



January 30, 2024

TO: Mr. William Moore
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164

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

OAH Docket No. 23-9003-39350

Dear Mr. Moore,

CropLife America ("CLA") and the American Seed Trade Association ("ASTA") appreciate the opportunity to comment on the Minnesota Pollution Control Agency's ("MPCA's") Request for Comments regarding possible rulemaking and amendment to Minnesota Administrative Rules Chapters 7035 and 7045, relating to waste treated seeds. Any regulations promulgated by MPCA would impose impacts on each organization's members, who, as to CLA, develop and sell pesticide products for agriculture and pest management in the United States and, as to ASTA, develop, produce, and distribute seeds for use in agriculture in the United States and abroad.

For reference, CLA and ASTA submitted joint comments to the August 28, 2023, Request for Comments Revisors ID Number R-04806 (sw-rule3-02a), on October 27, 2023. We again reiterate our initial comments that the MPCA treated seed disposal guidance document provides sufficient guidance to industry, consumers and growers regarding the proper use, limitations on use, and disposal of seed treated with pesticides¹. In short, we believe adoption of the language in the guidance document into MPCA's rules would satisfy the legislative directive contained in Minnesota Chapter 60, Article 3, Section 28 (2023).

Treated seed that will not be used for planting is already and appropriately considered industrial solid waste in Minnesota according to the guidance document, and therefore any new rules or amendments should be only considered under Minnesota Administrative Rules, Chapter 7035, Solid Waste. We have concerns with and caution against amending Minnesota Administrative Rules, Chapter 7045, Hazardous Waste as it pertains to the disposal of treated seeds. It would be inconsistent with federal law² to categorically categorize waste treated seeds as hazardous waste. "Hazardous waste", is a term carefully defined under federal waste management laws to apply only to certain substances, including certain but not all pesticides (40 C.F.R part 261). Regulating all treated seeds as hazardous waste under state law, irrespective of the applicability of federal law, has the potential to cause confusion for manufacturers,

¹ Treated seeds, Minnesota Pollution Control Agency, <https://www.pca.state.mn.us/sites/default/files/w-hw451.pdf>

² 40 CFR § 30.16 - Resource Conservation and Recovery Act (RCRA), <https://www.govinfo.gov/app/details/CFR-2014-title40-vol1/CFR-2014-title40-vol1-sec30-16/summary>



distributors, and the ultimate users of the product—a result at odds with the legislature’s intent in seeking action on this issue.

Disposing of waste treated seed as solid waste provides similar “cradle to grave” oversight as hazardous waste, and any suggestion that it does not ignores the stringent regulatory framework under which solid waste facilities are regulated in Minnesota, including requirements aimed at preventing pollution in the environment. See, e.g., Minnesota Administrative Rules 7035.2525 – 7025.2655 (Solid Waste Management Facility General Technical Requirements); see also Minnesota R. 7035.0350, (“The waste management goal of the state is to foster an integrated waste management system in a manner appropriate to the characteristics of the waste stream and thereby protect the state's land, air, water, and other natural resources and the public health.”)³.

Market forces already incentivize seed manufacturers and distributors to appropriately calibrate the amount of treated seed sold and used, and common practice for excess bags of treated seed is for return to the provider. Requiring additional reporting and tracking of waste treated seeds would be expensive, unnecessary, would impose additional burdens on farmers and would complicate the regulatory framework for solid waste management facilities that are already subject to reporting requirements, including, “the quantity of each type of waste handled” at the facility.” See, e.g., Minnesota R. 7035.2585.

We believe the MCPA treated seed guidance, along with instructions on the seed bag tag, provide for the safe and lawful disposal of waste treated seed and adequately address use, storage, handling, distribution, and disposal of waste treated seed to avoid adverse impacts on humans, food, livestock, fish, or wildlife and ensure no unreasonable adverse effects on the environment. The seed bag tag and label contain handling requirements, wildlife warnings, storage, disposal, and container handling instructions.

We respectfully encourage MPCA to avoid imposing new and unnecessary regulatory burdens on the disposal of waste treated seed with any amendments to Chapter 7045. The current authority and regulatory resources adequately enable their safe use and disposal. Thank you for your consideration of our comments on these possible new rules.

Sincerely,

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³ Minnesota Administrative Rules, Chapter 7035, Solid Waste, <https://www.revisor.mn.gov/rules/7035/>