MINNESOTA ETHANOL

Minnesota Ethanol Producers Association
701 Industrial Drive, Preston, MN 55965

March 14, 2023

The Honorable Rick Hansen
Environment and Natural Resources Finance and Policy Committee
407 State Office Building
St. Paul, MN 55155

RE: HF 2761

Chairman Hansen and Members of the Environment and Natural Resources Committee:

We write to share our concerns with HF 2761 related to the testing and monitoring for the presence of neonicotinoid pesticides and perfluoroalkyl and polyfluoroalkyl substances (PFAS) across commercial feed derived from biofuel production, the fuels produced, facility wastewater, facility emissions, and plant employees. While we strongly support and maintain existing federal and state safety controls, the additional monitoring and testing requirements created under HF 2761 are redundant, unnecessary, and will not produce meaningful data.

The Presence of PFAS is Near Universal

Neither PFAS nor neonicotinoid pesticides are used in the production of biofuels. Further, the bioprocessing facilities we represent never actively used synthetic PFAS-containing foams to suppress fires, and PFAS-containing foams stored at our facilities were removed in 2022.

According to the U.S. Environmental Protection Agency (EPA), "Because of their widespread use and their persistence in the environment, many PFAS are found in the blood of people and animals all over the world and are present at low levels in a variety of food products and in the environment." Given the widespread use and near-universal presence of PFAS, including in food, packaging, household, and beauty products, it would be irresponsible to single out biofuel producers for monitoring and testing, and nearly impossible to discern if the presence of any PFAS is unique or the result of external factors.

Existing Federal, State and Commercial Safety Controls Safeguard Feed from Pesticides

As feed producers, we strive to be trusted partners with our domestic and international customers as well as all federal and state regulators. Both feed customers and regulators already have stringent requirements in place regarding the quality and safety of the products we supply, including federal and state inspections, testing products prior to acceptance or prior to a shipment leaving the U.S., requesting letters of guarantees, documenting supplier approval processes, and conducting third-party audits.

Bioprocessing sites like ours that manufacture and distribute animal food are required to register with the U.S. Food and Drug Administration (FDA) per 21 CFR Part 1, Subpart H. Sites are also required to comply with federal regulations outlined in 21 CFR 507 Current Good Manufacturing Practice, Hazard Analysis, and Risk Based Preventive Controls for Food for Animals. Minnesota bioprocessing facilities that manufacture and distribute animal feed are likewise required to register with the Minnesota Department of Agriculture (MDA) Commercial Feed program and comply with Minnesota Commercial Feed Law (MCFL).

Recognize that each of the bioprocessing facilities we represent already has a rigorous food safety plan in place, routinely conducts hazard analysis to review all potential hazards that can enter into the process (e.g., treated seed or unlawful pesticides), and has well-established procedures to prevent hazards from occurring. Per federal regulations (21 CFR 2.25), treated seed with poisonous treatments is already addressed through our hazard analysis and prevented from entering the manufacturing process.

There is also significant existing oversight provided to the MDA. For example, MDA can and does carry out inspections on behalf of the FDA, and the commissioner or agent has a right to obtain samples (MCFL 25.41).

Given the strict safety measures enforced currently by federal and state agencies, and the substantial testing requirements under existing commercial agreements, we believe HF 2761's focus on bioprocessing facilities will not create any additional protections from neonicotinoid pesticides from entering Minnesota's feed supply or control the presence of PFASs.

Sincerely,

CHRIS HANSON
General Manager
POET Biorefining—Preston

TERRY HURLBURT
General Manager
POET Biorefining—Bingham Lake

SHANE ROBY
General Manager
POET Biorefining—Lake Crystal

RUSS GERMANN
General Manager
POET Biorefining—Glenville

MinnesotaCorn GROWERS ASSOCIATION

March 15, 2023

House Environment and Natural Resources Finance and Policy
Chair Rick Hansen
407 State Office Building
St. Paul, MN 551155

Dear Chair Hansen, Republican Lead Heintzeman and Members of the Committee,

The Minnesota Corn Growers Association (MCGA) submits the following written testimony on HF 2761. Respectfully, MCGA is opposed to HF 2761 and submits this testimony on behalf of our nearly 7,000 family farm members.

Ethanol produced in Minnesota is processed from harvested field corn. There is a difference between harvested field corn and corn seed treated with a neonicotinoid pesticide used for planting. Seed treatments provide an effective option to manage pest risk while also minimizing environmental risk. Environmental risk can increase from the use of topical or liquid application across the soil surface at planting or early in-season. The difference between harvested field corn and treated seed for planting is an important distinction because it is our understanding that a plant in Mead, Nebraska is only one of two ethanol plants in the entire U.S. processing pesticide-treated seed as a feedstock for ethanol production. The plant in Mead, Nebraska has since lost their state permit and is no longer in operation.

In response to concerns about the plant in Nebraska, the Minnesota Pollution Control Agency (MPCA) created consumer guidance for unused, unsold treated seed. We have included the MPCA guidance document as a part of our written testimony. As clearly stated in the fourth bullet, under the section "Treated seeds that will not be used for planting," waste treated seed may not be used for "ethanol, biodiesel, or other fermentation or oil processing, ***unless specially approved by the MPCA***." Therefore, we believe the new proposed air monitoring and biofuels co-product testing requirements for the presence of neonicotinoid pesticides in HF 2761 are completely unnecessary because no plant currently processes treated seed as a feedstock and if they would ever propose to do so, a new permit would need to be approved by the MPCA. Further, if the MPCA were to approve of such a project, monitoring could be handled in a new air permit.

With respect to air monitoring and co-product testing of perfluoroalkyl or polyfluoroalkyl substances (PFAS), it is our understanding the Environmental Protection Agency has not validated a method for monitoring PFAS in wastewater, air, biofuel or feed and we don't support the reliance on draft, non-validated methods. Therefore, we also find the monitoring and testing requirements unnecessary and premature until an EPA validated method is available.

Thank you for the opportunity to submit written testimony. If you or your staff have any questions, please contact MCGA's Senior Public Policy Director Amanda Bilek at 952-460-3604 or at abilek@mncorn.org.

Sincerely,

Richard Syverson
President
Minnesota Corn Growers Association

Treated seeds

Treated seeds are seeds, including grain, forage, oil-plant, and vegetable seeds, that have been treated with pesticides or fungicides. Treated seeds can usually be identified by their distinctive color. Federal law requires that a distinctive color be applied to seeds that are treated and sold.

Treated seeds that will be used by planting

Treated seed that will be used must be planted according to the label directions on the treated seed packaging. Depending on the label directions, planting may be allowed for crop production, wildlife habitat, or erosion or weather protection. There may also be restrictions on planting rate and depth.

Treated seeds that will not be used by planting

While the Minnesota Department of Agriculture (MDA) and the U.S. Environmental Protection Agency (EPA) regulate the pesticides and fungicides that are used to treat seeds, treated seeds themselves are exempt from these requirements. Instead, management of treated seeds that will not be used by planting is regulated by the Minnesota Pollution Control Agency (MPCA).

Treated seeds that will not be used by planting are considered industrial solid wastes in Minnesota. Because of the risk of concentrating the chemicals they are treated with, waste treated seeds in Minnesota may not be:

- Buried for disposal, except in a permitted solid waste landfill, even if burial is stated as a disposal option on the treated seed label, except that farmers in Minnesota may bury treated seeds from their own farm on the farm property. Spreading and incorporation into soil, except by a farmer of their own treated seeds on their own farm, is considered being buried for disposal and is not allowed.
- Composted.
- Burned, except in a permitted Waste-To-Energy (WTE) incineration facility. Waste treated seed may not be burned openly, in corn or wood stoves, or in residential or commercial boilers, including by farmers.
- Used for ethanol, biodiesel, or other fermentation or oil processing, unless specifically approved by the MPCA. Though some treated seed labels still list ethanol production as a management option if no measurable residues of pesticides remain in resulting by-products used in agronomic practice, the MPCA is not aware of any currently available use that does not raise this risk.

Packaging and equipment

Disposable packaging from treated seed, such as bags, is also considered a regulated solid waste in Minnesota, and may not be buried or burned except in permitted facilities. Farmers who do not need to dispose of any treated seeds may dispose of treated seed bags with their normal solid waste, but may not burn any plastic.

Reusable packaging, such as totes and cartons, may be reused with or without rinsing for the same product. When washing equipment, such as seed treatment equipment, planting equipment, or reusable packaging, the MPCA recommends using only the minimum amount of rinsewater necessary.

Rinsewater may be discharged to a publicly owned treatment works, commonly known as a sewage treatment plant, after notifying the works operator and following any conditions or restrictions they apply. Rinsewater may also be applied at label rates to a crop for which the active ingredients in the seed treatment are registered. Rinsewater may not be allowed to discharge to uncropped ground, surface water, or septic systems.

Arranging for proper disposal

Manufacturers, distributors, retailers, farmers, and any other person generating waste treated seed and packaging, called the waste *generators*, are responsible for arranging for proper disposal of their waste. The MPCA considers waste treated seed and packaging to be an industrial solid waste with no need for further hazardous waste evaluation by the generator, landfill, or WTE incineration facility.

You may find a list of Minnesota landfills in MPCA fact sheet #w-sw6-04, Minnesota landfills accepting mixed municipal solid waste, at: https://www.pca.state.mn.us/sites/default/files/w-sw6-04.pdf.

You may find a list of permitted Minnesota WTE incineration facilities on the website of the Minnesota Resource Recovery Association (MRRA), at: http://mnresourcerecovery.com/.

Many of these landfills and WTE facilities may accept industrial solid waste treated seed, however **generators must contact the landfill or WTE facility first to ensure that they will agree to accept waste treated seeds and can safely manage this waste stream**.

Management in landfills

If not already explicitly included, treated seeds must be addressed in a revision to a landfill's Industrial Solid Waste Management Plan. The revised plan must be reviewed and approved by the MPCA before a landfill may receive this waste stream. Revisions for treated seeds must include:

- Gas generation. Waste treated seed may present a fermentation and methane gas generation risk. Landfill operators must determine what prospective volume of waste treated seed and potential resulting gas generation the landfill can safely accept on a per-load or per-day basis.
- Stability and settlement. Landfill operators must determine when thin-spreading of waste treated seed over the active disposal area or incorporation into other received waste may be needed to maintain slope stability and minimize localized settlement.
- Daily cover. To prevent wildlife foraging and exposure, waste treated seed of any volume must be immediately covered.

Some landfills may also be required to additionally obtain county approval to receive waste treated seed, depending on location.

More information

Guidance and requirements in this fact sheet were compiled from Minnesota Rules, Chapters 7035 and 7045, and incorporate regulatory interpretation decisions made by the MPCA on January 12, 2022. To review Minnesota Rules, visit the Office of the Revisor of Statutes at: https://www.revisor.mn.gov/pubs.

The MPCA's Small Business Environmental Assistance Program can offer free, confidential compliance assistance. For information about waste minimization, contact the Minnesota Technical Assistance Program.

Immediately report all spills that may damage the environment to the Minnesota Duty Officer.

Minnesota Pollution Control Agency

Toll free (all offices) 1-800-657-3864
All offices 651-296-6300
..... https://www.pca.state.mn.us/

Small Business Environmental Assistance Program

Toll free 1-800-657-3938
Metro 651-282-6143
..... https://www.pca.state.mn.us/sbeap/

Minnesota Technical Assistance Program

Toll free 1-800-247-0015
Metro 612-624-1300
..... http://www.mntap.umn.edu

Minnesota Duty Officer

Toll free 1-800-422-0798
Metro 651-649-5451