



STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT

THE PENOBSCOT NATION
and
CONSERVATION LAW FOUNDATION,
Plaintiffs,

PETITION FOR JUDICIAL REVIEW OF
FINAL AGENCY ACTION

v.

Civil Action No. _____

MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Defendants.

Nov. 12, 2024

I. Introduction and Nature of the Action

The Maine Department of Environmental Protection (“MEDEP” or “Defendant”) is responsible for overseeing the application process for licenses for new or expanded solid waste disposal facilities. 5 M.R.S. § 1310N. Prior to submitting a license application for a new or expanded solid waste disposal facility, an applicant must apply to the MEDEP Commissioner for a determination of public benefit. 38 M.R.S. § 1310-AA. The MEDEP Commissioner then determines whether the proposed facility would provide “a substantial public benefit.” *Id.*

The Juniper Ridge Landfill (“JRL”) is located on a 780-acre parcel in Old Town and Alton, Maine. Maine Bureau of General Services (Owner) and NEWSME Landfill Operations, LLC (Operator), *Application for A Determination of Public Benefit Juniper Ridge Landfill Expansion*, SEVEE & MAHER ENGINEERS 1, 1-1 (June 2024), *available at* https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/PBDapplication/20240607_APPLICATION%20FOR%20A%20DETERMINATION%20OF%20PUBLIC%20BENEFIT.pdf [hereinafter PBD Application]. JRL is owned by the Maine Department of Administrative and Financial Services’ Bureau of General Services (“BGS”), operated by NEWSME Landfill Operations, LLC, a wholly-owned

subsidiary of Casella Waste Systems (“Casella”) (altogether the “Applicant” or “Casella”),¹ under a 30-year Operating Services Agreement, which was entered into on February 5, 2004. *Id.* On June 10, 2024, the Applicant filed with MEDEP an application for a determination of public benefit to expand JRL by about 61 acres. *Id.* On October 2, 2024, MEDEP Commissioner Loyzim issued a final agency action: an Approval with Conditions Public Benefit Determination (“PBD Approval”). *In The Matter of: State of Maine, Department of Administrative and Financial, Services, Bureau of General Services Old Town, Penobscot County, Maine Juniper Ridge Landfill Expansion S-020700-W5-CV-N (Approval With Conditions): Public Benefit Determination*, ME DEP’T ENV’T PROT. (Oct. 2, 2024), *available at* <https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/Juniper%20Ridge%20PBD%20S-020700-W5-CV-N.pdf> [hereinafter PBD Approval].

MEDEP’s final agency action comes after Maine has recently statutorily prioritized environmental justice (“EJ”) for solid waste facility siting processes. In 2022, Maine passed legislation that requires MEDEP to consider EJ impacts in making its public benefit determination (“PBD”) for a proposed new or expanded solid waste facility. 38 MRSA § 1310-AA(3)(E); An Act To Protect the Health and Welfare of Maine Communities and Reduce Harmful Solid Waste, S.P. 523 - L.D. 1639 (April 18, 2022), *available at* <https://legislature.maine.gov/bills/getPDF.asp?paper=SP0523&item=7&num=130>. Importantly, the administrative process for the proposed expansion of JRL was the first time that MEDEP was required by law to assess the potential EJ impacts on the communities in which the expansion is proposed in making its PBD.

Plaintiffs, the Penobscot Nation and Conservation Law Foundation, now bring this Petition under 5 M.R.S. § 11001 as persons aggrieved by Defendant’s final agency action and to challenge the lawfulness of Defendant’s final agency action. This action seeks review of Defendant’s

¹ While there is a legal distinction between all three entities, for ease of reference and consistency’s sake with the PBD Approval, this Petition also refers to the Applicant as “Casella.” *See generally*, PBD Approval.

statutory obligation in assessing the standards of determination for its PBD as listed in M.R.S. § 1310-AA(3), which includes the new EJ standard.

Plaintiffs allege as follows:

II. Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 5 M.R.S. § 11001; 8 M.R.S. § 346; 06-096 C.M.R. ch. 2, § 28; and M. R. Civ. P. 80C.
2. Venue is proper in Penobscot County Superior Court pursuant to 5 M.R.S. § 11002(1)(C) because Penobscot County is where the property which is the subject of this proceeding is located. JRL is located on a parcel in Old Town, Maine and Alton, Maine, both of which are in Penobscot County. PBD Application at 1.
3. This petition is timely under 5 M.R.S. § 11002(3) as Plaintiffs have filed “within 40 days from the date the decision was rendered to petition for review.” MEDEP rendered their PBD Approval on October 2, 2024. PBD Approval at 25.

III. Parties

A. Plaintiffs

1. The Penobscot Nation

4. Plaintiff the Penobscot Nation is the oldest government in the Western Hemisphere; “[s]ince time immemorial, the Penobscot Nation, penawahpkekeyak, the people of the place of the white rocks, has inhabited its ancestral homeland situated within the drainage area of the Penobscot River and its many tributaries, lakes, and ponds.” *Penobscot Nation, penawahpkekeyak, WABANAKI ALLIANCE*, available at <https://www.wabanakialliance.com/%20penobscot-nation/> (last visited Nov. 11, 2024). “As a proud riverine people, Penobscot epistemology, culture, and society are rooted in their intimate relationship to the [Penobscot]

river- the source of life that provides all that is needed; the river to which the Penobscot people belong,” and the river along which JRL is located and pollutes. *Id.*

5. The Penobscot Nation is a “person aggrieved” under 38 M.R.S. § 346(1) and 5 M.R.S. § 11001 by Defendant’s improper final agency action.
6. The Penobscot Nation is a sovereign entity that currently consists of well over 2,000 citizens. Penobscot Nation Decl. ¶ 2 (attached hereto as Exhibit A). The Penobscot Indian Island Reservation and trust lands are less than 10 miles away from JRL, with some locations as close as 1.5 miles away. *Id.* ¶ 4.
7. The Penobscot Nation is centered on Indian Island, a large island that sits in the Penobscot River about six miles from JRL. *Id.* ¶ 4. JRL is situated between two tributaries to the Penobscot River, a sacred source of fish and sustenance for the Penobscot Nation. *Id.* ¶¶ 4, 7, 12. One such tributary, Birch Stream, is a traditional hunting territory that the tribe has used for thousands of years. *Id.* ¶¶ 6–7.
8. The Penobscot Nation is concerned that a JRL expansion will threaten air and water quality such that its people would be further burdened in exercising their sustenance hunting and fishing rights or engage in traditional cultural practices such as water ceremonies. *Id.* ¶¶ 7, 12, 16. The Penobscot Nation is also very concerned about the health of its people and the Penobscot River itself, as well as the plants and wildlife in the Penobscot Watershed, all of which are relatives of the tribe. *Id.* ¶¶ 9, 14, 18–20. If the proposed expansion of JRL were to continue, it would deny the Penobscot people their centuries-old role as stewards of the Penobscot watershed and it would violate the sovereign rights of the Penobscot Nation. *Id.* ¶¶ 5, 6.

2. Conservation Law Foundation, Inc.

9. Plaintiff Conservation Law Foundation, Inc. (“CLF”) is a non-profit, member-supported organization incorporated under the laws of Massachusetts with offices at 53 Exchange Street, Suite 200, Portland, Maine, 04101. *See Conservation Law Foundation, CONSERVATION LAW FOUND.*, <https://www.clf.org/> (last visited Nov. 5, 2024). Founded in 1966, CLF protects New England’s environment for the benefit of all people, promoting the interests of its 5,600-plus members, including more than 400 members in Maine. CLF uses the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Through its Zero Waste Project, CLF aims to protect communities from the dangers posed by unsustainable waste management practices.
10. CLF is a “person aggrieved” under 38 M.R.S. § 346(1) and 5 M.R.S. § 11001 by Defendant’s improper final agency action. CLF has organizational standing to pursue this appeal and does so on behalf of its members. *See Leithiser Decl.*; H. Sanborn Decl.; L. Sanborn Decl.; Spencer Decl.
11. Charles B. Leithiser is a CLF member. *Leithiser Decl.* ¶ 3 (attached hereto as Exhibit B). He lives 7 miles away from JRL with his daughter and brother, and he has lived there for 38 years. *Id.* ¶¶ 2, 5. He has already had to give up eating local fish and fiddleheads as well as cross-country skiing and hiking in the area near the landfill because of his concerns about hazardous air and water quality caused by JRL operations. *Id.* ¶¶ 8, 12. Charles is very concerned that an expansion of JRL would increase the risks posed by JRL operations to air quality, water quality, and the health of himself, his family, and the environment. *Id.* ¶¶ 6–7.
12. Harry M. Sanborn is a CLF member. H. Sanborn Decl. ¶ 3 (attached hereto as Exhibit C). He has lived 0.1 miles away from JRL with his wife for 53 years. *Id.* ¶¶ 2, 5. Current JRL operations require Harry to forgo using water from the well on his property in favor of water

provided by Casella and limit his ability to garden and enjoy his backyard. *Id.* ¶¶ 7, 12. He is concerned that an expansion of JRL will continue to threaten his health and safety by worsening already poor air and water quality while also increasing traffic and noise pollution. *Id.* ¶¶ 12–13.

13. Laura Sanborn is a CLF member. L. Sanborn Decl. ¶ 3 (attached hereto as Exhibit D). She has lived 0.1 miles from JRL for 76 years, her entire life. *Id.* ¶ 2. She has experienced headaches and facial swelling due to the odors and landfill fires that result from JRL’s operations. *Id.* ¶¶ 9, 18. Laura is very worried that an expansion of JRL will create higher risks to air and water quality that will threaten her health and the health of her family, including her two granddaughters that live next door. *Id.* ¶¶ 6, 10, 21.

14. Edward S. Spencer is a CLF member. Spencer Decl. ¶ 3 (attached hereto as Exhibit E). He lives and works about 1.75 miles away from JRL and he has lived there for 45 years. *Id.* ¶¶ 2–3. His livelihood requires him to work outside, but JRL operations have resulted in odors and poor air quality that have sometimes forced him to stop work and move inside. *Id.* ¶¶ 4, 8. He is worried that an expansion of JRL will further interfere with his health and wellbeing and his ability to enjoy recreational activities along Pushaw Stream with his family. *Id.* ¶¶ 8, 10.

B. Defendant

15. Defendant MEDEP is the executive agency responsible for preventing, abating, and controlling pollution of the air, water and land and protecting natural resources. 38 M.R.S. § 341-A(1). MEDEP’s responsibilities include solid waste facility siting. 38 M.R.S. §§ 1310-N–1310-AA. Before an applicant can submit a license application for a new or expanded solid waste facility under 38 M.R.S. § 1310-N, the applicant must submit an application for public benefit to the MEDEP Commissioner. 38 M.R.S. § 1310-AA. The MEDEP Commissioner must evaluate the

application for whether the proposed facility provides a substantial public benefit, and after evaluation and the public engagement process, issue a determination of public benefit. *Id.*

IV. Background

A. **JRL Contaminates Surrounding Communities with Foul Odors, Smog, Methane, and Forever Chemicals.**

16. JRL, like all landfills, pollutes nearby communities and the environment, posing serious health and safety hazards.
17. The harms from JRL are not theoretical. Those living closest to the landfill suffer the odors from potentially toxic gases. Penobscot Nation Decl. ¶ 18; Leithiser Decl. ¶¶ 8–10; Spencer Decl. ¶¶ 10–11; H. Sanborn Decl. ¶ 7–8; L. Sanborn Decl. ¶¶ 8–10. The landfill’s leachate has long poisoned the Penobscot River, harming wildlife and unjustly burdening the Penobscot Nation. Penobscot Nation Decl. ¶¶ 9, 14–15. Incidents like landfill fires have affected the residents of Old Town and Alton and Penobscot members alike. Penobscot Nation Decl. ¶17; Leithiser Decl. ¶14; Spencer Decl. 15; H. Sanborn Decl. ¶ 9; L. Sanborn Decl. ¶ 18.
18. Common landfill hazards, like the May 2023 fire at JRL, further burden the populations living around JRL. On May 17, 2023, JRL caught fire. Landfill fires are fairly common, with hundreds occurring across the country each year. Tami Abdollah & Dian Zhang, *Landfills Catch Fire, Briefly, All Over America. Why did one in Alabama burn for months?*, USA TODAY, (April 14, 2023, 11:29 AM), <https://www.usatoday.com/story/news/2023/04/09/landfill-fires-arent-rare-alabama-one-burned-months/11532080002/>.
19. During the May 2023 fire, Penobscot Nation Chief Kirk Francis reported that tribal members suffered burning eyes and sore throats from the fire’s smoke and ash. Caitlin Andrews, *DEP Unlikely to Find Cause of Juniper Ridge Fire*, ME. PUBLIC RADIO (May 17, 2023), <https://www.mainepublic.org/environment-and-outdoors/2023-05-17/dep-unlikely-to-find->

cause-of-juniper-ridge-fire. Other residents shared that their bodies and cars were coated in ash, and that no warnings were issued to the public about the health hazards of the landfill fire. *See* Transcript of Bureau of General Services Public Meeting regarding OSA Extension, held on February 15, 2024, *available at* Public Hearing Transcription 02-15-2024 (edited).

20. JRL's next-door neighbors suffer air quality impacts that degrade their quality of life, and quite possibly, their health. In the last months, BGS received dozens of complaints from local residents about JRL odors impacting their quality of life. *See* Complaint Reports for Juniper Ridge Landfill from 2024 and 2023, ME DEP'T ADMIN. AND FIN. SERV., *available at* <https://www.maine.gov/dafs/bgs/maines-state-owned-landfills/juniper-ridge-landfill>.

Complaint notes show that odors came from a myriad of landfill-related activities, including daily sludge deliveries and ongoing landfill construction which releases smelly gases.

21. In recent calls, the on-call Environmental Analyst explained that neighbors were likely smelling heightened hydrogen sulfide odors from the work at the landfill. Hydrogen sulfide is a toxic gas; it affects the nervous system and respiratory tract, and in low doses can irritate the eyes, nose or throat, cause breathing difficulties, headaches, tiredness, memory loss, and balance problems. *Appendix E: Agency for Toxic Substances and Disease Registry (ATSDR) Hydrogen Sulfide Fact Sheet*, ENV'T PROT. AGENCY (Dec. 2016), *available at* https://www.epa.gov/sites/default/files/2017-12/documents/appendix_e-atsdr_h2s_factsheet.pdf; *Fact Sheet: Hydrogen Sulfide from Landfills*, N.J. DEP'T OF HEALTH, *available at* https://www.nj.gov/health/ceohs/documents/Hydrogen_sulfide_fact_sheet.pdf. Callers from Old Town and the City of Alton complained of stinging eyes and headaches but were told that the levels they could smell were not "significant" health risks.

22. In addition to smells, poor air quality, and fires, JRL’s leachate is a source of great contamination. JRL’s highly toxic leachate is sent to the Nine Dragons wastewater treatment plant (“WWTP”) and then discharged into the Penobscot River. Penobscot Nation and CLF Letter to MEDEP, *Application DEP# S-020700-W5-CV-N): Application for a Determination of Public Benefit Juniper Ridge Landfill Expansion*, ME DEP’T OF ENV’T PROT. (July 31, 2024), available at https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/comments/2024_07_31%20CLF%20and%20Penobscot%20Nation.pdf [hereinafter Penobscot Nation and CLF July 31 Letter]. Nine Dragons WWTP is just one mile downriver from the Penobscot Nation. *Id.* The leachate at JRL is collected from 122 acres, flowing at an average rate of 42,000 gpd, which is expected to increase by about 65% this year due to the opening of another waste cell. Crawford Engineers & Sevee & Maher Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME. (Jan. 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>.
23. Sampling of the leachate at JRL shows it contains perfluoroalkyl and polyfluoroalkyl substances (“PFAS”). PFAS are a group of nearly 15,000 synthetic chemicals that all share a carbon-fluorine bond. *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, NAT’L INST. OF ENV’T HEALTH SCIS., <https://www.niehs.nih.gov/health/topics/agents/pfc#:~:text=PFAS%20are%20a%20group%20of,the%20U.S.%20Environmental%20Protection%20Agency> (last reviewed May 3, 2024). They are called “forever chemicals” because they are practically indestructible in nature. *NTP Monograph on Immunotoxicity Associated with Exposure to Perfluorooctanoic Acid or Perfluorooctane Sulfonate*, U.S. DEP’T OF HEALTH & HUMAN

SERVS. 16 (Sept. 2016), *available at* https://ntp.niehs.nih.gov/sites/default/files/ntp/ohat/pfoa_pfos/pfoa_pfosmonograph_508.pdf.

24. A growing body of science has documented that there are significant adverse health effects associated with PFAS exposure, including liver damage, thyroid disease, decreased fertility, high cholesterol, obesity, endocrine system disruption, hormone suppression, and cancer. *Id.* The United States Environmental Protection Agency (“USEPA”) has identified landfill leachate as a potential significant source of PFAS in the environment. Just last year, USEPA announced plans to develop new effluent limitations guidelines and pretreatment standards for landfill leachate after a determination that new effluent guidelines for landfills are needed to address the widespread presence of PFAS in leachate. *See, e.g., Landfill Effluent Guidelines*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/eg/landfills-effluent-guidelines> (last updated Jan. 5, 2024); *Current Effluent Guidelines Program Plan*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/eg/current-effluent-guidelines-program-plan> (last updated May 22, 2024).
25. Casella’s most recent annual report for JRL shows that in 2022 there was at least one leachate spill, where the toxic chemicals flowed across the landfill road before being contained. *See 2022 Annual Report: Juniper Ridge Landfill Old Town, Maine*, Juniper Ridge Landfill 10 (April 2023), *available at* https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/2022%20Annual%20Report_Part1_0.pdf. This leachate spill was not announced to the public at the time of the spill. The annual reports for JRL show a pattern of sporadic landfill fires and toxic spills, and a propensity to keep such information from the public. *Id.* at 10; *see also 2021 Annual Report: Juniper Ridge Landfill Old Town, Maine*, Juniper Ridge Landfill 9 (April 2022), *available at* <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/>

inline-files/JRL%20-%202021%20Annual%20Report%20Complete%20Final%20%2804-29-22%29.pdf.

26. However, accidental leachate spills, while threatening, are not necessary for the leachate to wreak havoc on the surrounding environment. JRL's leachate is poisoning the Penobscot River on a regular basis, when the current system is functioning as intended. Casella does not treat the leachate to remove PFAS before sending it to Nine Dragons WWTP, nor does Nine Dragons WWTP treat the leachate for PFAS once it is received. Sevee & Maher Engineers, Inc. & Crawford Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME DEP'T OF ADMIN. & FIN. SERVS., BUREAU OF GENERAL SERVS. ES-3-ES-5 (Jan 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>. Moreover, recent studies have shown that the leachate treatment at a typical WWTP that does not treat PFAS, like Nine Dragons WWTP, can actually *create more PFAS in the treated effluent*. Nanthi Bolan, et al., *Remediation of poly- and perfluoroalkyl substances (PFAS) contaminated soils – To mobilize or to immobilize or to degrade?*, 401 JOURNAL OF HAZARDOUS MATERIALS 123892 (2021), <https://doi.org/10.1016/j.jhazmat.2020.123892>; Yalan Liu, et al., *From Waste Collection Vehicles to Landfills: Indication of Per- and Polyfluoroalkyl Substance (PFAS) Transformation*, 8 ENV'T SCI. & TECH. LETTERS 66–72 (2020), <https://doi.org/10.1021/acs.estlett.0c00819>. In other words, the effluent leaving Nine Dragons WWTP and entering the Penobscot River may contain even more PFAS than the leachate going into it.
27. The PFAS in the effluent discharged from Nine Dragons WWTP bioaccumulates and disperses into the wider environment. Once released into the environment, PFAS are extremely difficult

to contain and remediate because of the strength of the carbon-fluorine bond that comprises each PFAS molecule. *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, NAT'L INST. OF ENV'T HEALTH SCIS., <https://www.niehs.nih.gov/health/topics/agents/pfc#:~:text=PFAS%20are%20a%20group%20of,the%20U.S.%20Environmental%20Protection%20Agency> (last reviewed May 3, 2024); *PFAS Explained*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/pfas/pfas-explained> (last updated Oct. 25, 2023); *PFAS Explained*, U.S. ENV'T PROT. AGENCY (Oct. 2023), available at <https://www.epa.gov/system/files/documents/2023-10/final-virtual-pfas-explainer-508.pdf>.

28. The findings from the study commissioned by BGS, “Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills,” suggest that JRL’s leachate has been contaminating the Penobscot River—and hence the Penobscot Nation—with PFAS for years. Sevee & Maher Engineers, Inc. & Crawford Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME DEP’T OF ADMIN. & FIN. SERVS., BUREAU OF GENERAL SERVS. (Jan 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>.

29. The leachate at JRL has PFAS concentrations that far exceed the 20 parts-per-trillion interim drinking water standard for the six PFAS (“the PFAS(6)”) currently regulated by the State of Maine. *Id.* at ES-3. Specifically, the PFAS(6) in JRL leachate were found at levels *20 times greater* than those allowed in drinking water. Crawford, Study to Assess Treatment

Alternatives for Reducing PFAS in Leachate, ES-3 to ES-4. This sampling of course does not reflect the levels in the leachate of the hundreds of other PFAS for which no tests are done.²

30. JRL's pollution of the Penobscot River has meant the degrading of a natural resource at the core of the Penobscot Nation. The Penobscot River is the first citizen of the Penobscot Nation, per their census. Murray Carpenter, *Hundreds Rally in Bangor As Penobscot Nation Pushes Ahead with Water Fight*, ME. PUBLIC RADIO (Aug. 2, 2021), <https://www.mainepublic.org/2021-08-02/penobscot-nation-says-its-taking-water-fight-to-the-u-s-supreme-court>.
31. Further reflecting the landfill's intimate relationship with the environmental health of the Penobscot Nation, there has been a Penobscot member sitting on the Juniper Ridge Landfill Advisory Committee for over ten years. Penobscot Nation Decl. ¶ 8.
32. The Penobscot aquifer underlies the whole area and provides the drinking water for Old Town and Indian Island. Penobscot Nation and CLF July 31 Letter at 14.
33. The Penobscot Nation has actively opposed JRL for decades—most ardently for sending PFAS-laden leachate to the Nine Dragons WWTP in Old Town, where it is discharged into the Penobscot River without being treated for PFAS. *See* Dawn Neptune Adams, Testimony of Dawn Neptune Adams Submitted in Response to Chapter 400 Rule Petition for Comments, *available at* [https://www.maine.gov/dep/ftp/projects/ch400/comments2020-09-28/Neptune%20Adams,%20Dawn%20\(2\).pdf](https://www.maine.gov/dep/ftp/projects/ch400/comments2020-09-28/Neptune%20Adams,%20Dawn%20(2).pdf); *see also generally*, Crawford Engineers & Sevee & Maher Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME. (Jan. 2023), *available at* <https://www.maine.gov/dafs/bgs/>

² In an EPA evaluation of leachate from over 200 landfills, PFAS detections included 63 different PFAS with average concentrations for an individual compound as high as 14,000 parts-per-trillion. *See, Effluent Guidelines Program Plan 15*, U.S. ENV'T PROT. AGENCY, 6-13 (Jan. 2023) https://www.epa.gov/system/files/documents/2023-01/11143_ELG%20Plan%2015_508.pdf#page=48.

sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%
20Study.pdf.

34. The Penobscot River holds immeasurable value for the members of the Nation, whose way of life, economic activities, and ancestral wisdom are intricately connected to the Penobscot River basin. Their traditional customs, including fishing, hunting, and gathering plants for sustenance and healing, are deeply rooted in this ecosystem. However, pollutants in local fish populations have significantly impeded the Nation's capacity to maintain its customary practices and meaningfully enjoy its fishing rights over time. *One Health Assessment: Fish Returning to the Penobscot River*, U.S. ENV'T PROT. AGENCY (Nov. 29, 2022), <https://www.epa.gov/sciencematters/one-health-assessment-fish-returning-penobscot-river>.
35. In a study of fish in the Penobscot River, USEPA found that dioxin, furan, polychlorinated biphenyls ("PCBs") and PFAS were at levels in the fish that could pose health threats—including to the nervous system and immune system—to children and adults who consume them. *Id.* The researchers also concluded that these chemicals could put the animals who eat this fish at risk, including mink, otters, and eagles. *Id.* Further research is needed to fully understand to what extent JRL's leachate and run-off, which can also contain dioxins, furan, and PCBs, are contributing to these forms of contamination of the Penobscot River. Sang-Yee Ham et al., *Leaching characteristics of PCDDs/DFs and dioxin-like PCBs from landfills containing municipal solid waste and incineration residues*, 70 CHEMOSPHERE (2008), <https://doi.org/10.1016/j.chemosphere.2007.07.050>; Mehmet Sukru Ozcoban et al., *Effect of solid waste landfill leachate contaminants on hydraulic conductivity of landfill liners*, 85 WATER SCI. & TECH. (2022), <https://doi.org/10.2166/wst.2022.033>.

36. This contamination of traditional water and food sources of the Penobscot Nation is part of a larger web of disparate harm that the State’s landfilling has exacted on the Penobscot people for decades. Since Maine banned new commercial landfills in 1989, all three state-owned landfills were built along a 50-mile stretch of land “at the heart of the Penobscot Reservation.” Marina Schaffler, *Compound Injustice: PFAS May Concentrate Over Time in Landfills Near the Penobscot Indian Reservation*, THE ME. MONITOR (Sept. 10, 2022), <https://themainemonitor.org/compound-injustice-pfas-may-concentrate-over-time-in-landfills-near-the-penobscot-indian-reservation/>.
37. JRL’s poisoning of the Penobscot River has disproportionately burdened the Penobscot Nation for years. This one Maine community has now been saddled with 74 landfills along their river. There are 72 closed landfills in the Penobscot River watershed; many of them are unlined landfills that easily leak toxics into groundwater. *Id.*
38. The Maine Legislature has also found and declared as law “that the Penobscot River is a unique and valuable natural resource. The Penobscot River serves as an example to the Nation that good public policy carefully implemented can restore and preserve our natural resources. The river has supported, and is again beginning to support, the greatest run of Atlantic salmon and 11 other species of anadromous fish in North America, providing a unique fishing opportunity for Maine residents and members of the Penobscot Indian Nation.” 38 M.R.S. § 418-A(1). “[T]he preservation and restoration of the Penobscot River is of the highest priority.” *Id.*
39. The Penobscot Nation is already unjustly burdened by landfill pollution, and the expansion will only worsen the cumulative impacts of this harm. The plain language of 38 M.R.S. § 1310-AA(3)(E) makes it clear that the Commissioner must assess whether expanding JRL is

consistent with *ensuring* the surrounding community’s right to be protected from environmental pollution—a look at the history of the State’s degradation of this right for the Penobscot Nation and the Nation’s current environmental burdens necessitated a negative PBD.

B. Casella Has Filled JRL with Out-of-State Waste and Extra Debris to Stabilize Huge Volumes of Toxic, Untreated Sludge.

40. Casella’s management of JRL has included filling the landfill with thousands of tons of construction and demolition debris (“CDD”) from Massachusetts, and more recently with extra debris and oversized bulky waste to balance out the huge volumes of untreated, PFAS-laden sludge they are landfilling. Penobscot Nation and CLF July 31 Letter at 3–7.
41. Between 2012 and 2022, CDD at JRL increased from 369,069 tons to 485,298 tons. CDD is now the largest waste stream filling up JRL, making up 60% of the waste accepted at JRL between 2012 and 2022. *Maine Materials Management Plan: 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report*, ME. DEP’T OF ENV’T PROT. 37 (Jan. 2024), *available at* <https://www.maine.gov/dep/publications/reports/index.html> (report can be downloaded from the Maine Department of Environmental Protection’s Department Reports website using the link under 2024 next to 1/2/2024) [hereinafter *State Waste Plan 2024*]. Much of this waste came from Massachusetts. *Id.*
42. This massive stream of CDD runs counter not only to the State’s waste reduction goals, but also to its toxicity reduction goals. CDD is a particularly dangerous waste stream that contains chemical additives “and is likely to generate harmful leachate.” Adane Sewhunegn Molla, et al., *Chemicals of concern in construction and demolition waste fine residues: A systematic literature review*, 299 *JOURNAL OF ENV’T MGMT.* (2021), <https://doi.org/10.1016/j.jenvman.2021.113654>. The chemicals found in CDD “contaminate surface and groundwater resources as well as surface soils.” *Id.* at 2. Additionally, Casella has been requesting more and

more oversized bulky waste imports to stabilize the municipal sludge landfilled at JRL. *2023 Annual Oversized Bulky Waste (OBW) Request Form for Juniper Ridge Landfill*, STATE OF ME. DEP'T OF ENV'T PROT. (2023), available at https://www.maine.gov/dep/waste/juniperridge/documents/2023_01_26%20JRL%20OBW%20Annual%20Request%20Form%202023%20Final.pdf.

43. Casella's proffered justification for the increase in CDD is that it is needed to balance out an increase in the disposal of municipal sludge. The State of Maine has outlawed the sale of sludge as fertilizer because of its toxic levels of PFAS. Sawyer Loftus, *The Showdown Behind the Scenes of Maine's Sludge Crisis*, BANGOR DAILY NEWS (April 20, 2023), <https://www.bangordailynews.com/2023/04/20/maine/maine-focus/behind-the-scenes-maine-sludge-crisis-joam40zk0w/>. As a result of this ban, JRL now receives the vast majority of this toxic sludge from around the State. State Waste Plan 2024 at 38. In 2022, approximately 90% of sludge from municipal wastewater treatment plants was disposed of at JRL. *Analysis of Sludge and State-Owned Landfills as Public Utilities*, ME. DEP'T OF ENV'T PROT. 7 (Jan. 2024), available at <https://www.maine.gov/dep/publications/reports/index.html>.
44. While more recent legislation has stopped large amounts of CDD from continuing to flow from Massachusetts, plenty of this out-of-state waste still enters JRL as crushed debris known as "CDD fines." *Id.* at 16. The fines are ostensibly used for shaping, grading, or as alternative daily cover for the landfill, but there is no current accountability mechanism to track how much of this pulverized CDD is genuinely needed, and how much is merely extra profit for the landfill operator. Most of it comes from out-of-state. *2022 Annual Report: Juniper Ridge Landfill Old Town, Maine, Juniper Ridge Landfill*, 8 MAINE.GOV (April 2023), available at

https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/2022%20Annual%20Report_Part1_0.pdf.

45. The State Waste Plan acknowledges that any expansion of JRL is a band-aid solution that will not address the long-term shortcomings of the state’s current waste management issues. State Waste Plan 2024 at 42. Specifically, they have found that “if considerable *reduction in the amount of material* going to landfills is not achieved, or *unless new technology and infrastructure is brought online in multiple locations* in Maine, a sizeable portion of Maine’s landfill capacity will be gone within 20 years.” *Id.* (emphasis added).
46. The Plan also states unequivocally that “CDD, CDD residue and other similar material, and [oversized bulky wastes] have been utilized as bulking material for stabilization,” and that “[t]hese additional bulking materials compounded by sludge volumes have shortened the timeframe by which JRL is expected to reach its maximum capacity.” *Id.* at 38.
47. The Plan also states that “investing in sludge dewatering facilities . . . may be a far more sustainable option in the long run than continuing to landfill larger amounts of CDD in order to accommodate landfilling of sludge.” More plainly, “the current trajectory of sludge and CDD disposal encourages the expansion and use of landfilling.” State Waste Plan 2024 at 38.
48. As discussed below, any PBD must be consistent with the State Waste Plan and the State’s Solid Waste Hierarchy. 38 M.R.S. § 1310-AA(3)(B); 06-096 C.M.R. ch. 400, § 4(N)(1). By statutory hierarchy, waste reduction—including both the amount and the toxicity of waste—must be actively promoted as the highest priority, while landfilling is the last. 38 M.R.S. § 2101. The State Waste Plan’s conclusions are laid out above.
49. Consistency with the Plan and Hierarchy requires that the ceaseless demand for more bulky waste to balance untreated sludge be rectified. The PBD Approval did not rectify this. The

PBD Approval is therefore inconsistent with the Plan, and the Hierarchy, and thus violates the law's requirements for a PBD Approval.

C. MEDEP's PBD Process Timeline and the Penobscot Nation's and CLF's Involvement in the Public Process

50. On June 10, 2024, the Applicant filed with MEDEP an application for a determination of public benefit ("PBD Application") to expand JRL by about 61 acres.
51. On June 24, 2024, MEDEP accepted the PBD Application. After accepting the Application, as per 38 M.R.S. § 1310-AA(2), the Commissioner then had 60 days to issue its determination, which MEDEP determined to be August 23, 2024.
52. On July 5, 2024, CLF filed a request to MEDEP requesting that virtual attendees of the July 16, 2024, public meetings have the ability to provide oral comments.
53. On July 11, 2024, MEDEP emailed interested parties stating that MEDEP would hold a virtual-only public meeting for remote participation on July 26, 2024.
54. On July 16, 2024, MEDEP held two in-person public meetings for the public to provide comments on the PBD Application. The Penobscot Nation and CLF provided comments at these public meetings.
55. On July 26, 2024, MEDEP held one virtual public meeting for the public to provide comments on the PBD Application. Members of the public who were unable to attend the in-person meetings on July 16, 2024, had the opportunity to offer comments.
56. On July 30, 2024, MEDEP sent the Applicant a letter ("Request for Additional Information") stating that upon their initial review of the Application, MEDEP had several comments and questions for which they would like additional information.
57. On July 31, 2024, the Penobscot Nation and CLF filed written comments to MEDEP opposing the expansion and asking for a negative PBD.

58. On August 1, 2024, CLF filed a request with MEDEP to extend the review and comment timeline in light of MEDEP's Request for Additional Information. MEDEP pushed the deadline to September 23, 2024.
59. On August 9, 2024, the Applicant sent a response letter ("Response") to MEDEP's Request for Additional Information.
60. On August 13, 2024, MEDEP sent the Applicant a letter requesting a 30-day extension of the processing time for the application.
61. On August 13, 2024, the Applicant sent MEDEP a letter agreeing to MEDEP's 30-day extension request.
62. On September 6, 2024, the Penobscot Nation and CLF filed supplemental written comments to comment on certain answers the Applicant had provided in their Response.
63. On September 12, 2024, Casella sent a letter to MEDEP providing supplemental information on PFAS and a scholarship program.
64. On September 13, 2024, MEDEP issued a Draft PBD, which was a conditioned approval. MEDEP stated it would accept comments on the Draft PBD until September 20, 2024.
65. On September 16, 2024, CLF filed a request to MEDEP to extend the comment period.
66. On September 19, 2024, MEDEP let the public know they extended the comment and review timeline, making the new comment deadline September 27, 2024, and the PBD deadline October 2, 2024.
67. On September 27, 2024, the Penobscot Nation and CLF filed comments to MEDEP on the Draft PBD.
68. On September 27, 2024, the Applicant filed comments in response to the Draft PBD.

69. On October 2, 2024, MEDEP Commissioner Loyzim issued the PBD Approval. PBD Approval at 25.

V. Final Agency Action to be Reviewed

70. When making a PBD, the MEDEP Commissioner may issue a full or partial approval, with or without conditions. 38 M.R.S. § 1310-AA(7)(A). To issue a positive determination, the Commissioner must find that the proposed facility provides a “substantial public benefit.” 38 M.R.S. § 1310-AA(1). The criteria for such a finding are comprised of four distinct evaluations: (1) capacity needs; (2) consistency with the State’s waste management and recycling plan and promotion of the State’s solid waste management hierarchy; (3) consistency with local, regional, or state waste management systems; and lastly, (4) consistency with ensuring EJ for the community in which the expansion is proposed. 38 M.R.S. § 1310-AA(3).

71. On October 2, 2024, MEDEP Commissioner Loyzim issued the PBD Approval. PBD Approval at 25. In the PBD Approval, MEDEP found that the Application met two out of the four PBD standards as a matter of course, while the other two standards would be met provided the Applicant fulfill certain conditions set by MEDEP. *Id.* at 22–23.

72. In the Approval, MEDEP found that the proposed expansion meets the short-term and long-term capacity needs of the State and is not inconsistent with local, regional, or state waste collection, storage, transportation, processing, or disposal. *Id.*

73. However, MEDEP found the Applicant’s proposed expansion of JRL would only be consistent with the State’s waste management and recycling plan and promotion of the State’s solid waste management hierarchy provided the Applicant submits a report to MEDEP “detailing its plans and schedule for implementing the mattress recycling program within 6 months of the date of”

the issuance of the PBD Approval, “and, if a license is issued for the construction and operation of the expansion:

- Casella continues to expand deployment of its mobile recycling app, and includes information in each landfill annual report regarding where the app has been deployed;
- Each landfill annual report includes a discussion regarding Casella’s work to encourage and assist towns to engage in all possible recycling and diversion activities; and
- Casella evaluates, and submits the evaluation in each annual report, the availability and capacity of regional facilities in Maine to reduce the volume of municipal wastewater treatment plant sludge prior to landfilling at JRL. The evaluation should include recommendations to further reduce the volume of sludge prior to landfilling.” *Id.*

74. MEDEP also found that the Applicant’s proposed expansion of JRL would only be consistent with ensuring EJ for the community in which the expansion is proposed “provided that if a license is issued for the construction and operation of the expansion:

- Casella designs and installs a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations and submits an implementation schedule with tasks to the Department for review and approval to meet this timeframe. The schedule should be submitted to the Department within 90 days of issuance of this public benefit determination;
- Casella pays for all applicable costs associated with a third-party odor consultant, working on behalf of the Department, to complete an odor analysis of the landfill and surrounding area, including evaluation of historical air quality sampling results, odor complaint history, field investigation, and recommended actions, to be submitted to the Department for review;
- Casella conducts two additional surface scans per year during periods of low barometric pressure, if possible, of the landfill intermediate cover, using a Department-approved method to determine if there are fugitive landfill gas emissions and conducts repairs of the cover material accordingly; and
- The applicant establishes a system to inform the public about significant landfill events in near real time such as through a website or other means as approved by the Department.”
Id. at 23.

75. The PBD Approval allows the Applicant to apply for a license to expand JRL under 38 M.R.S. § 1310-N provided the Applicant include MEDEP’s conditions in its license application.

76. The PBD Approval is a “final agency action” as defined by law and may be reviewed by this Court. 5 M.R.S. § 11001 (“[A]ny person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court. . .”); 5 M.R.S § 8002(4).

VI. Grounds for Relief

77. Based on the legal criteria MEDEP is required to consider when evaluating a PBD application listed at 38 M.R.S. § 1310-AA(3), MEDEP should not have approved the PBD Application as the proposed expansion of JRL: (1) runs counter to the State’s waste management and recycling plan (State Waste Plan) and Solid Waste Hierarchy; and (2) is entirely inconsistent with ensuring EJ for the affected local communities. MEDEP’s decision was therefore affected by an error of law, unsupported by substantial evidence, and arbitrary and capricious.

A. The Proposed Expansion as Conditioned in the PBD Runs Contrary to the State Waste Plan and Solid Waste Hierarchy and Therefore the PBD Approval is Affected by an Error of Law, Unsupported by Substantial Evidence, and Arbitrary and Capricious.

78. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

79. MEDEP may only issue an approval if the Commissioner finds that the proposed facility “is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy as set out in section 2101.” 38 M.R.S. § 1310-AA(3)(B); 06-096 C.M.R. ch. 400, § 4(N)(1).

80. The PBD Approval does not promote the State Waste Plan and Hierarchy, as required for an approval. 06-096 C.M.R. ch. 400, § 4(N)(1). By statute, waste reduction—including both amount and the toxicity of waste—must be actively promoted as the highest priority, while landfilling is the last. 38 M.R.S. § 2101. Contrary to this statutory hierarchy, Casella’s

management of JRL has filled up this state-owned landfill with out-of-state waste, toxic construction and demolition debris, and unnecessarily huge volumes of untreated sludge. *See supra* ¶¶ 40–47; *see also* Penobscot Nation and CLF July 31 Letter at 4–8.

81. To resolve the inconsistency of the expansion with the State Waste Plan and Hierarchy, conditions must be placed on the management of JRL itself that increase waste diversion and reduce the volume and toxicity of waste landfilled at JRL. The PBD Approval did not do that.
82. As the State Waste Plan clearly establishes, one such critical condition would be mandating that Casella install and use a dehydrating system to greatly decrease the volume of sludge buried. State Waste Plan 2024 at 38. This treatment of sludge would simultaneously obviate the need for increased construction and demolition debris and oversized bulky waste that Casella has demanded to balance out the watery sludge. Unfortunately, the condition in the PBD Approval requiring Casella to evaluate the capacity of *other* regional facilities in Maine to reduce the volume of sludge prior to landfilling at JRL is insufficient to bring the application in line with the law. PBD Approval at 15. The PBD Approval runs contrary to the State Waste Plan and the Solid Waste Hierarchy.
83. Secondly, given the rate at which waste is filling up JRL, if the expansion is approved it should be conditioned on a maximum fill rate for waste annually—this would preserve the life of the landfill. No such maximum fill rate was placed in the PBD Approval.
84. Thirdly, there should be a specific annual cap on how many CDD fines may be imported into JRL. This cap should be based on Casella’s proven need for alternative daily cover, shaping and grading, on average. There is currently no accountability for or check on the amount of CDD fines entering JRL. This condition should also require that any attempt at exceeding the set annual limit be made through a formal request to MEDEP with a detailed justification for

the excess need. This is nothing new: a similar process is currently required for OBW at JRL. As the operation stands, CDD fines appear to be a remaining loophole through which Casella is filling up Maine's landfill capacity with toxic, out-of-state waste.

85. The PBD Approval, instead of proscribing the above three conditions, merely asks Casella to submit its plan for a mattress recycling program and expand its mobile recycling app. PBD Approval at 22. As stated, the approval divests Casella of the duty to reduce the huge volumes of untreated sludge, by merely asking that Casella evaluate the ability for other regional facilities to reduce the volume of sludge. *Id.*

86. The PBD Approval did not place the above three conditions on the expansion of JRL. PBD Approval at 22. Most of the conditions simply pertain to Casella encouraging recycling at its other facilities, and do not meaningfully address the need for this expansion to comply with the State Waste Plan and Hierarchy. PBD Approval at 15 and 22. In particular, the State Waste Plan clearly establishes that investing in sludge dewatering is the sustainable solution to stop the unfettered filling of JRL with CDD and that JRL's current practices encourage landfilling and expansions. State Waste Plan 2024 at 38. It is plain to see that *not* mandating dewatering of the sludge is inconsistent with the State Waste Plan.

87. In sum, the proposed expansion does not comply with the criteria for a PBD Approval and must be denied under the governing statute. Any approved expansion must include the above three conditions to conform with the State Waste Plan and the Solid Waste Management Hierarchy, and therefore MEDEP's decision is affected by an error of law, unsupported by substantial evidence, and/or arbitrary and capricious.

B. As Conditioned, the Proposed Expansion is Inconsistent with Ensuring EJ for the Surrounding Community and Therefore the PBD Approval is Affected by an Error of Law, Unsupported by Substantial Evidence, and Arbitrary and Capricious.

88. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

89. MEDEP may only issue an Approval PBD if the Commissioner finds that the proposed expansion of a facility “is not inconsistent with ensuring [EJ] for the community in which the facility or expansion is proposed.” 38 M.R.S. § 1310-AA(3)(E).
90. The law defines EJ as “the right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment regardless of ancestry, class, disability, ethnicity, income, national origin or religion. [EJ] includes the equal protection and meaningful involvement of all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions.” *Id.*
91. Thus, for the proposed expansion of JRL, MEDEP was required to assess the proposed expansion’s impacts on the surrounding communities, ensuring that no such community will be overly burdened by the expansion, and find that the expansion of JRL is not inconsistent with ensuring EJ for those communities.
92. The Penobscot Nation, the City of Old Town, and the Town of Alton are some of the communities “in which the expansion is proposed.” *Id.*
93. Even with the added conditions in MEDEP’s PBD Approval, the proposed expansion does not do enough to ensure equal protection from environmental pollution nor meaningful involvement.
94. In the PBD Approval, MEDEP states that “[t]he proposed expansion is not inconsistent with ensuring [EJ] for the community in which the expansion is proposed . . . provided that if a license is issued for the construction and operation of the expansion” obliges with four conditions. PBD Approval at 23. None of the conditions are enough to bring the PBD Approval in line with the EJ criteria, and therefore MEDEP’s decision is affected by an error of law, unsupported by substantial evidence, and/or arbitrary and capricious.

1. The PFAS Condition in the PBD Approval is Insufficient to Satisfy the EJ Requirement.

95. The first condition addressing PFAS is neither detailed nor stringent enough. The issue of PFAS is a serious concern for the community and was brought up by multiple community members at the July 2024 public meetings and through submitted written comments. Ed Spencer, *Environmental Justice and PBD*, ME DEP'T ENV'T PROT. (Aug. 7, 2024), available at https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/comments/2024_08_07%20Ed%20Spencer.pdf; Kat Taylor, *Kat Taylor Public Comments RE: July 16, 2024 JRL Expansion PBD Application Meeting*, ME DEP'T ENV'T PROT. (Sept. 5, 2024), available at https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/comments/2024_09_06%20Kat%20Taylor.pdf; see also PBD Approval at 6.
96. As noted above in Paragraph 29, sampling of the leachate at JRL shows it has PFAS concentrations that far exceed the 20 parts-per-trillion interim drinking water standard for the PFAS(6) currently regulated by the State of Maine. Crawford Engineers & Sevee & Maher Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME. ES-3 (Jan. 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>; Penobscot Nation and CLF July 31 Letter at 16–17.
97. This condition must be significantly improved to bring it closer to ensuring the legal requirements for environmental justice are met.
98. To start, the condition itself is far too broad and has no criteria for what an acceptable treatment system will look like. It is imperative that MEDEP determine clear criteria for analyzing the capability and suitability of the proposed technology for the treatment system and make sure the public is aware of these criteria, as well.

99. MEDEP should also have required full transparency from Casella when they propose said technology and hold them to a high standard of proving why certain technologies should be implemented. There should also be numerous opportunities for the public to be informed throughout the process, as well as the ability to comment on the proposed technology, as is required by the “meaningful involvement” prong of the PBD EJ standard. There should also be clear guidance on how MEDEP will use the public’s input to guide their decision.
100. As noted in Plaintiffs’ Comment Letter submitted on September 27, 2024, and accompanying expert report, an acceptable PFAS treatment program should test for more than just the state-regulated PFAS. *See* Penobscot Nation and CLF Sept. 27 Letter, 6-7, Yang Y. & Holsen T., *Review of Leachate Treatment Study Plan for New England Waste Service Landfill as Required by Condition I.A.5 of the State of Vermont Agency of Natural Resources, Department of Environmental Conservation, Watershed Management Division Pretreatment Discharge Permit 3-1406 2* (Dec. 7, 2023).
101. Any reasonable treatment program would, at a minimum, use EPA Method 1633 to test for at least 40 PFAS, some of which will likely come under EPA regulation soon. *Id.* at 2. The treatment system must also test for PFAS precursors, as many of the treatment processes discussed in the legislatively mandated Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills, such as foam fractionation, can break PFAS chains down into PFAS precursors, which then become PFAS once again after the pre-treated leachate is treated in a WWTP.³ *Id.*; *see also* ¶ 26. As noted in Plaintiffs’ Letter, Total

³ Around three months ago, the Brunswick Executive Airport suffered “Maine’s worst toxic foam spill.” Penelope Overton, *Foam spill flushes wave of toxic chemicals into troubled Androscoggin River*, PORTLAND PRESS HERALD (Sept. 24, 2024), <https://www.pressherald.com/2024/09/24/foam-spill-flushes-wave-of-toxic-chemicals-into-troubled-androscoggin-river/>. “The pipes carried the spill . . . to the sewer plant, where it was treated for some of its nastier contaminants but not the forever chemicals that make

Oxidizable Precursors Assay (“TOPA”) testing to measure the PFAS precursors in the leachate treated on-site, both before and after pretreatment, is recommended to ensure the pretreatment is working effectively. Penobscot Nation and CLF Sept. 27 Letter at 6. Once the testing methods and standards are set, the type of pretreatment can be better chosen and evaluated.

102. In addition, because the foam fractionation process, as used at Casella’s Coventry Landfill in Vermont, is unlikely to be a successful treatment option on its own, *see* Penobscot Nation and CLF Sept. 27 Letter at 6, either some other type of pretreatment should be required at JRL, or a combination of biological pretreatment and reverse osmosis should be required alongside the foam fractionation process to provide a safer, more established and reliable form of treatment. *Id.*

103. Another critical component of a PFAS pretreatment program MEDEP must require is that Casella manage the residual waste from pretreating the leachate in an environmentally responsible manner. If foam fractionation is chosen as a treatment system in conjunction with biological pretreatment and reverse osmosis, the residual foamate should be managed through electrochemical oxidation and plasma discharge rather than encapsulation in Portland cement to avoid creating more PFAS in leachate going forward. *See* Penobscot Nation and CLF Sept. 27 Letter at 6.

104. Additionally, to avoid a spill like the one that happened at Casella’s landfill in Coventry, Vermont, any PFAS pretreatment system must include continuous staffing during the operation of the treatment unit in the event that redundant alarms do not function as designed and to ensure that any secondary containment system operates as designed. Abagael Giles, *Spill of landfill leachate into stormwater pond leaves Coventry locals concerned*, VT PUBLIC (March

aqueous film-forming foam . . . so dangerous. Its next stop? The Androscoggin.” *Id.* MEDEP must protect the Penobscot River, and all those who live along it, from the same fate.

8, 2024), <https://www.vermontpublic.org/local-news/2024-03-08/spill-of-landfill-leachate-into-stormwater-pond-leaves-coventry-locals-concerned>. MEDEP should have gone further and required a PFAS pretreatment system consistent with the recommendations in Plaintiffs’ Letters and Expert Report to give substance to the EJ standard of the PBD law.

105. Lastly, the PFAS condition as written in the draft PBD does nothing to measure, prevent, or remedy PFAS in landfill air emissions. According to a new study, “PFAS gas that emits from landfill waste ends up highly concentrated in the facilities’ gas treatment systems, but the systems are not designed to manage or destroy the chemicals, and much of them probably end up in the environment.” Tom Perkins, *US landfills are major source of toxic PFAS pollution, study finds*, THE GUARDIAN (Aug. 9, 2024), available at <https://www.theguardian.com/environment/article/2024/aug/09/pfas-landfills-us#:~:text=Toxic%20PFAS%20%E2%80%9Cforever%20chemicals%E2%80%9D%20that,to%20find%20an%20effective%20solution>. In fact, “extrapolated concentrations in this study surpassed previous reports in LFG [landfill gas], in some cases by 2 orders of magnitude, and were more comparable (although much lower) to concentrations recently identified in *soil vapor near a PFAS manufacturing facility*.” Ashley Lin, et al., *Landfill Gas: A Major Pathway for Neutral Per- and Polyfluoroalkyl Substance (PFAS) Release*, ENV’T SCI. & TECH. LETTERS 2024 11 (7), 730–737 (emphasis added). “[E]ven under more conservative assumptions these findings suggest that LFG, largely unscrutinized for PFAS, contains similar or greater magnitudes of PFAS compared to leachate, mostly attributed to midlength FTOH homologues. As landfills can be viewed as unabating PFAS repositories, the significance of LFG management in mitigating the long-term, long-range atmospheric transport of neutral PFAS, and subsequently derived PFAAs, cannot be understated.” *Id.* The lead author of the study characterized these findings as “alarming.”

Perkins, *US landfills are major source of toxic PFAS pollution*. Accordingly, MEDEP should have required regular air monitoring for PFAS to assess the breadth of the problem at JRL and then require the Applicant to use its “alliances” with educational institutions to assess and implement an air treatment program.

2. The Odor Dispersion Modeling and Additional Surface Scan Conditions are Insufficient to Satisfy the EJ Criteria.

106. The second and third conditions regarding conducting odor dispersion modeling studies and additional surface scans also do not go far enough in addressing the health concerns associated with odor and gas emissions from JRL.
107. As noted in the PBD Approval, “the block group that includes Indian Island is *above the 95th percentile when compared to state data* for several indexes including wastewater discharge, hazardous waste proximity, underground storage tanks, *and toxic releases to air.*” *Id.* at 17 (emphasis added) (internal citations omitted). “For the block group that includes JRL, there are 2 [EJ] indexes (*toxic releases to air* and wastewater discharge) that are in the 50th to 80th percentile range when compared to state data.” *Id.* (emphasis added).
108. While odor itself is a significant problem—and between January 2023 and August 2024, nearly all complaints filed regarding JRL cite odor as the reason for the complaint—community members are also concerned about what is causing the odors and its toxicity. As recently as August 15, 2024, a resident neighboring JRL filed an odor complaint, with the Environmental Analyst confirming that the site had “strong sludge odor at the landfill site this morning.” *State of Maine, Complaint Report*, DEP’T OF ADMIN. & FIN. SERVS. (Aug. 2024), <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/0824%20JRL%20Complaint%20Report.pdf>. Given that direction of the wind determined how and when the odor impacted this particular resident, it raises questions about how this noxious odor is

experienced by the adjacent community. *Id.* For this reason, a real-time continuous air quality monitoring should be placed in the block groups with elevated exposure to toxic air releases.

3. The Condition Requiring Casella to Establish a System to Inform the Public About Significant Landfill Events is Insufficient to Bring the PBD Approval in Line with the EJ Criteria.

109. The fourth condition, requiring establishment of a system to inform the public about significant landfill events, is far too broad and leaves too many unresolved questions for the Penobscot Nation and CLF to have any confidence that this condition meets the law’s EJ standard. For example, there is no definition of “significant,” nor is there criteria for what information should be included in the notification.

110. Furthermore, this condition must establish criteria to ensure the system will address diverse accessibility considerations (e.g., internet access, telephone access, language access). The community must also be engaged in the development of this system to satisfy “meaningful involvement.” MEDEP should have engaged more with the community to ascertain what type of notification system would actually be effective for the surrounding communities.

111. The inadequacy of these conditions reflects the lack of meaningful involvement of the affected communities as required by the EJ standard. In addition to the regular public meetings required by statute during the PBD process, MEDEP and Casella should have had listening sessions with the affected communities to better tailor any conditions—not just to the communities’ specific concerns, but to the communities’ desired remedies. 38 M.R.S. § 1310-AA(2). Moreover, the conditions should have provided for meaningful public involvement over the course of the expansion and once the expansion were to begin operations, not just during the PBD process.

4. MEDEP’s Approval of the Limited EJ Discussion in Applicant’s PBD Application Does Not Satisfy the EJ Criteria.

112. The first component of the legal definition of EJ focuses on “the right to be **protected** from **environmental pollution** and to live in and enjoy a **clean and healthful environment;**” however, the PBD Approval puts forth initiatives that have nothing to do with protecting the community from the environmental pollution of JRL. 38 M.R.S. § 1310-AA(3)(E) (emphasis added). Some of the initiatives are programs that currently exist because *they are already required by existing law*, and others have nothing to do with protecting communities from environmental pollution.

113. For example, Casella asserted in the PBD Application that, in line with the proposed landfill expansion, it would expand the already- required monitoring program to detect changes in groundwater, surface water, and air quality; continue financial benefits through host community agreements for those living in immediate proximity of JRL; and create a youth scholarship program. PBD Application at 5-1; Casella Letter to MEDEP, *NEWSME Landfill Operations, LLC: Application for Determination of Public Benefit*, (Sept. 12, 2024), available at https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/comments/2024_09_12%20Casella%20PBD%20Supplement.pdf; *see also* Penobscot Nation and CLF July 31 Letter at 11–12 (providing in detail why each project the Applicant put forth in the PBD Application does not meet the environmental pollution element); *see also* Penobscot Nation and CLF Sept. 27 Letter at 5–6. Such programs do nothing to actually *ensure* the surrounding communities are protected from the environmental pollution from JRL’s operations.

114. Addressing the element of meaningful involvement, the Applicant puts forth minimal efforts of going beyond their basic legal public notice requirements. PBD Application at 5-1–5-2; *see* Penobscot Nation and CLF July 31 Letter at 12–13 (providing in detail why each

project the Applicant put forth in the PBD Application cannot be said to meet the meaningful involvement element).

115. The PBD Approval’s rudimentary analysis of the minimal and inadequate EJ provisions provided in the Application cannot fulfill the legal EJ requirement of the PBD inquiry. PBD Application at 5-1-5-2. What the Applicant has put forth in the PBD Application for the EJ standard cannot be enough to meet the EJ standard, and MEDEP’s approval of the PBD Application without questioning those provisions/commitments in the PBD Approval shows that MEDEP believes that these conditions meet the EJ criteria.

5. With the Addition of the EJ Criteria, the PBD Timeline Should Be Interpreted Broadly to Ensure that the Community Can Provide Sufficient Input and MEDEP Can Adequately Consider Such Input; MEDEP Did Not Do That Here.

116. As currently written, the PBD statute puts MEDEP under a very restricted timeline that makes it difficult to ensure meaningful public involvement if interpreted narrowly. Maine law allows the Commissioner 60 days from accepting the application to issue its determination. 38 M.R.S. § 1310-AA(2). Within that time frame, MEDEP must review the PBD Application, host public meetings, take into consideration comments made at these meetings, review submitted written comments, and issue a determination.

117. Though this compressed timeframe comes from Maine law, nothing in that law prohibits MEDEP from extending the timeline when circumstances require it, and the “meaningful involvement” provision of the statute now requires it. MEDEP themselves commented multiple times about how restricted the PBD timeline is, and while MEDEP did extend the timeline slightly after several requests, the extensions were short. For example, even with an extension, MEDEP only allowed themselves three business days to review comments on the Draft PBD Decision. *See supra* ¶¶ 65–70.

118. “Meaningful involvement of all people” includes the public’s ability to have enough time to engage in the PBD process and for MEDEP to have time to adequately review and consider those comments, as required by law. MEDEP should have interpreted the statute to allow for more public engagement and a longer timeline for comments and decision-making. In addition, the final PBD should more adequately reflect the public’s concerns and address them head-on, rather than summarizing them in a single paragraph. *See* PBD Approval at 6.

VII. Demand for Relief

WHEREFORE, Plaintiffs the Penobscot Nation and CLF respectfully request that judgment be entered in Plaintiffs’ favor and that the Court provide the following relief:

119. Plaintiffs request this Court rule that MEDEP’s PBD Approval is affected by error of law, unsupported by substantial evidence on the whole record, and/or arbitrary, capricious, or characterized by an abuse of discretion. As such, Plaintiffs request this Court reverse MEDEP’s PBD Approval and find that the Application does not satisfy the criteria of the PBD statute.

120. In the alternative, Plaintiffs request this Court require MEDEP to modify the PBD Approval to include the following:

- a. A cap on the amount of CDD fines that JRL can accept in a given year;
- b. A maximum fill limit on the waste JRL can accept in a given year;
- c. Casella must implement a sludge dewatering system at JRL; and
- d. Strengthen the PFAS condition as laid out in Plaintiffs’ Petition for Review and Comment Letters.

121. In the alternative, should this Court choose not to reverse or modify the Commissioner’s decision, Plaintiffs request this Court remand the case for MEDEP to reopen the PBD process and direct MEDEP to require additional community engagement proceedings, new findings of

fact and/or conclusions of law based on these additional proceedings, or direct MEDEP to hold such proceedings or take such action as the court deems necessary.

Respectfully submitted,

THE PENOBSCOT NATION,
CONSERVATION LAW FOUNDATION

By its attorneys,



Alexandra Enríquez St. Pierre, Esq.
MA Bar No. 706739
*Application for Admission as Visiting
Attorney to be Filed Forthwith*
CONSERVATION LAW FOUNDATION
62 Summer Street
Boston, MA 02110
(617) 850-1732
aestpierre@clf.org



Nora Bosworth, Esq.
ME Bar No. 010838
CONSERVATION LAW FOUNDATION
53 Exchange Street, Suite 200
Portland, ME 040101
(207)-210-6439 x 5017
nbosworth@clf.org