

Waste Treated Seeds Rules Hearing - 3-5-25

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
OF THE STATE OF MINNESOTA

IN THE MATTER OF

Proposed Amendments to Rules Governing Waste
Treated Seeds, Minnesota Rules, Chapters 7035
and 7045, Revisor's ID Number R-04806
OAH DOCKET NO. 23-9003-39350

Public hearing taken via WebEx

Wednesday, March 5, 2025

Met, pursuant to notice, at 3:00 p.m.

BEFORE:

SUZANNE TODNEM, ADMINISTRATIVE LAW JUDGE

REPORTER:

Colleen M. Sichko, Registered Professional
Reporter

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1 APPEARANCES:

2 DAVID STELLMACH, Staff Attorney,
3 Minnesota Pollution Control Agency.

4 JOSHUA BURMAN, Senior Environmental
5 Specialist, Hazardous Waste Compliance Unit,
6 Industrial Division, Minnesota Pollution Control
7 Agency.

8 DANIEL GONZALEZ, Rule Coordinator,
9 Minnesota Pollution Control Agency.

10 MAGGIE WENGER, moderator, Minnesota
11 Pollution Control Agency.

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22 (WHEREUPON, the following proceedings were duly
23 had and entered of record, to-wit:)
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25

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1 THE JUDGE: Good afternoon and welcome,
2 and thank you for taking your time to be here today
3 to participate in this public rulemaking process.
4 If we can move to slide 2.

5 Today is March 5th, 2025, and it is
6 about 3:00 in the afternoon, and we are here for a
7 public hearing in the Matter of the Proposed
8 Amendment to Rules Governing Waste Treated Seed,
9 Minnesota Rules, Chapters 7035 and 7045. This
10 matter will be referred to as OAH Docket Number
11 23-9003-39350. Please pay attention to these last
12 five numbers as they will help you navigate the
13 eComment website. You should also reference this
14 case number if you submit comments by mail or fax.

15 One moment. All right, slide 3,
16 please. Today after my remarks, the agency will
17 offer its exhibits and a presentation on the
18 proposed rule. After that, the public will have an
19 opportunity to ask questions and make comments. I
20 ask that you direct your questions and comments to
21 me.

22 The hearing will adjourn at 6:00 p.m.
23 We might not need the entirety of the time from now
24 until 6:00 p.m., but the opportunity to make oral
25 comments will remain available. Next slide.

1 So for a brief introduction, my name is
2 Suzanne Todnem and I'm an Administrative Law Judge
3 with the Office of Administrative Hearings. The
4 Office of Administrative Hearings is independent of
5 the Minnesota Pollution Control Agency, as well as
6 any groups or individuals that participate in this
7 hearing. The role of our office is to provide
8 hearings that are fair to all of the participants.
9 Next slide.

10 Rulemaking hearings like this are
11 conducted so that members of the public can be heard
12 as part of the rulemaking process. I am here to
13 ensure that there is procedural fairness, to ensure
14 that we are courteous to each other so that all
15 interested parties can be heard, and to draw out
16 knowledge from as many voices as possible, so your
17 participation is important. An underlying
18 assumption of this process is that we rely on the
19 wisdom of the group. Thus, we are grateful that you
20 are contributing your thoughts, experience and
21 expertise to the formation of substantive rules.
22 Rulemaking is made better because of you, the
23 public. Next slide.

24 This hearing is part of a process by
25 which rules are adopted under the Minnesota

1 Administrative Procedures Act. During this
2 rulemaking proceeding, the agency is required to
3 document its statutory authority to adopt the
4 proposed rules, demonstrate that it has fulfilled
5 all relevant legal and procedural requirements of
6 the law, and demonstrate the need for and
7 reasonableness of each portion of the proposed rules
8 with an affirmative presentation of facts. Those
9 are the three big issues I am interested in
10 reviewing as part of this proceeding.

11 My job is to ensure that the statutory
12 requirements are met for rulemaking. It is not my
13 job to rewrite the rules based on the views of
14 participants or to select one set of proposed rules
15 over another set of proposed rules. My review is
16 limited to compliance with the statutory
17 requirements for rulemaking. Next slide.

18 In addition to making oral comments
19 here today, you may also submit written comments.
20 Written comments can be submitted electronically
21 using the OAH eComments site, by U.S. Mail and by
22 fax, and that information is there on the screen in
23 front of you. Written comments will be accepted
24 until 4:30 p.m. on March 25th, 2025. Next slide.

25 While all three methods are accepted

1 and treated equally, eComments is the preferred
2 method. eComments allows the agency and others to
3 see your comments instantaneously as they are
4 submitted. You can also read the comments of others
5 on this website. Think of it as a repository for
6 written comments. Next slide.

7 If you want to comment in today's
8 hearing, here's what you need to do. For WebEx
9 video commenters, please select the button at the
10 bottom right-hand corner of your computer screen
11 that says "Chat" or there's a comment bubble icon.
12 In the chat box enter your first and last names.
13 This indicates you wish to speak. The moderator
14 will use the names in chat to call on you to speak.
15 Please do not enter any comments or questions in the
16 chat, as they will not be answered or read into the
17 record. Just type your first and last names and let
18 us know you want to speak.

19 For telephone commenters, please press
20 *3 to indicate you want to speak and you will be
21 placed in the queue. The *3 function does not work
22 for all phone types, so we will give you an
23 opportunity to unmute your phones and you can make a
24 comment at that time or remain silent if you do not
25 wish to make a comment and we will move to the next

1 person. Next slide.

2 The moderator will announce speakers in
3 the queue from both telephone and WebEx lists in the
4 order entered into the queue. The moderator will
5 call your name when it is your turn to speak. The
6 moderator will also announce who is on deck next so
7 that person can get ready to go. When it is your
8 turn to speak, please turn on your video. Limit
9 your initial comments to five minutes so we can
10 ensure everyone has an opportunity to speak. If you
11 have additional comments or questions, you may
12 rejoin the queue for another opportunity to speak as
13 time permits. It is helpful for the agency and for
14 me, the Administrative Law Judge, to hear from as
15 many different people as possible. Next slide.

16 So, again, in addition to the oral
17 comments of this public hearing, you may also submit
18 written comments by eComments, US Postal Service
19 mail or by fax. Next slide.

20 So when it is your turn to speak,
21 please state and spell your first and last names.
22 If you are commenting on behalf of an organization,
23 please identify the full name of the organization in
24 addition to any acronym, if any. Please be sure to
25 speak slowly, clearly and loudly. Next slide.

1 The court reporter that -- we do have a
2 court reporter on the call here, and the court
3 reporter's transcript is the official record of the
4 hearing and will be used by me when citing to the
5 hearing as necessary. Next slide.

6 As noted earlier, the written comments
7 period will close on March 25th, 2025. So pursuant
8 to Minnesota Statutes, Section 14.15, Subdivision 1,
9 the Judge may order to keep a hearing record open
10 for up to 20 days following the public hearing. I
11 am so ordering a 20-day comment period so that
12 written comments will be accepted and made a part of
13 the record until that time, which is again 4:30 p.m.
14 on March 25th, 2025. Next slide.

15 Following the comment period, there
16 will be a rebuttal comment period that closes at
17 4:30 p.m. on April 1st, 2025. Next slide.

18 Following the close of the rebuttal
19 comment period, I will issue a report. I will
20 prepare a report that contains my conclusions about
21 whether the agency has met its statutory burdens in
22 this matter, specifically whether the agency has
23 documented its authority to enact the rule, whether
24 the agency has fulfilled all of the required
25 procedures, and whether the agency has demonstrated

1 the need and reasonableness for each portion of the
2 proposed rules. You can expect my report
3 approximately 30 days after the last comment
4 deadline unless an extension is necessary. My
5 report will be published on the Office of
6 Administrative Hearings website on the day it is
7 issued. Next slide.

8 As a reminder, lobbyists must register
9 with the Campaign Finance and Public Disclosure
10 Board.

11 All right. So now Mr. Stellmach will
12 introduce the agency's distinguished panel.

13 Mr. Stellmach?

14 MR. STELLMACH: Thank you, Your Honor.
15 My name is David Stellmach. I'm a staff attorney
16 with the Minnesota Pollution Control Agency, which
17 is also referred to as MPCA. I'm appearing in this
18 rule proceeding on behalf of the MPCA. As noted,
19 the MPCA is proposing a rule governing waste treated
20 seed as directed by Minnesota Session Law 2023,
21 Chapter 60, Article 3, Section 28.

22 And to introduce the staff here today
23 who are going to make a presentation, first we have
24 Joshua Burman. He's a senior environmental
25 specialist in the Hazardous Waste Compliance Unit in

1 MPCA's Industrial Division. Mr. Burman is the lead
2 planner for the proposed rules.

3 Daniel Gonzalez is the MPCA rule
4 coordinator for this rulemaking, and Mr. Gonzalez
5 manages the administrative procedures aspects of the
6 rule and is the point of contact for process-related
7 questions.

8 May I proceed to introduce the
9 exhibits?

10 THE JUDGE: Yes, please.

11 MR. STELLMACH: Okay. So I would like
12 to submit into the hearing record the hearing
13 exhibits. The exhibits are posted on the agency's
14 website, and the purpose of the exhibits is to
15 document the legal authority of the MPCA to adopt
16 the proposed rule, demonstrate that the agency has
17 fulfilled all relevant legal procedural requirements
18 for promulgating the rule, and demonstrate that each
19 portion of the proposed rule is needed and is
20 reasonable. I will quickly go through each of the
21 exhibits which relate to those purposes.

22 So Exhibit A-1a is the initial Request
23 for Comments dated July 6, 2023, which started the
24 rulemaking process.

25 Exhibit A-1b is the Certificate of

1 Mailing for the initial Request for Comments to the
2 contacts on the MPCA's rulemaking list and the
3 MPCA's tribal contacts.

4 Exhibit A-2a is the Second Request for
5 Comments, which was dated December 15th, 2023, that
6 expanded the range of amendments identified in the
7 First Request for Comments to include both Minnesota
8 Rules, Chapter 7035 and Chapter 7045.

9 Exhibit A-2b is the Certificate of
10 Mailing for the Second Request for Comments to the
11 contacts on the MPCA's rulemaking list and our
12 tribal -- the MPCA's tribal contacts.

13 Exhibit A-2c is the Certificate of
14 Mailing for the Second Request for Comments to
15 additional interested persons.

16 Exhibit B is just a placeholder which
17 isn't applicable to this rulemaking.

18 Exhibit C contains the text of the
19 proposed rule and the Revisor's Certificate of
20 Approval.

21 Exhibit D contains the Statement of
22 Need and Reasonableness, or SONAR, that was
23 published with the rule. The SONAR documents the
24 statutory authority of the MPCA to adopt the
25 proposed rule. It demonstrates that each portion of

1 the proposed rule is needed and it's reasonable and
2 includes both a general and a detailed description
3 of why the rule is needed and reasonable.

4 Exhibit E is the certificate showing
5 that the agency sent a copy of the SONAR to the
6 Legislative Reference Library.

7 Exhibit F-1a is the Dual Notice of
8 Intent to Adopt Rules.

9 Exhibit F-1b is the Certificate of
10 Mailing of the Dual Notice of Intent to Adopt Rules,
11 the SONAR and the proposed rules.

12 Exhibit F-1c is the publication of the
13 Dual Notice in the Minnesota State Register.

14 Exhibit G-1 is a Certificate of Mailing
15 of the Notice of Hearing which was sent on
16 February 27, 2025.

17 Exhibit G-2 is a Certificate of
18 Accuracy for that mailing list.

19 Exhibit H is another placeholder which
20 is not applicable to this rulemaking.

21 Exhibit I -- excuse me, Exhibit I-1
22 includes the comments received after the initial
23 Request for Comments.

24 Exhibit I-2 includes comments received
25 after the Second Request for Comments.

1 Exhibit I-3 includes comments received
2 during the comment period following the Dual Notice
3 of Intent to Adopt the Rule.

4 Exhibit J is another placeholder which
5 isn't applicable to this rulemaking.

6 Exhibit K-1 is a Certificate of Mailing
7 the Notice of Intent to Adopt Rules and the SONAR to
8 certain legislators and the Legislative Coordinating
9 Commission according to Minnesota Statutes,
10 Section 14.116.

11 Exhibit K-2 is a Certificate of Mailing
12 of the proposed rule to the Commissioner of the
13 Minnesota Department of Agriculture.

14 Exhibit K-3 is a Certificate of
15 Consulting with Minnesota Management and Budget in
16 compliance with Minnesota Statutes, Section 14.131.

17 Exhibit K-4 is a Certificate of
18 Consulting with Minnesota Department of Agriculture
19 and the University of Minnesota in compliance with
20 the Session Law 2023, Chapter 60, Article 3,
21 Section 28.

22 And last, Exhibit K-5 is a letter sent
23 by the agency to the Office of Administrative
24 Hearings requesting the hearing.

25 THE JUDGE: All right, thank you. So I

1 have Exhibits A-1a through K-5 as you listed being
2 offered into the record and they are received into
3 the record at this time.

4 MR. STELLMACH: Thank you, Your Honor.
5 May we proceed with the presentation at this time?

6 THE JUDGE: Yes, please.

7 MR. STELLMACH: Okay. Mr. Burman will
8 now make his presentation outlining the proposed
9 rule and summarizing the need and reasonableness of
10 the proposed rule.

11 MR. BURMAN: Thank you, Mr. Stellmach;
12 thank you, Judge Todnem. My name is Joshua Burman,
13 again Environmental Specialift Senior at the
14 Minnesota Pollution Control Agency. I am here to
15 present a -- this presentation as a general overview
16 of the provisions of the waste treated seed
17 rulemaking. It is intended to provide a general
18 explanation of the provisions in the rule. It is
19 reference for any detailed provisions to the
20 proposed rule that's in the record. Next slide,
21 please.

22 As related, this is a general summary
23 of the provisions of the rule. The summary will
24 cover generally why the MPCA is performing a waste
25 treated seed rulemaking, a summary of the

1 authorizing and mandating session law, the
2 concepts -- the basic concepts of the proposed rule,
3 which include the definition of "waste treated
4 seed," the regulated status of waste treated seed in
5 the State of Minnesota, required management methods
6 proposed by the rule, prohibited management methods
7 contained in the proposed rule, and the regulatory
8 jurisdictions of state and local units of government
9 and, finally, present a summarized history of this
10 rulemaking. Next slide, please. Thank you.

11 Answering the question of why is the
12 MPCA performing the waste treated seed rulemaking,
13 this rulemaking has been mandated by the Minnesota
14 legislature, as Mr. Stellmach previously referenced.
15 In 2023 Session Law, Chapter 60, Article 3,
16 Section 28, the Minnesota legislature mandated that
17 the MPCA perform this rulemaking.

18 In addition, the MPCA estimates that
19 waste treated seed presents a significant volume of
20 waste annually in Minnesota with an estimated volume
21 of approximately 14,000 tons of waste treated seed.
22 This is an estimate as currently there is no
23 statutory or rule requirement in Minnesota for
24 reporting to the State of Minnesota of generation of
25 waste treated seed volumes.

1 In addition, the rule is intended to
2 provide clarity in requirements to assist all
3 handlers of waste treated seed in their proper
4 management. Though many of their provisions and
5 requirements contained in the proposed rule are
6 found in existing Minnesota statutes and Minnesota
7 rules, those provisions are found in many separate
8 places that are not cross-referenced or linked, so
9 many handlers may be either unaware of them or
10 unaware of some of those provisions. Next slide,
11 please.

12 The 2023 Session Law, Chapter 60,
13 Article 3, Section 28 required as a mandate the
14 Minnesota Pollution Control Agency to perform
15 rulemaking specifically for the purpose of the safe
16 and lawful disposal of waste treated seed. The
17 Session Law referenced the existing Minnesota rule,
18 which from the enactment date of the Session Law
19 required that the MPCA publish a proposed rule by
20 December 31st, 2024. The MPCA has completed that
21 requirement.

22 In Article 3, Section 7 of the Session
23 Law, the legislature defined waste treated seed for
24 the purpose of the rulemaking, and in Article 3,
25 Section 16 and in Article 9, Sections 2 and 5, the

1 legislature created additional new waste treated
2 seed requirements that the MPCA considered in the
3 preparation of the proposed rule and its provisions.
4 Next slide, please.

5 The proposed waste treated seed rule
6 contains five basic concepts. Those are the
7 definition of "waste treated seed," the regulatory
8 or regulated status of waste treated seed in the
9 state of Minnesota, management methods required
10 under the proposed rule based on existing statutes
11 and rules, management methods prohibited to be -- or
12 proposed to be prohibited in the rule, again based
13 primarily on existing statutes and rules, and the
14 regulatory jurisdictions of the State of Minnesota,
15 divisions of the state and local units of
16 government. Next slide, please.

17 The definition of "waste treated seed"
18 is based on Minnesota Statutes, 115A.03,
19 Subdivision 37a, which was enacted in the 2023
20 Session Law. The MPCA, in the proposed rule,
21 clarified this definition to make it clear for the
22 reader, for regulated parties and for regulatory
23 agencies. Waste treated seed, as provided in the
24 proposed rule, includes any waste treated seed that
25 will not be planted for the purpose of growing live

1 plants in accordance with the treated seed container
2 label instructions. The proposed regulatory
3 definition of "waste treated seed" does not include
4 waste treated seed that is planted for the purpose
5 of growing live plants according to the treated seed
6 container label instructions. Next slide, please.

7 The regulated or regulatory status of
8 waste treated seed in Minnesota, waste treated seed
9 is, as its name suggests, a waste. Wastes are
10 subject to the MPCA's regulatory jurisdictions for
11 solid waste, potentially hazardous waste and the
12 statutory waste management provisions. Waste
13 treated seed meets the definition under the existing
14 definition of the term "industrial solid waste."
15 Therefore, under existing rules, waste treated seed
16 is already regulated as an industrial solid waste.
17 Those statutes and rules are beyond the scope of
18 this rulemaking.

19 The rule proposes that waste treated
20 seed be exempted from the requirement otherwise
21 applicable of hazardous waste evaluation as long as
22 that waste treated seed is properly managed as
23 provided in the proposed rule. Without this
24 exemption, all nonexempt waste, that is waste that
25 is not exempted by rule or statute, generated in

1 Minnesota does and would have to be individually
2 affirmatively determined -- to determine if it is to
3 be evaluated or to perform an evaluation by the
4 person generating the waste and they would have to
5 determine or evaluate the waste treated seed as
6 nonhazardous. This proposed exemption would exempt
7 a person generating waste treated seed from that
8 requirement, again, as long as that waste treated
9 seed was properly managed under the provisions in
10 the proposed rule. Next slide, please.

11 The proposed rule provides multiple
12 options for properly disposing of waste treated
13 seed. Waste treated seed is proposed to be allowed
14 to be incinerated at a permitted waste energy
15 facility. These are facilities that are permitted
16 by the State of Minnesota by the Minnesota Pollution
17 Control Agency to incinerate solid wastes, including
18 municipal solid wastes and industrial solid wastes,
19 for the purpose of generating electrical or heat
20 energy.

21 The rule also allows burial of waste
22 treated seed at a permitted solid waste landfill,
23 permits issued by the Minnesota Pollution Control
24 Agency.

25 Finally, the proposed rule would allow

1 for burial by a farmer. The term in the rule is "a
2 person owning or operating land used for farming."
3 In this presentation we're using the term "farmer"
4 as it is more familiar to most readers and most
5 members of the public, on the farm in the proposed
6 manner. This burial must be allowed under existing
7 statute that is beyond the scope of this rulemaking
8 and is not within the authority of the MPCA to
9 change the requirements or allowances in this
10 statute.

11 However, burial by a farmer on the farm
12 is not available as an option if the county board
13 where the farm is located resolves or passes a
14 resolution that solid waste service is reasonably
15 available at that farm. Next slide, please.

16 The proposed rule would prohibit or not
17 allow many management methods. Those methods are,
18 again, precluded by existing statutes or rules and
19 are clarified and restated in the proposed rule.
20 Those management methods that are proposed to be
21 explicitly prohibited under the proposed rule
22 include burning for disposal except in a
23 waste-to-energy -- using the acronym WTE --
24 incinerator, composting of waste treated seed,
25 indiscriminate burial, that is burial not at a

1 permitted solid waste land disposal facility, or not
2 within the provisions of the disposal on the farm by
3 the farmer if not precluded by resolution of the
4 county board, and use, donation, sale or other
5 offering for human food, animal feed, including
6 wildlife feed, or fuel production or oil processing.
7 An example of fuel production from waste treated
8 seed might be ethanol production.

9 The proposed rule states that such
10 prohibitions would apply unless a specific provision
11 was explicitly superseded by a controlling federal
12 law. The MPCA is not currently aware of any
13 controlling federal laws that would supersede, but
14 does allow that such could exist or could be enacted
15 in the future. Next slide, please.

16 The 2023 Session Law mandated that the
17 MPCA include in the provisions of the rulemaking
18 statements of regulatory jurisdictions of agencies
19 of the State of Minnesota and local units of
20 government. The MPCA, therefore, states that it
21 regulates waste treated seed under this proposed
22 rule, if the rule is finalized and promulgated, and
23 under existing statutes and rules beyond the scope
24 of this rulemaking.

25 The MPCA understands that the Minnesota

1 Department of Agriculture regulated -- regulates,
2 excuse me, pesticide registration, that is some of
3 the treatments that are applied to seed to render it
4 treated seed, and the use in labeling of treated
5 seed containers. Clarification, that the Minnesota
6 Department of Agriculture requirements for use and
7 labeling of treated seed and treated seed containers
8 apply to product treated seed, that is treated seed
9 that is intended to be used for use by planting for
10 the purpose of growing live plants.

11 The MPCA further understands that local
12 units of government, including municipalities and
13 county governments, may enter into delegation
14 agreements with the Minnesota Department of
15 Agriculture to enforce specific Minnesota Department
16 of Agriculture requirements as provided for in each
17 individual delegation agreement which the MPCA
18 understands may vary.

19 In addition, local units of government
20 under existing Minnesota statutes and rules beyond
21 the scope of this rulemaking may enforce their own
22 solid waste ordinances enacted by the county,
23 including more stringent waste treated seed burial
24 requirements which are not precluded by any
25 Minnesota rule or statute known to the MPCA. Next

1 slide, please.

2 The MPCA would like to present a
3 summary history of this rulemaking. The mandating
4 Session Law was passed -- excuse me, enacted on
5 May 24th, 2023. That Session Law required the MPCA
6 to consult with the Minnesota Department of
7 Agriculture and the University of Minnesota
8 Extension Service regarding waste treated seed
9 management.

10 The MPCA held meetings to consult with
11 the MDA and University of Minnesota in August and
12 September of 2023. The First Request for Public
13 Comments period ran from August 28th to October 27th
14 of 2023. The MPCA, in reviewing the responses to
15 the First Request for Public Comments and in
16 consultation with its legal counsel, determined that
17 it was necessary to open a Second Request for Public
18 Comments, which ran from December 26th, 2023, to
19 January 30th, 2024; and meeting the statutory --
20 excuse me, the Session Law-imposed deadline, the
21 proposed rule was published with the accompanying
22 public comment period on December 30th, 2024, which
23 ran to February 14th, 2025. Next slide, please.

24 That is the end of the MPCA's proposed
25 rule summary presentation. I return to

1 Judge Todnem.

2 THE JUDGE: All right. Thank you,
3 Mr. Burman.

4 Mr. Stellmach, did you have anything to
5 add at this time?

6 MR. STELLMACH: No, Your Honor, that
7 concludes the MPCA's presentation, so we have
8 nothing further.

9 THE JUDGE: All right, thank you. So
10 now it is time to hear comments from you, the
11 public. It is your time now to get into the queue
12 if you wish to speak. Again, you can enter in your
13 name in the chat or press *3 if you are
14 participating by phone, and I'll just refer to the
15 agency to let me know if there are any people in the
16 queue.

17 I will point out that most of this
18 hearing time has been allotted for questions and
19 statements from the members of the public. That's
20 because the key reason we are here today is for
21 public comments. This is a fairly informal process,
22 but I am here to ensure that everyone can be heard
23 and in order to do that we must, again, be courteous
24 to each other and respect time limits, although I
25 don't see a whole lot of participants, so I don't

1 anticipate running out of time.

2 As a reminder, when it is your turn to
3 speak, please state and spell your first and last
4 names. Actually, if we could keep the slide up,
5 that provides the instructions on how to express an
6 interest in commenting, that last slide titled
7 "Public Questions and Comments."

8 MR. GONZALEZ: Yes, Your Honor.

9 THE JUDGE: All right. So is there
10 somebody from the agency who is going to call on
11 people or should I go ahead and do that?

12 MS. WENGER: Your Honor, apologies,
13 we're having screen issues. This is Maggie Wenger
14 from the Pollution Control Agency. There are three
15 speakers in the queue, Bryan Biegler followed by
16 Todd Wentzel followed by Janette Dean.

17 THE JUDGE: Okay, thank you.

18 Bryan Biegler, if you want to unmute
19 your microphone and if you would like to turn your
20 camera on, you are welcome to do so, and then please
21 state and spell your name.

22 MR. BIEGLER: Yes, hello. Good
23 afternoon. My name is Bryan Biegler, that's
24 B-r-y-a-n, Biegler, B-i-e-g-l-e-r. I farm down in
25 southwest Minnesota and I appreciate this

1 opportunity to provide comments today.

2 I want to emphasize the critical role
3 that treated seed plays for our corn farmers and to
4 make it clear that we do not view unused or unsold
5 treated seed as waste. Quite the opposite, this is
6 a valuable product and every effort is made to
7 ensure that none is wasted. Treated seed is an
8 essential part of my pesticide management strategy.
9 It allows me to protect my crop from early season
10 pests and diseases in a precise and controlled
11 manner, reducing the need for additional pesticide
12 applications later in the season.

13 This targeted approach not only
14 improves crop health, but also contributes to
15 environmental sustainability by limiting the broader
16 application of crop protection products. If access
17 to treated seeds were restricted, the consequences
18 would be significant. Early season pest pressure
19 would increase, forcing farmers to rely more heavily
20 on in-season chemical applications, which are often
21 less efficient and more costly. This would
22 undermine the progress we've made in precision
23 agriculture and integrated pest management.

24 Economically, treated seed is one of
25 the largest input cost for corn farmers, typically

1 about the third highest after land and fertilizer
2 costs. We invest in it because it provides a real
3 return through better emergence, stronger plant
4 stands and improved yields. Any policies that
5 create unnecessary barriers to using or handling
6 treated seed will add cost and complexity to farming
7 operations at a time when margins are already tough.

8 Corn farmers take stewardship of
9 treated seed very seriously. We follow strict
10 guidelines to ensure proper handling, storage and
11 planting, making sure that as much seed as possible
12 is used efficiently. In the case that seed is not
13 used, it is usually returned to the seed dealer and
14 then returned to the company, which will test and,
15 if it meets specs, will rebag and sell the following
16 season. For seed that does not make specs, for the
17 company that I have sold for anyway, they send it to
18 a federally regulated power plant to be incinerated
19 and used for energy.

20 Regulations that assume treated seed is
21 a waste product are misguided and fail to recognize
22 the responsible management practices already in
23 place. For these reasons, I view the proposed rules
24 as unnecessary and potentially harmful to farmers.
25 I encourage policymakers to recognize the value of

1 treated seed and work with farmers to support
2 practical science-based stewardship practices rather
3 than imposing regulatory burdens.

4 I would like to thank you for the time
5 and for considering these perspectives.

6 THE JUDGE: All right. Thank you,
7 Mr. Biegler.

8 Next we have Todd Wentzel and then --
9 followed by -- after Mr. Wentzel we have Janette
10 Dean of Sierra Club.

11 Mr. Wentzel, if you want to unmute your
12 microphone and then state and spell your name.

13 MR. WENTZEL: Thank you, Your Honor.
14 My name is Todd Wentzel, that's T-o-d-d
15 W-e-n-t-z-e-l.

16 I farm with my family in Swift County,
17 Minnesota. We grow corn, soybeans, wheat and dry
18 edible beans. My wife and I also operate a seed
19 dealership.

20 I want to provide comments today on the
21 importance of treated seed to corn farmers and to
22 emphasize that we do not view unused or unsold
23 treated seed as a waste. Actually, the opposite is
24 true, as this is a very valuable product for farmers
25 and every effort is made to avoid and eliminate

1 waste.

2 I view these rules as unnecessary.
3 Some of the benefits of treated seed to my farm
4 include the ability to avoid seedling damage to
5 insect pests such as seedcorn maggots, wireworms,
6 white grubs and bean leaf beetles to name just a
7 few. The damage done by these biting and sucking
8 insects can harm or kill young seedling plants and
9 create a pathway for soil borne diseases to enter
10 the plant, which may cause yield damage later in the
11 season.

12 The damage by these insects reduce
13 plant populations within our fields. Because these
14 pests can reduce plant populations, the use of
15 treated seed enables farmers to precisely plant the
16 desired number of seeds per acre and achieve the
17 most economical return for their individual fields
18 without the need to factor in a percentage of loss
19 of seedlings. Before farmers had access to treated
20 seed, we had to choose between increasing planting
21 rates or having a final plant population that was
22 less than what was needed.

23 If we do not have access to treated
24 seeds, we go back to losing stands and yield or we
25 would have to consider using other insecticidal

1 products which could be applied at the time of
2 planting to control these pests. These alternative
3 products typically require higher use rates and
4 increased exposure to the operators since it's a
5 separate product to handle at that time.

6 When ordering seed, farmers have tools
7 available to them to calculate how much seed is
8 needed for their farm and, in fact, right to the
9 field level. Many farming systems exist that allow
10 the farmer to enter precise plant population maps
11 for given fields that will then calculate the units
12 needed to sow that field or farm. Many times this
13 may be done with consultation with their seed dealer
14 or an independent agronomist. Modern planters can
15 deliver the exact number of seeds per acre that are
16 needed, enabling the farmer to avoid any leftover
17 seed. With seed costs of around \$125 an acre for
18 corn and \$70 per acre for soybeans, farmers are
19 motivated to ensure that no seed is overused or
20 spilled. If pests reduce our plant populations by
21 10 percent without seed treatment, this presents a
22 significant loss to the farm.

23 We transport our seed from the farm to
24 the field in a seed tender fitted with a conveyor
25 belt to fill the planter. This system enables us to

1 easily fill the planter's hoppers without handling
2 individual bags, thereby reducing the chance of
3 spillage by the use of those bags. The design of
4 the conveyor system allows us to easily clean out
5 the remaining seeds at the end of the crop year or
6 when switching crops and capture that seed for later
7 use.

8 Our planter even came with a special
9 cup that's used to catch any seed from the planting
10 units as cleanout is done and that can be -- can
11 prevent spills and can be saved. If an accidental
12 spill should occur, I would ensure that it's cleaned
13 up right away. This is going to be done by picking
14 up any loose seed that we can with our
15 chemical-resistant gloved hands and placing it in a
16 container and any kernels that would be left over
17 would be covered up by several inches of soil to
18 ensure that no birds or animals could get to them,
19 and by covering these seeds they will then grow in
20 the field.

21 Any seed that is left over after
22 planting is stored in the original seed container,
23 tied shut, and placed in our heated shop until the
24 next planting season, when it will then be used for
25 the next crop year. Usually this would amount to

1 only one or two small units of seed. If the season
2 does not allow us to plant all of our field, then
3 any unused or unopened seed containers would be
4 returned to the seed company, where they may then
5 transfer them to another location which may still be
6 able to plant that seed, or they will be saved over
7 for the next season.

8 As a seed dealer, I know that I'm
9 expected to keep returns to a minimum, so therefore
10 I closely manage my inventory. In the case of
11 soybeans, most of my customers will order a few
12 units of nontreated beans to finish planting with
13 them so they will have very little left over. What
14 they do have left, they will similarly do what we do
15 on our farm in saving that seed for the next season.
16 If a customer should have leftover containers of
17 seed, they would then return them to me and I would
18 return them to the company that I sell for.

19 This company does utilize deadlines for
20 ordering seeds so that they can properly manage
21 inventory and reduce leftover seed at the end of the
22 season. When the company gets treated seeds
23 returned to them, they are stored in an
24 environmentally-controlled warehouse and tested
25 throughout the winter. They will then be resold the

1 next season as long as they meet quality standards.
2 If they would fail these standards, they are sent to
3 a permitted incineration facility.

4 I want to thank you for the opportunity
5 to provide comments today.

6 THE JUDGE: All right. Thank you,
7 Mr. Wentzel.

8 Next I see we have Janette Dean of
9 Sierra Club and following her we have Darin Johnson,
10 Minnesota Soybean Growers.

11 Janette?

12 MS. DEAN: I'm unmuting here. Thank
13 you. Wonderful to be here today. I'm here
14 representing the Sierra Club Northstar Chapter's
15 Forest and Wildlife Stewards Group, as well as
16 their --

17 THE JUDGE: Can you -- I'm sorry, I'm
18 just going to quick interrupt and ask you to please
19 state and spell your first and last names and then
20 you can continue with who you represent. Thank you.

21 MS. DEAN: Oh, certainly. Janette
22 Dean, spelled J-a-n-e-t-t-e, Dean, D-e-a-n and,
23 again, I'm representing the Sierra Club Northstar
24 Chapter. All right. So, yes, I'm representing two
25 groups within the chapter, our Forest and Wildlife

1 Stewards Group, as well as our Water and Wetlands
2 Group.

3 We number about a hundred members,
4 which include scientists, public policy advocates
5 and others, and we also do the work that over 50,000
6 supporters and members of our entire chapter across
7 Minnesota count on us to do. So we're representing
8 them today when we say that we do thank and agree
9 with the MPCA's important regulations to monitor and
10 also provide rules for the waste disposal of
11 neonicotinoid treated seeds.

12 One thing I think we hear too often
13 from the farmers' perspective, we know that
14 neonicotinoids, neonics, have extremely toxic
15 concentrations that have been going outside the
16 plants. The seeds are treated, but the plants,
17 whether it's spraying, whether it's seeds, these
18 neonics go out into the environments. They go into
19 our land, into dust, the air, water. Many studies
20 are showing the toxicities which are harmful to
21 people and wildlife.

22 So we believe neonics should be
23 strictly regulated more than just waste disposal of
24 the seeds, but also with planting; but today we're
25 addressing the MPCA's new regulations and we agree

1 with them overall, but we would like the agency to
2 closely review the comments that were submitted
3 already in an important letter by two important
4 leaders in this field, Rosemary Malfi, she's the
5 policy director who submitted a letter on behalf of
6 the Xerces Society for Invertebrate Conservation,
7 Xerces; and also E. Hardy Kern, III, he's director
8 of government relations for the pesticides and birds
9 campaign on behalf of the American Bird Conservancy.

10 So since the others took some time,
11 I'll just repeat briefly what they shared. They
12 believe MPCA should also require a burial setback
13 distance for waste treated seed that is greater than
14 200 feet for private wells that supply drinking
15 water to humans or animals. MPCA should also
16 prohibit WTS, waste treated seed, burial on well
17 head protection areas. They must better define best
18 practices for waste treated seed burial on farms.

19 And the last three that we agree with
20 that they are recommending, asking MPCA to track the
21 waste treated seed quantities entering waste
22 streams; two more, that they work with MDA to
23 develop consistent labeling for treated seed in
24 Minnesota as it relates to disposal requirements;
25 and, finally, they recommend that spilled seed not

1 recovered for planting should indeed be defined as
2 waste treated seed.

3 So, again, we're representing the
4 members of our group all across the state. These
5 are people working in many fields, many industries,
6 not just farming. So Minnesota's role is to protect
7 the public and I'm asking you to do that today with
8 our comments.

9 THE JUDGE: All right. Thank you,
10 Ms. Dean.

11 MS. DEAN: Thank you.

12 THE JUDGE: All right. Next I have
13 Darin Johnson and then, following Darin Johnson,
14 we'll have Stacy Cook.

15 MR. JOHNSON: All right. Well, thank
16 you, Your Honor, and thanks for allowing me the
17 opportunity to testify today on behalf of the
18 Minnesota Soybean Growers. My name is Darin
19 Johnson. I'm a fourth generation soybean and corn
20 farmer from Wells, Minnesota. Also, I'm currently
21 serving as the president of the Minnesota Soybean
22 Growers Association.

23 First off, I will talk about the
24 benefits of seed treatment on our farm. Number one,
25 seed treatments reduce the overall pesticide use

1 because it's targeted protection. Seed treatments
2 apply small precise amounts of active ingredients
3 directly to the seed, reducing the overall chemical
4 load in the environment. Less spray passes
5 protecting young seedlings early reduces the need
6 for additional applications later in the season.

7 And I'll just touch a little bit on,
8 you know, how it has reduced our passes across the
9 field actually by two-thirds because we are no
10 longer having -- over the last five or six years,
11 it's depressed our aphids enough where we have not
12 had to spray for aphids, so that is just another
13 benefit.

14 Number two, it supports conservation
15 and stewardship in soil health. Many Minnesota
16 farmers use reduced or no till to improve soil
17 health and reduced erosion. In a lot of cases
18 you'll be planting in cooler soil in these
19 situations. Also, generally speaking, Minnesota
20 farmers are planting soybeans in cooler conditions
21 across the state no matter the practice.

22 Three, reduced erosion and runoff: A
23 well established crop canopy made possible by a
24 healthy seed reduces soil erosion, which is always a
25 concern for water quality in Minnesota lakes and

1 rivers.

2 Avoid excessive seed use: So without
3 protection, higher seed loss occurs due to pest and
4 disease, potentially leading to costly replant that
5 requires additional seed, fuel and labor. Also with
6 that we have been able to reduce populations, which
7 has helped us try and manage white mold across the
8 state, as well.

9 Minnesota's climate creates high
10 disease pressure. A wet, cool spring leads to
11 diseases like pythium, phytophthora, also physarum
12 and rhizoctonia. In total, those four diseases
13 alone are costing us 90 million bushels in yield
14 loss; and let's not forget to mention cyst nematode
15 and sudden death, nematodes alone causing a
16 10 percent reduction in yield across the US. Also,
17 the all-season-long insect suppression for pesky
18 insects like aphids like I mentioned previously and
19 bean leaf beetles, ultimately reducing yields and
20 having to make more passes across the fields without
21 the use of seed treatments.

22 Five, technology. On our farm we use
23 an on-demand treatment system. With these types of
24 systems you're sending the treated seed out as
25 needed. Also with these types of systems you are

1 able to prescribe the exact recipes down to the
2 milligram at a specific field level. They are
3 absolutely precision machines.

4 When I say they are measuring down to
5 the milligram, that's not all. They are also
6 factoring in the size of the beans, as well. Seed
7 treatment can range in costs from 5 to 40 dollars a
8 unit. Also, soybean seed ranges from 45 to 65
9 dollars a unit, so one unit would be considered
10 140,000 soybeans. That's equal to one unit and
11 we're planting anywhere from 90 to 140 to 150
12 thousand. The average would probably be about
13 130,000 in southern Minnesota per acre. We, as
14 farmers, cannot -- can simply not afford to treat
15 seed that would not get planted.

16 Another piece of precision aspect would
17 be the ability to measure and quantify the amount of
18 seed needed for each field almost down to the
19 individual seed itself, pretty amazing technology
20 available, and most farmers are very quick adopters
21 of it because of the cost savings and the capability
22 to be so precise. That, in turn, leaves us with
23 very little extra treated seed. The treated seed
24 that we do have left over is planted as a cover crop
25 in some of our customers' vegetable crop fields

1 which, again, leaves us with little or no wasted
2 treated seed. In the case that we would, Bear, who
3 we sell for, would return the seed to the plant.

4 In closing, I would like to say thanks
5 for the opportunity to testify today and I would
6 like to leave you with this. Minnesota's economy in
7 rural Minnesota is driven by agriculture, and not
8 potentially having access to these important tools
9 puts us at a disadvantage against other states and
10 countries when it comes to production. We need to
11 focus on science-based best management practices.
12 Our land and tools available to us now and in the
13 past have allowed us to pass it on to the next
14 generation, and for most farms that's many
15 generations.

16 We strive to be good stewards of the
17 land and the environment and make sure it is all
18 passed on in better shape than we received it.
19 Thank you.

20 THE JUDGE: All right. Thank you,
21 Mr. Johnson.

22 Next I have Stacy Cook and then Bruce
23 Kleven.

24 MR. COOK: Thank you, Your Honor.
25 Stacy Cook, S-t-a-c-y C-o-o-k.

1 So I would like to say -- I didn't
2 prepare any remarks, I'm just going to shoot from
3 the cuff here; but I would like to say that I
4 appreciate the need for seed treatments for crop
5 health and productivity; and I do appreciate that,
6 from the growers' perspective, they are always
7 trying to be as efficient as they can be with the
8 utilization of that seed and, of course, they don't
9 want to waste it. It is very expensive.

10 However, there is still a lot of excess
11 seed in the market. Seed companies carry excess
12 stock to be able to plant more acres than sometimes
13 are actually planted in the spring for some, maybe,
14 wet areas or really dried out areas or maybe just a
15 change in the crop rotation, a slight modification
16 of the boundaries; but whatever the reason, there is
17 a lot of waste treated seed that's excess every
18 season. There is pretty much a constant supply
19 that's being trucked through Minnesota and down to
20 Iowa to be burned in a cement kiln for the majority
21 of it, and they're always looking for outlets.

22 So we need outlets for waste treated
23 seed as long as we're going to have treated seed in
24 our agricultural community, which I believe is
25 likely to endure for quite some time. So we're

1 going to have this problem with the excess waste
2 material and what to do with it. While burying it
3 in the solid waste industrial landfill, you do have
4 some controls, you have monitoring, you have a good
5 leachate system. So if those treatment molecules
6 are flushed off the surface of the seed, it should
7 be contained unless there's leak in the liner or
8 something like that and then it gets out into the
9 environment.

10 I do -- while understanding that we
11 need more ways to utilize it, I do disagree with the
12 exception for burning in a waste energy facility as
13 written. I believe it should have more restrictions
14 on it. I think that waste energy facilities should
15 be able to verify that that treatment molecule has
16 been destroyed, which can be done through
17 incineration. It can't be done in a corn stove at
18 home or out in your barn or whatever necessarily
19 because they don't have the means to measure what is
20 required to destroy that molecule. Twelve hundred
21 degrees Fahrenheit is required to be sustained on
22 the surface of that seed to destroy that molecule.
23 That is blown apart into its elemental components
24 and it's no longer a treatment -- it's carbon,
25 hydrogen, oxygen, nitrogen, it's just elements.

1 So I think if we're going to allow an
2 exception to burn in a waste energy facility -- and
3 I'm very familiar with almost all of the waste
4 energy facilities we have in this state because I
5 work in that sector, in the power sector, and I've
6 toured many of them and looked at their systems.
7 They are not reaching anywhere near that temperature
8 on the grates of those boilers. They have cooling
9 and combustion air coming up from the bottom that's
10 limited to, in most cases, less than 300 degrees.
11 It's actually cooling the seed until it travels off
12 the grate. It will vaporize and burn some, but
13 there's live treatment coming off the end of that
14 and then being quenched and then it's in the water
15 that leaks back out of that ash before it gets to a
16 landfill.

17 So we need to have controls in place
18 just to say a waste energy facility is fine to
19 incinerate it because the ash is going to the
20 landfill; that may be true. If they aren't reaching
21 adequate temperatures in the combustion process, it
22 can still survive leaving the stack.

23 And for full transparency, I've got a
24 little background in this. In my -- I actually run
25 a -- or I did run a combined heat and power biomass

1 facility down in Shakopee, Minnesota called Coda
2 Energy and we went through the fuel permitting
3 process, and we did do it incorrectly. We did get
4 penalized by the agency, but we did set up those
5 supply lines; we did talk to the seed companies and
6 the treatment companies. We actually went through
7 the whole process, how do we verify that we are
8 absolutely destroying this and removing it from the
9 environment for good in this process, because we
10 carry a temperature in our combustion process of
11 over 3,000 degrees.

12 So we verified that, yep, it's all
13 gone, but we did run afoul of the rule as stated
14 because, technically, we burn biomass waste, but we
15 aren't technically a waste energy facility by the
16 agency definition. So we got all that clarified for
17 us, we paid our penalty, we are no longer employing
18 that as a fuel type.

19 However, I did have a problem in that I
20 was ready to prove scientifically that those
21 molecules no longer existed and that was the
22 superior process, and to see that other facilities
23 will be able to burn it without any of those
24 verifications or any of the testing or make sure
25 that it's not leaking out of the facility I think is

1 falling a little bit short.

2 That's all I really have, so thank you
3 very much, Your Honor.

4 THE JUDGE: Thank you.

5 All right. Next I have Bruce Kleven.

6 MR. KLEVEN: Yes, thank you, Your
7 Honor. I'm -- I see that our title of our slide
8 here is Public Questions and Comments. I'm an
9 attorney working with some of the ag groups here,
10 and I'm wondering if I'm able to ask the MPCA a
11 question about a previous slide with their initial
12 presentation.

13 THE JUDGE: Certainly. First -- and I
14 apologize to Ms. Sichko, I have not been diligent
15 about having our commenters state and spell their
16 names. So if I could first ask you to do that, and
17 then if you could direct your question to me and
18 then I can field the question to the agency.

19 MR. KLEVEN: Sure, very good. So for
20 the record, Bruce Kleven, an attorney, B-r-u-c-e,
21 last name is K-l-e-v-e-n.

22 The question was on the slide with the
23 initial presentation. I believe the agency is
24 estimating that there are 14,000 tons of waste seed,
25 and I was wondering if I read that correctly first,

1 and then I have a follow-up.

2 THE JUDGE: Certainly. So first I'll
3 see if, Mr. Gonzalez, if you could find -- it looks
4 like it is slide number 20, if you could move the
5 slide to slide 20.

6 MR. KLEVEN: Yep, that's the one, Your
7 Honor. I'm wondering if the agency could share with
8 us how they arrived at 14,000 tons. I couldn't find
9 any reference to that in the SONAR and I'm wondering
10 how they arrived at that.

11 MR. BURMAN: This is Joshua Burman,
12 Your Honor.

13 THE JUDGE: Okay, go ahead.

14 MR. BURMAN: I can speak generally. I
15 do not have the materials immediately at hand to
16 present data. However, the MP -- I do first
17 emphasize that this is an estimate. There is no
18 statutory or rule requirement existing in Minnesota
19 for generators or other handlers of waste treated
20 seed to report volumes to the State or, to our
21 knowledge, to any other government entities either.
22 Therefore, an estimate is the only possibility.

23 The general approach, the MPCA looked
24 at the data that was available, which was data -- I
25 apologize, just a second, I'm trying to choose the

1 correct word -- data received and collected -- I
2 apologize, that was the word I was looking for, data
3 collected by the State of Kansas and the US
4 Environmental Protection Agency to the former
5 operations of an ethanol plant in Mead, Nebraska.

6 That plant did keep records of the
7 relative sources of the waste treated corn that was
8 received at that plant on an annual basis, and that
9 data did allow the MPCA to roughly estimate the
10 proportion of the waste treated corn arriving at
11 that plant from the state of Minnesota, and that
12 allowed the MPCA to look at the annual use or sales
13 of waste treated seed from some data available and
14 then extrapolate the estimate of waste treated corn
15 generated annually in Minnesota, looking at publicly
16 available industry data.

17 The MPCA then looked at the other major
18 crop in Minnesota that would be expected to produce
19 potentially waste treated seed, which is soybeans,
20 and looked at -- estimated a roughly similar
21 generation rate based on the acreage of soybeans
22 planted with treated seed in Minnesota with the
23 acreage of corn planted annually in Minnesota with
24 treated seed. Again, it is a rough estimate, but
25 that is generally how the MPCA arrived at that

1 number.

2 THE JUDGE: All right. Thank you,
3 Mr. Burman.

4 And I will just note, Mr. Kleven, that
5 oftentimes agencies will address questions in their
6 written response during the written comment period.
7 So if you have additional questions, of course,
8 Mr. Burman is welcome to provide an answer here, if
9 possible, but as I said, the agencies oftentimes
10 will respond or supplement their response in their
11 written comments.

12 It sounded like you also had an
13 additional follow-up question?

14 MR. KLEVEN: Yes, thank you, Your
15 Honor. I was curious if that data was in the record
16 and I think it's significant because this, to me,
17 seems to be overstating the problem by a lot. If we
18 do simple math here, 14,000 tons just in Minnesota
19 is 28 million pounds of seed that the agency has
20 considered just wasted, and we previously heard from
21 a couple of farmers talking about the cost of this.
22 I think, according to the Department of Ag stats,
23 there's roughly 80,000 farms in the state, so if you
24 divide that by 28 million pounds, the agency would
25 have you believe that there are 350 pounds of wasted

1 seed every year per farm, and that just seems like a
2 lot.

3 Another way to look at it would be the
4 average semi holds about 55,000 pounds net of
5 product. That would mean there are 509 semi loads
6 of wasted seed every year according to the agency.
7 So I would just -- it just seemed like an awfully
8 high number to base this rule on.

9 So I'm wondering in my follow-up, then,
10 is any of that data, taking the ethanol plant and
11 backing it into Minnesota from another state, if
12 that data is in the record anywhere.

13 THE JUDGE: All right. I'll just give
14 the agency an opportunity to respond now.
15 Otherwise, of course, the agency can defer answering
16 at a later date. Does the agency wish to respond at
17 this time?

18 MR. STELLMACH: Thank you, Your Honor.
19 The agency will provide a supplemental response in
20 our response to comments.

21 THE JUDGE: All right, thank you.

22 Mr. Kleven, do you have any additional
23 questions at this time? I know we're kind of
24 nearing your five-minute mark, but given the
25 agency's response, I wanted to give you a few extra

1 minutes.

2 MR. KLEVEN: No. Thank you for the
3 time, Your Honor. I don't have any follow-up. I
4 appreciate you letting me emphasize the point here
5 in front of you. Thank you.

6 THE JUDGE: All right, thank you.

7 I did see that Janette Dean had
8 interest in making a second comment, followed by
9 Stacy Cook, and I am going to start offering second
10 opportunities to speak because I do not see any
11 other new individuals wishing to speak.

12 So with that, Janette Dean, if you
13 could just state and spell your name again for the
14 record.

15 MS. DEAN: Certainly. Janette Dean,
16 that's spelled J-a-n-e-t-t-e, last name Dean,
17 D-e-a-n. Again, I'm representing Sierra Club's
18 Northstar Chapter and that would be specifically our
19 Forest and Wildlife Stewards Group and also our
20 Water and Wetlands Stewards Group.

21 So I just wanted to clarify that,
22 again, while we're happy to see rules to have more
23 proper disposal of waste treated seeds, when I was
24 talking about the burial methods, I did want to
25 clarify that, like others, we do agree that that is

1 the least preferred option for disposal because this
2 can further contribute to surface and groundwater
3 contamination. Those lands could be disturbed in
4 many types of ways and wildlife can be close to
5 them.

6 But we do want to say that these
7 neonicotinoids also, which are used as seed
8 treatments, they do often end up in waterways and
9 our concern is the application to the seed is not
10 absorbed by the plant fully enough and that's true
11 of seeds that are exposed that aren't planted.

12 So, again, we appreciate the strictest
13 rules possible for the disposal of the seeds, and we
14 will also continue to advocate for alternatives
15 because of the harm that's being done to land,
16 water, plants, animals and people beyond the crops;
17 and we believe it's harmful to farmers, as well, and
18 their land. So, again, people say it can mitigate
19 pest damage, but we found that it's overused. We
20 would really like the rules that prove where it's
21 benefiting in crop plantings and not just assuming
22 all use is really that effective after all.

23 Thank you for your time today.

24 THE JUDGE: All right, thank you.

25 And Stacy Cook, again, if you could

1 just state your name for the record. No need to
2 spell it a second time.

3 MR. COOK: Thank you, Your Honor.

4 Stacy Cook again, and this is spurred by
5 Mr. Kleven's inquiry. I actually feel that the
6 14,000-ton estimate is far short. We were actually
7 working on an agreement, we had an agreement in hand
8 that we were ready to sign before we realized that
9 we had improperly qualified the treated seed fuel
10 for our facility for 36,500 tons a year and we --
11 they wanted to increase that amount in volume
12 because they still had more need to dispose of seed,
13 but we had only stack-tested that at a hundred tons
14 a day. So that's all we felt we were allowed to do
15 and we found out later we weren't allowed to do any
16 of it.

17 So it is a huge problem, and it's not
18 coming from the farmers. The farmer is only buying
19 what they need or as close as they can possibly be.
20 It comes from Remington Seeds that supplies Corteva
21 and Pioneer and Homestead and Bear and all these
22 other big seed companies across the country, and
23 they have a guarantee with the seed companies that
24 they are going to make sure that they have all the
25 seed they need to plant their entire regions with

1 seed of the various crops that are planted for that
2 year.

3 Now, if any individual farmer changes
4 his crop plan or the seed orders don't come in to
5 the seed companies at the rate that they expected,
6 they always have excess; or if you change corn to
7 beans or beans to corn at the last minute, you
8 decide to change that rotation, well, now you have
9 either a whole bunch of corn seed sitting there or a
10 whole bunch of bean seed because they had the volume
11 out there to be able to plant that spring for
12 everybody.

13 So that's where the big volume comes
14 from, it's from the seed companies themselves. It
15 hasn't been distributed to the farmers yet. There
16 is some waste treated seed or excess treated seed on
17 the farms and, like some of them said, they can
18 overseed, they can cover crop. There are means to
19 get rid of the small amounts in a safe --
20 environmentally save manner. It's these bigger
21 volumes, that's where the problem is, because even
22 while we were burning up to a hundred tons a day in
23 our facility trying to eliminate that -- those
24 treatment molecules because we thought we were
25 inerting it and making it safe for the

1 environment -- I mean, our main interest was
2 sustainability.

3 It's, like, really, you're hauling
4 these by semi truck all the way -- past here all the
5 way through Minnesota down to Iowa to get rid of
6 them in a cement kiln? Well, geez, let's save all
7 that diesel full and all those emissions in the
8 state and you can just bring them here. They set up
9 a depackaging facility in Olivia to service just
10 that run. They also had a depackaging facility over
11 in Lake City.

12 There's several depackaging facilities
13 across the state and those are all servicing the big
14 seed companies that have this excess seed that never
15 actually made it out to a farm. It's sitting in
16 warehouses that the seed companies have. They have
17 to clear it out because germination rates are
18 dropping and they have to have room for the fresh
19 seed for the next planting.

20 So I just wanted to clarify that. It
21 is a very large issue. You know, if I had given the
22 agency some data, maybe that estimate would be much,
23 much higher, because we were actually in contact
24 with the companies that have all the seed and the
25 problem of trying to dispose of it. So it exists,

1 it's just how can it be responsibly taken care of as
2 a waste product.

3 Is there a way -- I mean, as a state,
4 there is no way to force these seed companies that
5 are in other states to change the way they handle
6 their logistics and their inventories. Maybe there
7 is a more efficient way they can do it to reduce the
8 volume, but that volume exists and it has to be
9 taken care of somehow and we have to do it in a
10 responsible manner.

11 That's all I have, Your Honor. Thank
12 you.

13 THE JUDGE: Okay, thank you.

14 I am just going to remind everyone that
15 comments in the chat area are not a part of the
16 official record, so, again, if you do wish to make a
17 comment, please type your name in the chat or press
18 *3 to express your interest in commenting. I do
19 encourage all the participants here to comment.
20 That's why we're here.

21 I do not see any other comments. I
22 will say, though, it is hard for me to track if
23 there are people participating by phone and if they
24 have an interest in commenting. I don't believe we
25 have anyone participating by phone, but if the

1 agency could confirm that, I would appreciate it.

2 MS. WENGER: Your Honor, we have no one
3 participating by phone and no requests to speak in
4 the queue right now.

5 THE JUDGE: All right. Then at this
6 time I would like to take about a ten-minute break.
7 We are required to give our court reporters humane
8 treatment, so at this time it's 4:15 and we will
9 take about a ten-minute break and return at 4:25.
10 In the meantime, feel free to enter your name in the
11 chat if you would like to speak when we come back at
12 4:25. Thank you.

13 (Short break taken.)

14 THE JUDGE: All right, it is 4:25. I
15 do not see any additional requests to comment and I
16 do not see any hands raised. I will just add that
17 in addition to the comments we've already heard, I
18 do encourage people to make a comment or ask a
19 question that they might have and, in particular, if
20 there are any specific parts of the record -- I'm
21 sorry, parts of the rule that you support or object
22 to and why, that is always helpful to the agency;
23 and a reminder that in addition to making comments
24 here today or in lieu of making comments here today,
25 you can submit your written comments.

1 I'll confirm with the agency, are there
2 any others expressing an interest in commenting?

3 MS. WENGER: Your Honor, we have no
4 commenters in the chat and no one is attending by
5 phone at this time.

6 THE JUDGE: All right, thank you.

7 I will also take this opportunity to
8 remind the public and the agency that the record
9 will remain open until the end of both comment
10 periods. So, again, written comments are due
11 March 25th, 2025, at 4:30 p.m. and rebuttal comments
12 are due by 4:30 p.m. on April 1st, and those are
13 through the eDocket -- primarily through the eDocket
14 method or through fax or U.S. Mail.

15 As a reminder, the notice for this
16 hearing did state that the hearing would continue
17 until 6:00 p.m., so we will keep the opportunity to
18 make oral comments until that time. I am going to
19 turn my camera off, but my -- I am still here and if
20 anyone expresses an interest in making further
21 comment, either new commenters or a repeat
22 commenter, please send the chat message and we will
23 take your comment at that time.

24 Just another reminder and encouragement
25 to make a comment or ask a question if you have one

1 by typing your name in the chat box.

2 This is Judge Todnem. Just another
3 encouragement to ask additional questions or ask --
4 make additional comments or ask questions from the
5 members of the public. I don't see any additional
6 names in the chat box or any hands raised.

7 All right, just checking in again.
8 It's about 4:45. Any additional comments or
9 questions?

10 MS. WENGER: Your Honor, we have no
11 names in the queue and no one participating by phone
12 at this time.

13 THE JUDGE: All right, thank you.

14 All right, this is Judge Todnem again.
15 I just want to check in on any interest in comments
16 or questions.

17 MS. WENGER: Your Honor, at this time
18 we have no comment requests in the chat and we have
19 no one participating by phone.

20 THE JUDGE: All right, thank you.

21 This is Judge Todnem. It's 5:00 and I
22 just want to check in and again encourage people to
23 make comments or pose questions at this time.
24 Again, enter your name in the chat box or raise your
25 hand to indicate such an interest.

1 MS. WENGER: Your Honor, just
2 confirming that we have no one participating by
3 phone and no names in the queue right now.

4 THE JUDGE: All right, thank you.

5 All right, this is Judge Todnem. It's
6 5:11 p.m. I just wanted to check in about comments
7 or questions and encourage anyone still on the call
8 to submit those comments or a request to comment or
9 a question at this time.

10 MS. WENGER: Judge Todnem, just
11 confirming that we have no speakers in the queue and
12 no one participating by phone at this time.

13 THE JUDGE: Thank you.

14 This is Judge Todnem. It's 5:20 p.m.
15 and, again, I just want to check in about any
16 comments or questions and encourage members of the
17 public still on the line to raise any questions or
18 make any comments that you might have.

19 All right, this is Judge Todnem. It's
20 5:30 p.m. I just want to check in about any
21 additional comments or questions from members of the
22 public.

23 MS. WENGER: Your Honor, confirming
24 that at this time we have no requests in the chat
25 and no one participating by phone.

1 THE JUDGE: All right, thank you.

2 All right, it's 5:40. This is
3 Judge Todnem, again encouraging any members of the
4 public present to enter your name in the chat to
5 express an interest in making a comment or posing a
6 question.

7 MS. WENGER: Your Honor, confirming
8 that we have no one participating by phone and no
9 names in the chat.

10 THE JUDGE: Thank you.

11 All right, this is Judge Todnem. It's
12 5:50 and we are nearing the end of the allotted
13 hearing time, so I'll make one last call for any
14 questions or comments from members of the public.

15 MS. WENGER: Your Honor, confirming
16 that we have no names in the chat and no one
17 participating by phone right now.

18 THE JUDGE: All right, thank you.

19 All right, it is 5:56, so I'll just
20 make a last call for any comments or questions, a
21 reminder to enter your name in the chat box or press
22 *3 if attending by telephone.

23 MS. WENGER: Your Honor, there are no
24 phone numbers or people entered in the chat at this
25 time.

1 THE JUDGE: All right, thank you.

2 All right. Mr. Gonzalez, if you could
3 move to the next slide. Thank you.

4 So, again, I just want to remind
5 everyone still on the call that written comments can
6 be submitted by 4:30 p.m. on March 25th, 2025, and
7 rebuttal comments must be received by 4:30 p.m. on
8 April 1st, 2025. Please be sure to reference Docket
9 Number 23-9003-39350 and written comments can be
10 submitted by U.S. Mail, by fax or using the eComment
11 site and, again, eComments is recommended so that
12 members of the public and the agency can see the
13 comments posted instantaneously rather than waiting
14 for posting after the close of the comment period.

15 All right, last call for any comments
16 or questions?

17 Seeing none, I will note that it is
18 6:00 p.m. and the hearing is adjourned. Thank you
19 all for attending.

20 MR. STELLMACH: Thank you, Your Honor.

21 (Proceedings concluded at 6:00 p.m.)
22
23
24
25

1 STATE OF MINNESOTA)
2) ss.
3 COUNTY OF DAKOTA)
4

5 REPORTER'S CERTIFICATE
6

7 I, Colleen M. Sichko, do hereby certify
8 that the above and foregoing transcript, consisting of the
9 preceding 63 pages is a correct transcript of my
10 stenograph notes, and is a full, true and complete
11 transcript of the proceedings to the best of my ability.

12 Dated March 10, 2025.
13

14 /s/Colleen M. Sichko
15 COLLEEN M. SICHKO
16 Registered Professional Reporter
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