not alter the applicable federal requirements for municipal solid waste or industrial waste landfills.¹²⁸

98. The MPCA concluded that the proposed rule does not affect air quality or water quality standards promulgated by the federal government.¹²⁹

99. The MPCA reviewed waste regulations from the EPA Region 5 states and the states surrounding Minnesota.¹³⁰ The MPCA determined that Illinois, Indiana, Michigan, and North Dakota had no apparent specific waste treated seed standards.¹³¹ South Dakota had no apparent specific standards but had received authorization to establish specific standards from its Department of Agriculture and Natural Resources.¹³² Wisconsin had standards equivalent to Minn. Stat. § 18B.075.¹³³ Ohio had standards equivalent to the proposed Minn. R. 7035.3700.¹³⁴ Iowa had no apparent specific standards, but it did have guidance documents jointly published by the Iowa Department of Natural Resources and Department of Agriculture.¹³⁵ The MPCA did not assess the Iowa guidance in relation to the proposed rule.¹³⁶

100. The MPCA met its obligation to assess the differences between the proposed rule and federal regulations and the reasonableness of each difference.

I. Environmental Justice Policy

101. The MPCA adopted a policy for environmental justice in May 2022.¹³⁷ The MPCA's policy states that, in addition to improving the environment and public health, the outcome of its work must address environmental justice concerns.¹³⁸ The MPCA also 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.¹³⁹

102. When undertaking rulemaking, the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* The MPCA reviewed the regulations of Wisconsin, Illinois, Indiana, Michigan, Ohio, Iowa, North Dakota, and South Dakota.

¹³¹ Ex. D at 44.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *See* Ex. D.

¹³⁷ Ex. D at 39.

¹³⁸ *Id.*

¹³⁹ *Id.*

Minnesotans in rule development.¹⁴⁰ The MPCA maintains it strives to evaluate how proposed rule amendments may affect low-income populations and communities that have a high proportion of people of color.¹⁴¹

103. The MPCA determined in its equity analysis that it does not expect the proposed rule will have any negative environmental consequences.¹⁴²

104. With respect to meaningful involvement, the MPCA believes its stakeholder outreach has ensured that most affected communities are aware of the proposed rule and no specific plan was necessary to reach out to low-income populations and communities of color. The MPCA determined no additional outreach is necessary.¹⁴³ The MPCA stated that all interested and affected parties may submit comments on the proposed rulemaking.¹⁴⁴ The MPCA is correct but this is true of all rulemaking proceedings. The important consideration here is ensuring interested and affected parties, particularly parties historically deprived of notice, are provided proper notice of the proposed rule.

105. The MPCA reasoned that because the proposed rule will apply statewide, there will be no particular effect on any community over another.¹⁴⁵ However, even statewide applicability of a rule can result in disparate effects on different populations. In this case, there is no indication in the record that the proposed rule will have a disparate effect on the populations covered by the MPCA's environmental justice policy.

106. The MPCA has complied with its environmental justice policy.

V. Rulemaking Legal Standards

107. The Administrative Law Judge must make the following inquiries: (1) whether the agency has statutory authority to adopt the rule; (2) whether the rule is unconstitutional or otherwise illegal; (3) whether the agency has complied with the rule adoption procedures; (4) whether the proposed rule grants undue discretion to government officials; (5) whether the rule constitutes an undue delegation of authority to another entity; and (6) whether the proposed language meets the definition of a rule as defined in Minn. Stat. § 14.02, subd. 4.¹⁴⁶

108. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, the agency must establish the need for, and reasonableness of, a proposed rule by an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 39-40.

¹⁴³ *Id.* at 40.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 39-40.

¹⁴⁶ See Minn. R. 1400.2100.

for the hearing record,¹⁴⁷ “legislative facts” (namely, general and well-established principles, that are not related to the specifics of a particular case, but which guide the development of law and policy),¹⁴⁸ and the agency’s interpretation of related statutes.¹⁴⁹

109. A proposed rule is reasonable if the agency can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”¹⁵⁰ By contrast, a proposed rule is arbitrary and capricious where the agency’s choice is based upon whim, devoid of articulated reasons or “represents its will and not its judgment.”¹⁵¹

110. An important corollary to these standards is that when proposing new rules, an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative that is selected by the agency is a rational one.¹⁵² Thus, while reasonable minds might differ as to whether one or another particular approach represents “the best alternative,” the agency’s selection will be approved if it is one that a rational person could have made.¹⁵³

VI. Rule by Rule Analysis

111. The proposed rules have received comments both for and against them during the hearing process.¹⁵⁴ The MPCA stated that it would respond to the comments received during the hearing.¹⁵⁵ The proper venue to provide a response to comments made at the hearing was the eComment portal during the initial post-hearing comment period. Submitting a comment using the eComment portal would have allowed members of the public, in particular the commenters, to see the MPCA’s response. Instead, the MPCA filed a document it labeled as “Exhibit M” with the Administrative Law Judge on April 3, 2025.¹⁵⁶ The filing was untimely and deprived the public from seeing the MPCA’s written response to the comments. The MPCA made two attempts to respond to public comments in documents it labeled “Exhibit L” and “Exhibit M.” However, neither document

¹⁴⁷ See *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984); *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

¹⁴⁸ Compare generally, *U. S. v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

¹⁴⁹ See *Mammenga v. Agency of Human Services*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

¹⁵⁰ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

¹⁵¹ See *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm’n*, 251 N.W.2d 350, 357-58 (Minn. 1977).

¹⁵² *Peterson v. Minn. Dep’t of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

¹⁵³ *Minn. Chamber of Commerce*, 469 N.W.2d at 103.

¹⁵⁴ See Exs. I-1 – I-3; Tr.

¹⁵⁵ Tr. at 51.

¹⁵⁶ Exhibit M (Apr. 3, 2025). The rebuttal comment period closed on April 1, 2025. However, the eComment portal and the MPCA’s website both listed the incorrect closing date of April 3, 2025. Because of that error, the Judge would have accepted proper rebuttal comments submitted by 4:30 p.m. on April 3, 2025.

was properly entered into the record at the hearing or submitted in a way that members of the public would know about or see the documents.

112. Several sections of the proposed rules were not opposed by any member of the public and were adequately supported by the SONAR. Accordingly, this Report is limited to discussion of the portions of the proposed rule that received critical comment or otherwise need to be examined.

113. The MPCA has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of all rule provisions not specifically discussed in this Report.

A. Definitions

114. The MPCA defines “waste treated seed” in Minn. R. 7035.0300, subp116a. Some commenters wanted the definition of waste treated seed to specifically include spilled treated seeds.¹⁵⁷ The MPCA contends that the definition is broad enough to encompass treated seeds that are spilled. In its response to the comments, the MPCA opined 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.¹⁵⁸ The MPCA further explained that use and handling of treated seed as a product is beyond the scope of this rulemaking and declined to include spilled treated seeds in this rulemaking.¹⁵⁹

115. The MPCA demonstrated, by an affirmative presentation of facts, the need for and reasonableness of its definition of “waste treated seed.”

B. Waste Treated Seed Burial Setback Distance

116. The proposed Minn. R. 7035.3700, subp. 4(A)(3)(a) declares a setback burial distance of more than 200 feet away from any water-supply well used for human or animal drinking water and more than 1,000 feet away from any public water supply for disposal of waste treated seed.¹⁶⁰ The minimum setback distance for private wells was the subject of several comments at the hearing and written comments.

117. Several commenters stated the MPCA should require burial setback distance greater than 200 feet for private wells that supply drinking water to humans or animals.¹⁶¹ Commenters additionally stated that the MPCA should clarify or prohibit waste

¹⁵⁷ Ex. I-3.

¹⁵⁸ Ex. L.

¹⁵⁹ *Id.*

¹⁶⁰ Ex. C at 8.

¹⁶¹ Tr. at 37; Ex. I-3.

treated seed burial on wellhead protection areas and better define best practices for waste treated seed burial on farms.¹⁶²

118. One comment in the prehearing comment period noted that chemicals known as “neonics” are the most commonly used chemicals to coat several types of seeds.¹⁶³ The commenter stated that since the MPCA uses 1,000 feet as the distance required to prevent the spread of neonics used near water, any waste treated seed must be buried at least 1000 feet from any private well used for drinking water for humans or animals.¹⁶⁴

119. The MPCA explained the legislature prohibits burial of waste treated seed “near a drinking water source or any creek, stream, river, lake, or other surface water” but failed to define “near.”¹⁶⁵

120. The MPCA used the same setback distances previously 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.¹⁶⁶ The MPCA did not explain how or why land treatment sites that treat petroleum contaminated soil¹⁶⁷ is an appropriate or comparable point of reference for the risks presented by waste treated seeds.

121. The MPCA opines that 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, and it is therefore reasonable to apply a similar minimum setback distance from any water-supply well.¹⁶⁸ The record does not support that the amount of buried seed would be small.

122. The MPCA believes that the most likely proximal water-supply well would be the farmer’s own water-supply well, and that the risks to a farmer’s own water-supply well would be limited in scope.¹⁶⁹ The MPCA indicates that since the farmer would be burying the waste treated seeds on the farmer’s own land and in proximity of the farmer’s well, that appropriate measures will be taken. However, if the regulation is set at 200 feet, it is reasonable that the farmer would rely on the MPCA’s expertise and assume that 200 feet is a safe distance from the well. However, the record does not support that 200 feet is a safe distance from a well to prevent contamination.

¹⁶² Tr. at 37; Ex. I-3.

¹⁶³ Ex. I-3.

¹⁶⁴ *Id.*

¹⁶⁵ Ex. D at 28.

¹⁶⁶ *Id.*

¹⁶⁷ Minn. R. 7037.0100, subp. 8.

¹⁶⁸ Ex. D at 29.

¹⁶⁹ *Id.* at 28-29.

123. The MPCA stated wellhead protection areas are regulated and interpreted by the Minnesota Department Health, not the MPCA.¹⁷⁰ While “public water supply” and “water-supply well” are defined terms that can be identified as points on a map, the wellhead protection area may be based on a hydrogeological study.¹⁷¹

124. The MPCA believes it balanced the expected risk of burial of a purported relatively small volume of waste treated seed by persons operating land used for farming on that land with the regulatory burden. The record does not provide for an accurate amount of waste treated seed anticipated to be buried under the proposed rule.

125. The MPCA has not demonstrated, by an affirmative presentation of facts, the need for and reasonableness of the proposed setback distance.

C. Waste Treated Seed Classification

126. The proposed Minn. R. 7035.3700, subp. 2, declares the regulated status of waste treated seed as industrial solid waste and exempts waste treated seed managed according to part 7035.3700 from the hazardous waste requirements of chapter 7045.¹⁷² This subpart of the proposed rules was the subject of comments at the hearing and written comments.¹⁷³

127. Several commenters recommended a requirement that all waste treated seed be regulated as hazardous waste.¹⁷⁴ The MPCA determined that in order to effectively regulate all varieties of waste treated seeds as hazardous wastes, the MPCA would have to drastically enlarge the scope of regulated hazardous wastes in Minnesota.¹⁷⁵ The MPCA determined that such an expansion of the scope and stringency of the existing Hazardous Waste Rules would substantially increase the volume of regulated hazardous waste generated in the state, with a commensurate steep increase of the regulatory burden on Minnesota businesses.¹⁷⁶ The MPCA also determined the management of waste treated seed as proposed in this rulemaking would not result in risks that would justify such a major regulatory shift.¹⁷⁷

128. One commenter requested that the MPCA designate waste treated seed as a minimally-regulated “biomass” suitable for incineration in facilities that burn trees, brush, and uncontaminated plant waste.¹⁷⁸ The MPCA stated that waste treated seeds differ from the types of “clean” wood, plants, and other wasted considered to be burnable

¹⁷⁰ Ex. L.

¹⁷¹ *Id.*

¹⁷² Ex. C at 7; Ex. D at 23.

¹⁷³ See Ex. D at 13-14; Exs. I-1-I-3.

¹⁷⁴ Ex. D at 13-14.

¹⁷⁵ *Id.* at 13.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 15.

“biomass” due to the toxic pesticides and other chemicals that waste treated seed tends to contain.¹⁷⁹ The MPCA declined this request because such a classification would not protect the environment.¹⁸⁰

129. At the hearing, multiple commenters discussed the importance and value of treated seeds and stated unused or unsold treated is not viewed as waste by farmers.¹⁸¹ They expressed concern that any restrictions to access to treated seeds would have significant consequences for them.¹⁸²

130. In its SONAR, the MPCA justified its classification of regulated waste treated seed as industrial solid wastes as follows: 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. 2.¹⁸³ The MPCA evaluated many example types of waste treated seed and determined that waste treated seed, with or without the proposed provisions in this rulemaking, would likely not meet any of the definitions of hazardous wastes contained in Minn. R. ch. 7045.¹⁸⁴ Instead, the MPCA determined waste treated seed meets 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...”.¹⁸⁵

131. The MPCA concluded it is necessary and reasonable to declare that waste treated seed managed under the provisions proposed in this rulemaking is industrial solid waste.¹⁸⁶

132. The MPCA has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of the proposed classification of waste treated seed as industrial solid waste is necessary and reasonable.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 15-16.

¹⁸¹ Tr. at 27-35.

¹⁸² Tr. at 28.

¹⁸³ Ex. D at 23.

¹⁸⁴ *Id.* at 23-26.

¹⁸⁵ *Id.* at 26.

¹⁸⁶ *Id.* at 27.

Based upon the Findings of Fact and the contents of the rulemaking record, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has authority and jurisdiction to review these rules under Minn. Stat. §§ 14.14, .15, .50 (2024), and Minn. R. 1400.2100 (2023).

2. The MPCA has statutory authority to adopt the proposed rule in Minn. Stat. §§ 115A.06, subd. 2, and 116.07, subds. 2(b) and (d), and 4(b) and (g), and 2023 Minn. Laws ch.60, art.3, §28. The Agency has demonstrated its statutory authority to adopt the proposed rules pursuant to Minn. Stat. § 14.05, subd. 1 (2024).

3. The MPCA published a Request for Comments on August 28, 2023, and a second Request for Comments on December 26, 2023, in the *State Register*. The Agency complied with the requirements set forth in Minn. Stat. § 14.101.

4. Minn. Stat. § 14.15, subd. 5, requires an administrative law judge to disregard an error or defect in the proceeding due to an “agency’s failure to satisfy any procedural requirement” if the administrative law judge finds “that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process”¹⁸⁷

Dual Notice

5. The MPCA published a Dual Notice in the State Register on December 30, 2024. The MPCA emailed a link to the published Dual Notice to recipients on the waste treated seed GovDelivery list and tribal contacts.

6. Minn. Stat. § 14.14, subd. 1a, requires that an agency maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the agency their electronic mail address or their name and United States mail address.

7. The MPCA did not send the Dual Notice to the MPCA’s list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings as required in Minn. Stat. § 14.14, subd. 1a(a). The waste treated seed GovDelivery list does not meet the requirements of Minn. Stat. § 14.14, subd. 1a(a) because it is not a list maintained by the MPCA in which persons on the list are removed only if, upon the agency’s inquiry, 60 days have passed and a negative reply or no reply is provided. That is, the waste treated seed GovDelivery list is maintained temporarily and used only for this rulemaking. The MPCA did not send the Dual Notice to the 13 persons

¹⁸⁷ Minn. Stat. §14.15, subd. 5.

who received the December 2023 Request for Comments by U.S. mail in compliance with Minn. Stat. § 14.101, and who do not have email addresses.

8. The MPCA did not demonstrate that it made reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication as required in Minn. Stat. § 14.14, subd. 1a(a). The MPCA described this type of effort in the early stages of the rulemaking process, at or before the request for comments stage, and required persons to self-subscribe to the waste treated seed GovDelivery list. No proposed rule draft was available with either of the requests for comments. The MPCA did not make those same efforts at the most critical notice point in rulemaking, the Dual Notice. MPCA's failure to proactively provide this critical notice likely deprived a person or entity of an opportunity to participate meaningfully in the rulemaking process. This defect is not harmless error.

9. The MPCA did not request approval of its Dual Notice from the Judge as required in Minn. R. 1400.2080, subp. 5.

Farming Operations

10. The MPCA provided a copy of the proposed rule to the Commissioner of Agriculture on December 5, 2024, pursuant to Minn. Stat. § 14.111. Although the notice to the Commissioner of Agriculture was not 30 days prior to publication of the Dual Notice, the insufficient timing did not result in prejudice as MDA participated in the rulemaking including at the beginning of the process.

11. When a public hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state pursuant to Minn. Stat. § 14.14, subd. 1b. Because the proposed rule affects farming operations as recognized by the MPCA's notification of the Commissioner of Agriculture pursuant to Minn. Stat. § 14.111, the MPCA was required to hold a hearing in an agricultural area of the state. No hearing was held in an agricultural area of the state as required. This defect deprived a person or entity of an opportunity to participate meaningfully in the rulemaking process and is not a harmless error.

12. The Agency's failure to fully satisfy the procedural requirements of Minn. Stat. §§ 14.111; 14.22 (2024) and Minn. R. 1400.2080, subp. 5 (2023) deprived persons or entities of an opportunity to participate meaningfully in the rulemaking process.

13. The MPCA has not fulfilled all substantive requirements of Minn. Stat. §§ 14.002, .127, .131, .14, .22, .23, (2024) and Minn. R. 1400.2070, .2080, .2100.

14. The MPCA did not fulfill the notice requirements established in Minn. Stat. § 14.14, subd. 1a(a).

15. The MPCA has fulfilled the substantive requirements of Minn. Stat. §§ 14.128, .125.


16. Except as noted in Finding 125, the MPCA has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14 and 14.50.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is recommended that the Agency's proposed rules be **DISAPPROVED**.

Dated: May 1, 2025


SUZANNE TODNEM
Administrative Law Judge

NOTICE

The Agency must make this Report available for review by anyone who wishes to review it for at least five working days before it may take any further action to adopt final rules or to modify or withdraw the proposed rules. If the Agency makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

Because the Administrative Law Judge has determined that the proposed rules are defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for her approval. If the Chief Administrative Law Judge approves the adverse findings contained in this Report, she will advise the Agency of actions that will correct the defects, and the Agency may not adopt the rules until the Chief Administrative Law Judge determines that the defects have been corrected.

However, if the Chief Administrative Law Judge identifies defects that relate to the issues of need or reasonableness, the Agency may either adopt the actions suggested by the Chief Administrative Law Judge to cure the defects or, in the alternative, submit the proposed rules to the Legislative Coordinating Commission for the Commission's advice and comment. If the Agency makes a submission to the Commission, it may not adopt the rules until it has received and considered the advice of the Commission.

However, the Agency is not required to wait for the Commission's advice for more than 60 days after the Commission has received the Agency's submission.

If the Agency elects to adopt the actions suggested by the Chief Administrative Law Judge and make no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, it may proceed to adopt the rules. If the Agency makes changes in the rules other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, it must submit copies of the rules showing its changes, the rules as initially proposed, and the proposed order adopting the rules to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Agency must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the Agency, and the Agency will notify those persons who requested to be informed of their filing.