



STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. PENS-APP-2024-00014

THE PENOBSCOT NATION and
CONSERVATION LAW FOUNDATION,

Petitioners,

v.

MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent,

and

NEWSME Landfill Operations, LLC.

Party-in-Interest.

**RULE 80C BRIEF OF PARTY-IN-
INTEREST NEWSME LANDFILL
OPERATIONS, LLC**

Party-in-Interest NEWSME Landfill Operations, LLC (“NEWSME”) respectfully requests that the Court affirm the well-reasoned Second Public Benefit Determination (“Second PBD”) issued by the Department of Environmental Protection (“Department”) for the expansion of Juniper Ridge Landfill (“JRL”). As the Department concluded following its thorough and extended review of the application filed by the Bureau of General Services (“BGS”) and NEWSME, the proposed expansion of JRL provides a substantial public benefit.

In challenging the Second PBD, Petitioners Conservation Law Foundation and the Penobscot Nation object to two of the four statutory findings required under 38 M.R.S. § 1310-AA(3): (1) that the proposed expansion is not inconsistent with ensuring environmental justice; and (2) that the proposed expansion promotes the solid waste management hierarchy (the “Waste Hierarchy”). Not satisfied with the new conditions of approval secured by their challenge to the Department’s First Public Benefit Determination (“First PBD”), Petitioners now effectively seek

to halt the expansion altogether, arguing in essence that no conditions can make the project acceptable. Petitioners, however, have not met their burden of showing any error by the Department. Instead, the Department properly determined that expanding JRL is not inconsistent with environmental justice and that it promotes the Waste Hierarchy.

First, the Department addressed each factor required under the environmental justice standard as interpreted by this Court, including the Penobscot Nation's relationship with the Penobscot River and the cumulative existing environmental burdens experienced by the Penobscot Nation. Incorporating these factors into its analysis, the Department properly concluded that the expansion—which is subject to exacting operational, monitoring, containment, remediation, and community engagement requirements—will not result in an undue environmental burden on the Penobscot Nation. Expanding JRL will not erase the effects of 200 years of industrialization along the Penobscot River. But, as relevant here, it also will not unreasonably or inequitably add to them. Among other benefits, *because* of this expansion, JRL's landfill leachate will now be treated to reduce perfluoroalkyl and polyfluoroalkyl substances ("PFAS") before it is discharged.

Second, the Department properly analyzed whether developing a sludge drying facility at JRL is necessary for the expansion to promote the Waste Hierarchy. The Department reasonably concluded that imposing this requirement would be unnecessary because, *inter alia*, a facility capable of processing 80% of the State's sludge output is beginning operations imminently. Regardless, the Second PBD imposes a new condition that will cap the amount of sludge and construction and demolition debris ("CDD") that JRL can accept, limiting how much of these materials can be landfilled, consistent with the Waste Hierarchy. *See* 38 M.R.S. § 2101(1).

In short, the Department reasonably concluded that expanding JRL is not inconsistent with environmental justice, promotes the Waste Hierarchy, and will provide a substantial public benefit.

STATEMENT OF FACTS

I. JUNIPER RIDGE LANDFILL.

JRL is a landfill located on approximately 780 acres in Old Town and Alton, Maine. AR-0041. Originally permitted in 1993 to serve the paper mill in Old Town, JRL is Maine's only operational State-owned landfill.¹ AR-0043, 0922, 3132. The State owns JRL through BGS, and NEWSME operates JRL under an agreement between the State and NEWSME's ultimate parent, Casella Waste Systems, Inc. ("Casella"). AR-0041-43, 0276-384, 3132-33.

JRL is a secure waste disposal facility. AR-0046. It operates under a solid waste facility license issued by the Department, which imposes strict environmental conditions and establishes stringent design standards for the liner and leachate systems, among other requirements. AR-431-544. Surface and groundwater is protected by a composite liner and a leachate collection system. AR-0046. JRL is the only fully lined landfill in Maine, with a double liner in Cells 11-17 that include leak detection and leak collection/transport systems. AR-3156. Leachate generated in the landfill is collected, stored in a glass-lined leachate storage tank, and transported off-site for treatment and disposal. AR-0046. The site includes multiple leachate/leak detection pump stations, sedimentation/detention ponds to contain and treat potential stormwater pollutants, an active landfill gas extraction and Thiopaq® treatment system, and a landfill gas flare to contain odors and air emissions.² AR-0043, 079, 119, 460-61, 505, 717. Treated leachate is discharged from the ND OTM, LLC ("ND Paper") treatment plant, pursuant to a wastewater discharge license

¹ Maine's two other State-owned landfills cannot accept new waste. The Dolby Landfill is in the process of closing. AR-3141, 3161. The Carpenter Ridge Landfill was permitted in 1996, but never developed, and the Legislature recently barred its development or operation as a State-owned landfill and granted the Penobscot Nation a right of first refusal to buy that land should the State choose to sell it. AR-3141, 3160-61; P.L. 2025, c. 651, § 6.

² JRL also includes a renewable natural gas facility, currently under construction, which will convert the cleaned landfill gas to usable natural gas. AR-0043.

issued by the Department. AR-3154, 3157. The ND Paper outfall discharges approximately 24 million gallons per day (“mgd”) of pulp and paper wastewater, of which approximately one-third of one percent consists of treated leachate from JRL.³ See AR-2773, 3157.

JRL plays a critical role in Maine’s waste management system. JRL accepts approximately 52% of Maine’s non-hazardous solid waste⁴ from a variety of waste streams, including CDD and oversized bulky wastes (“OBW”). AR-0041, 0051, 0129, 0134, 3135, 3139, 3142. JRL also accepts residual waste, such as ash, from other waste management facilities, including waste-to-energy (“WTE”) facilities (*i.e.*, incinerators) and CDD processing facilities, when those facilities are operating, and bypass waste⁵ from them when they are not. AR-0041, 0057-59, 0134-35, 3135, 3139.

Further, JRL accepts 90% of Maine’s municipal and industrial sludge, a waste product from the operation of wastewater treatment plants that under Maine law must be landfilled. AR-0041-42, 0055-56, 0135-36, 0208, 3139. JRL’s acceptance of large volumes of this sludge is a recent development. AR-0055, 0135, 3147. Previously, the State’s sludge was primarily disposed of through land spreading and composting. AR-0170-71, 0915, 3102. In 2022, Maine banned land spreading and composting due to concerns about PFAS contamination, and Maine has landfilled all sludge since then. AR-0055-56, 0110, 0135-36, 3147; 38 M.R.S. §§ 1304(20), 1306(7). The continued landfilling of current sludge volumes likely will be short-lived. Alternative sludge processing systems are under development, including a sludge-drying facility

³ For context, in 2023, JRL trucked 26,531,525 gallons of leachate to ND Paper for treatment, slightly more than the *daily* total discharge from the ND Paper outfall. See AR-2773, 3157.

⁴ JRL does not accept out-of-state or hazardous waste. AR-0052, 1416-17; see 38 M.R.S. § 1310-N(11) (limiting disposal at State-owned landfills to waste generated in Maine).

⁵ “Bypass” is waste intended for a facility higher on the Waste Hierarchy, such as an incinerator, but that temporarily cannot be handled there because of a malfunction or shutdown. 38 M.R.S. § 1303-C(1-C).

capable of processing 80% of the State’s sludge, which will begin operations imminently. AR-3111, 3113-15, 3118-3121, 3148-49.

Maine is facing a looming solid waste disposal capacity shortage. Several factors have consumed the existing permitted capacity at JRL faster than anticipated, including changes in Maine legislation, reduced capacity at solid waste processing facilities and WTE facilities, and the impact of non-recurring waste streams. AR-0055-59; *see* AR-0041-42, 0068, 0135-36, 0208-09, 3147. At its current fill rate, JRL will run out of capacity in 2028, just two years from now, and construction on additional space will need to begin months before that happens. AR-0042, 0054, 0070, 3139. This is not just a problem at JRL—the entire State has less than ten years of landfill capacity available anywhere. AR-0072, 0139, 3140.

Facing this imminent capacity issue, the Department noted in the 2024 update to its Waste Plan that an “expansion of Juniper Ridge Landfill in Old Town will be necessary to ensure there is adequate capacity for the entire State of Maine over the next ten years.” AR-0101; *see* AR-0041, 67-70. A report prepared for the Department by a consultant stated the issue more bluntly: “If JRL is not expanded, the state faces a dire situation for solid waste generally in Maine.” AR-0165, 0041; *see* AR-0139 (stating “[t]he loss of JRL as a disposal facility would create catastrophic capacity issues”). Given these realities, BGS and NEWSME propose to expand JRL by 61 acres to provide roughly 11.9 million cubic yards of additional capacity. AR-0046, 3135. This expansion will add an estimated 11.3 years to JRL’s life. AR-0046, 3135.

II. THE PENOBSCOT RIVER AND PENOBSCOT NATION.

Extending across more than 8,500 square miles, the Penobscot River watershed is Maine’s largest, draining 25% of the State. AR-2498, 3154. The main stem of the Penobscot is designated as “Class B,” meaning the waters generally meet high quality criteria and can support all

indigenous aquatic species, while some of its tributaries are rated class AA, the highest designation. AR-3154. A long history of industrialization and inhabitation within the watershed has nonetheless contributed to environmental impacts to its waterways. AR-3155. For example, approximately 116 dams line the river and its tributaries, and public and private facilities discharge 150 million gallons of wastewater per day into the river, including through five major Department-licensed outflows. AR-2503. Until at least 1988, most Maine municipalities disposed of waste in their own unlined, unsecured landfills. AR-2385, 3159. As a result, 93 landfills exist within the watershed, potentially contributing to environmental pollution. AR-3159.

However, these circumstances are not unique to the Penobscot River. Other major waterways across the State also have borne the effects of industrialization and human inhabitation. *See, e.g.*, AR-1042-251. For example, the smaller Kennebec River watershed hosts 125 landfills. AR-3155. Indeed, many hundreds of unlined, unsecure landfills were developed across Maine. *See* AR-2385. As a result of these and other effects of human development, major river systems throughout the State have experienced environmental burdens. *See, e.g.*, AR-1170, 1187-248.

These circumstances are also improving. Since 1988, the Legislature and the Department have overseen the closure and remediation of the vast majority of the existing unsecure landfills in Maine and in the Penobscot River watershed, including the closure of 397 unlined landfills between 1989 and 2011 alone. AR-2385, 2389, 3159-60. According to Petitioners, at least 70 of 93 landfills in the Penobscot Region are now closed. AR-3158-59. For example, the other major State-owned landfill in the Penobscot River watershed, the Dolby Landfill, was closed and covered in 2024, reducing the leachate it generates from 74.2 million gallons per year (“MGY”) to just 22.0

MGY. AR-3086, 3161. And in January 2026, the Department issued permits for additional steps at the Dolby Landfill to further reduce leachate outflows.⁶ AR-3161.

Indeed, data demonstrates improvement in concentrations of legacy contaminants in the Penobscot River. For example, dioxin levels have improved in the Penobscot River over time, including reductions in concentrations in fish tissue.⁷ AR-1193, 2578; *see* AR-1171 (“Sampling results from 2011-2014 showed that dioxin levels in fish from Maine rivers continued to decline, approaching background levels at some locations” and were “below the [Fish Tissue Action Level] in the Penobscot River at Milford”). Similarly, polychlorinated biphenyls (“PCBs”), another disused “legacy pollutant” that cannot be addressed through permitting, “will continue to diminish naturally over time.”⁸ AR-1234-35.

Recent developments in public and scientific awareness have generated a focus on PFAS throughout Maine and the United States. *See, e.g.*, AR-0109-11, 0179, 1157-58, 2666-67, 3154-55, 3165. Although PFAS enters the Penobscot River watershed from a variety of sources, including landfill leachate, current data indicates that PFAS levels in the Penobscot River generally have not reached alarming levels. *See* AR-0839, 2625, 2629-31, 2642. For example, testing conducted for perfluorooctanesulfonic acid (“PFOS”), one particularly prevalent PFAS compound, AR-0180, found that ambient PFOS levels in Penobscot River were below detectable levels of 1.0 part per trillion (“ppt”). AR-3155. Similarly, fish tissue samples all reported results below the fish tissue action level (“FTAL”) of 3.5 nanogram/gram (“n/g”). AR-3130, 3155. Robust scientific, commercial, legislative, and regulatory developments are underway throughout

⁶ The State also has banned the construction of new commercial landfills and has instituted rigorous environmental regulations and permitting processes governing the construction and expansion of landfills. *See* AR-0059; 38 M.R.S. § 1310-X(1); 06-096 C.M.R. chs. 400 & 401.

⁷ Maine’s paper mills stopped discharging measurable amounts of dioxin by 2005. AR-1137.

⁸ The manufacture of PCBs stopped in the United States in 1977. AR-2464.

Maine and the United States to mitigate future flows of PFAS into the environment, including by reducing the manufacture and use of PFAS. *See, e.g.*, AR-0179, 0208.

The Penobscot Nation is a federally recognized Indian tribe centered around the Penobscot River and its tributaries, including the Indian Island Reservation. AR-3161. Indian Island is located several miles east of JRL and several miles upstream of the ND Paper outfall. AR-3152; *see* AR-2508, 3131. As of 2015, there were 2,397 members of the Penobscot Nation, of whom 455 live on Indian Island. AR-2501. The culture and traditions of the Penobscot Nation are closely tied to the Penobscot River watershed, including through hunting, fishing, trapping, and gathering. AR-2487, 3153, 3161-62. Through the Maine Indian Land Claims Settlement Act of 1980, the Penobscot Nation enjoys sustenance fishing rights. AR-2497. Sustenance fishing is legally recognized as consuming approximately 200 grams per day (“g/day”) of locally caught fish. 38 M.R.S. § 466-A(1). However, because of existing toxins, consuming fish and other wildlife from some portions of the Penobscot River watershed at sustenance levels conflicts with advisory guidance from the Department and the Maine Center for Disease Control. AR-3162.

III. PROCEDURAL HISTORY.

BGS and NEWSME applied for a public benefit determination⁹ pursuant to 38 M.R.S. §§ 1310-N(3-A), 1310-AA, and 06-096 C.M.R. ch. 400, § 5(G), on June 7, 2024. AR-3134. Following extensive public comments during an extended comment period, including from Petitioners, the Department issued the First PBD on October 2, 2024. *See* AR-1278, 1291, 1398-1402, 1432, 1469-75, 2376, 2380, 3137-39. The First PBD found that the proposed JRL expansion, with conditions of approval, met all the criteria set forth in 38 M.R.S. § 1310-AA(3),

⁹ A public benefit determination itself does not allow any physical changes to a landfill; rather, it is a threshold step to ensure that the project will provide a substantial public benefit that must be met for the licensing and environmental evaluation process to begin. 38 M.R.S. § 1310-AA(3).

and thus would provide a substantial public benefit. AR-0022-25. Petitioners appealed the First PBD, alleging a variety of errors. This Court recognized that the need for expanding JRL is a “virtually indisputable fact,” but remanded the First PBD for further consideration, finding only two errors. Order on 80C Appeal (Jan. 7, 2026), at 9, 16 (hereinafter, “Remand Order”).

First, the Court concluded that the Department’s environmental justice analysis did not sufficiently evaluate existing environmental burdens borne by the Penobscot Nation. Specifically, the Court found the Department’s assessment was limited to gathering information about the history and circumstances of environmental impacts on the Penobscot Nation without incorporating that data into its analysis. Remand Order, at 13, 15. The Court further faulted the First PBD for not “explor[ing] the reasons” that 74 landfills exist in the Penobscot region. *Id.* at 14. On remand, the Court instructed the Department to “consider the cumulative environmental burdens borne by the Penobscot Nation, including the existence and condition of other landfills near it, and whether these environmental burdens and the Penobscot’s intimate relationship with the Penobscot River permit a finding that the proposal fulfills environmental justice.” *Id.* at 16.

Second, the Court concluded that the Department’s Waste Hierarchy determination “did not address directly whether [the Department] should require sludge drying [at JRL].” Remand Order, at 9. The Court could not “determine whether the Department in fact considered such a requirement in its analysis.” *Id.* As such, the Court ordered the Department to address whether imposing an on-site sludge drying requirement was necessary to promote the Waste Hierarchy. *Id.*

Pursuant to that Order, the Department issued the Second PBD on March 23, 2026, with fifteen pages of additional analysis and new conditions of approval addressing the Court’s concerns. AR-3132-74. In the Second PBD, the Department analyzed, *inter alia*: (1) the current environmental condition of the Penobscot River; (2) the Penobscot Nation’s relationship with the

river; (3) specific environmental burdens borne by the Penobscot Nation because of the current state of the river and the Penobscot Nation's special relationship to it; (4) the historical and geographic context, including the reasons for the existence of landfills in the Penobscot Region, and current environmental trendlines; (5) whether these factors demonstrate an existing undue environmental burden; and (6) whether the expansion will result in an undue environmental burden on the Penobscot Nation. AR-3152-3167. Further, the Department expressly analyzed whether developing a sludge drying operation at JRL was necessary, considering, *inter alia*, the imminent opening of the sludge drying facility at Crossroads Landfill. AR-3147-50.

As a result of this analysis, the Second PBD imposes a number of conditions on JRL's approval, including new conditions not required in the First PBD. As most relevant here, JRL must develop a PFAS treatment system for its leachate, and JRL will be subject to annual limits on the volumes of sludge and CDD it can accept. AR-3149-51, 3165, 3167-70. With these, and other, conditions in place,¹⁰ the Department determined that the expansion would not unduly burden the project community, including the Penobscot Nation, and that on-site sludge drying would be unnecessary and duplicative of other facilities' capacity. AR-3150-51, 3165. Accordingly, the Department concluded that all of the criteria were satisfied and issued a revised public benefit determination with more stringent conditions. AR-3168-71.

¹⁰ Despite Petitioners' focus on PFAS in the environmental justice analysis and the dryer in the Waste Hierarchy analysis, a public benefit determination requires a holistic review of multiple aspects of the proposed expansion. To that end, the Department retained multiple other conditions of approval from the First PBD, including further odor analysis at JRL, two additional surface scans per year at JRL to detect air emissions, reporting on plans for a mattress recycling program, expanding deployment of Casella's recycling application, annual reporting to the Department on work to encourage further recycling with municipalities and the availability and capacity of infrastructure to reduce sludge volumes, and creation of a new system to communicate about significant events at the landfill with the general public. AR 3170-71.

On April 11, 2026, Petitioners filed a supplemental brief objecting to the Second PBD. Petitioners again challenge only the Department’s determinations that the proposed expansion (1) is not inconsistent with ensuring environmental justice, and (2) promotes the Waste Hierarchy.

STANDARD OF REVIEW

In an appeal under M.R. Civ. P. 80C, a court’s review of an agency’s decision is highly deferential. Although an agency’s conclusions of law are reviewed *de novo*, *Med. Mut. Ins. Co. of Me. v. Bureau of Ins.*, 2005 ME 12, ¶ 5, 866 A.2d 117, when a statute is ambiguous and falls within an agency’s expertise, courts defer to the agency’s interpretation so long as that interpretation is “reasonable.”¹¹ *Conservation L. Found., Inc. v. Dep’t of Env’t Prot.*, 2003 ME 62, ¶ 23, 823 A.2d 551. Even if a court views an alternative interpretation as better reflecting legislative intent, an agency’s interpretation must be “upheld unless the statute plainly compels a contrary result.” *Off. of the Pub. Advoc. v. Pub. Utilities Comm’n*, 2023 ME 77, ¶ 9, 306 A.3d 633 (quotations and citation omitted). A statute is ambiguous if it is “reasonably susceptible to different interpretations.” *Bocko v. Univ. of Maine Sys.*, 2024 ME 8, ¶ 12, 308 A.3d 203 (quotations and citation omitted).

A court’s review of an agency’s findings of fact are even more deferential. A court must uphold an agency’s factual determinations if they are supported by “substantial evidence.” 5 M.R.S. § 11007(4)(C)(5). Substantial evidence requires only that there be *any* competent evidence in the entire record to support the agency’s decision. *See 21 Seabran, LLC v. Naples*, 2017 ME 3, ¶ 10, 153 A.3d 113. “That inconsistent conclusions can be drawn from evidence does not mean that a finding is not supported by substantial evidence,” *Toomey v. Frye Island*, 2008 ME 44, ¶ 12, 943 A.2d 563, because a court “may not substitute its judgment for that of the agency.” 5 M.R.S.

¹¹ Maine has not followed the Supreme Court’s recent retreat from deference to agency expertise when interpreting ambiguous statutes. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

§ 11007(3); *see Dyer v. Sup. of Ins.*, 2013 ME 61, ¶ 14, 69 A.3d 416. Thus, reversal is permissible only if the evidence *compels* a different result. *See Tarason v. S. Berwick*, 2005 ME 30, ¶ 6, 868 A.2d 230. An appellant bears the burden of proving the record compels a contrary conclusion. *Id.*

Similarly, the bar for overturning an agency’s decision as arbitrary or capricious is “high.” *AngleZ Behav. Health Servs. v. Dep’t of Health & Hum. Servs.*, 2020 ME 26, ¶ 23, 226 A.3d 762. An agency acts arbitrarily and capriciously only if “its action is wilful and unreasoning and without consideration of facts or circumstances.” *Id.* (quotation and citation omitted). And an agency abuses its discretion only if its decision “exceed[s] the bounds of the reasonable choices available to it.” *Stein v. Maine Crim. Just. Acad.*, 2014 ME 82, ¶ 23, 95 A.3d 612 (quotations and citation omitted). It is not enough that the agency “could have made choices more acceptable to the appellant or even to a reviewing court.” *Id.* (quotations and citation omitted). The appellant bears the burden of proving that an agency decision was arbitrary, capricious, or an abuse of discretion. *Conservation L. Found., Inc.*, 2003 ME 62, ¶ 38, 823 A.2d 551.

Finally, remand only is warranted if an agency’s fact finding is insufficient to enable “meaningful judicial review,” thereby posing a “danger of judicial usurpation of administrative functions.” *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2001 ME 16, ¶ 15, 769 A.2d 834 (quotations and citation omitted). Even if “the form of the findings [is] unsatisfactory,” the findings are sufficient if the record, in its “totality,” shows that the agency applied the relevant criteria. *Cunningham v. Kittery Plan. Bd.*, 400 A.2d 1070, 1079 (Me. 1979). As such, material subsidiary findings can be “inferred from the record and the general factual findings.” *Christian Fellowship & Renewal Ctr.*, 2001 ME 16, ¶ 19, 769 A.2d 834.

ARGUMENT

I. THE DEPARTMENT PROPERLY DETERMINED THAT THE JRL EXPANSION IS NOT INCONSISTENT WITH ENVIRONMENTAL JUSTICE.

Petitioners fail to demonstrate that the Department erred in determining that the proposed expansion of JRL is not inconsistent with environmental justice. In the Second PBD, the Department properly interpreted and applied that standard, consistent with both the statutory text and this Court's Remand Order.

A. The Department Properly Interpreted the Environmental Justice Standard.

To issue a public benefit determination, the Department must find that the JRL expansion “is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed.” 38 M.R.S. § 1310-AA(3)(E). Environmental justice “means 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.” *Id.* It “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.*

In its Remand Order, this Court elaborated on the meaning of this nebulous standard. Specifically, the Court concluded the Department must “consider the cumulative burdens borne by the Penobscot Nation, including the existence and condition of other landfills near it, and whether these environmental burdens and the Penobscot Nation's intimate relationship with the Penobscot River” preclude a public benefit determination. Remand Order, at 16. The Court further specified that the Penobscot Nation's “history and circumstances” must be incorporated into the Department's analysis, not merely recited, including an analysis of the reasons why more than 70 other landfills exist in the Penobscot region. *Id.* at 13-15.

Based on the statutory text, this Court’s elaboration, and the Department’s expertise in interpreting and administering the public benefit determination statute, the Department articulated an interpretation of the standard that comports precisely with the Court’s instruction. Specifically, the Department identified a two-part inquiry for evaluating environmental justice. First, the expansion must “not unduly burden the potentially affected community, considering the cumulative effect of the existing environmental burdens borne by that community.” AR-3152. Second, the proposed expansion must be “subject to a fair review process that includes the meaningful engagement of all people in the potentially affected community.” *Id.* The Department also exercised its discretion to define “the community in which the . . . expansion is proposed,” *i.e.*, the community for which environmental justice must be considered. 38 M.R.S. § 1310-AA(3)(E). The Department defined this community as not only Old Town and Alton, in which the JRL is geographically located, but also as the Penobscot Nation because of its “special relationship” with the Penobscot River.¹² AR-3152-53.

Petitioners no longer challenge the Department’s compliance with the second, procedural component of the environmental justice standard, given the robust and protracted public comment, hearing, and review process. With respect to the first component, the Department’s construction of the environmental justice standard more than satisfies the Court’s Remand Order. Consistent with the Order, the Department’s construction required analyzing the existing cumulative

¹² While consistent with the Court’s Remand Order, this definition of the “community in which . . . the expansion is proposed” arguably exceeds what the statute requires. A “host community” is defined as only “any town, township, or city that is the *geographic site* of a solid waste disposal facility or any immediately contiguous [municipality] if [it] can demonstrate to the department that it incurs a direct financial impact” 38 M.R.S. § 1303-C(15-B) (emphasis added). Only Old Town and Alton are the “geographic site” of JRL. AR-3152. The Penobscot Nation is not a municipality and no record evidence demonstrates that Indian Island will incur any financial impacts. The Department could have limited its inquiry to impacts within Old Town and Alton, including on individuals of Penobscot ancestry residing in those two municipalities, but chose to interpret the statute broadly to be more protective of the Penobscot Nation.

environmental burdens borne by the Penobscot Nation, in light of its special relationship with the Penobscot River, to determine whether the expansion will result in an undue environmental burden that would be inconsistent with environmental justice.¹³

The Department's construction is entitled to deference. Deference is owed to an agency's interpretation of a "statute it administers" as the agency inevitably will have "greater expertise in matters of [relevant] concern and greater experience administering and interpreting those particular statutes." *Off. of the Pub. Advoc.*, 2023 ME 77, ¶ 9, 306 A.3d 633 (quotations and citation omitted) (modification in original). Here, the Maine Legislature specifically directed the Department to administer the public benefit determination statute, and environmental justice is just one element of that statute. *See* 38 M.R.S. § 1310-AA. The Department therefore administers the environmental justice standard and its expertise and experience in matters of relevant concern and in interpreting the statute justify deference to its reasonable construction of the statute.¹⁴

B. The Department Properly Applied the Environmental Justice Standard.

In this round of briefing, Petitioners take a scattershot approach to challenging the Second PBD's environmental justice determination, hoping at least one shot will find its target. Petitioners argue the Department (1) committed an error of law by considering only general population PFOS

¹³ This interpretation is more demanding than the statute requires. The environmental justice standard is coextensive with equal protection doctrine and thus requires only that the expansion is not *intended* to burden protected classes of persons. *See, e.g., Polk v. Town of Lubec*, 2000 ME 152, ¶ 14, 756 A.2d 510. There is no evidence in this record of any such intent with respect to the Second PBD.

¹⁴ NEWSME acknowledges this Court's conclusion that the Department "is not specially equipped to assess the complex assembly of historical, geographical, and cultural factors presented by BGS's application" as applied to the Penobscot Nation. Remand Order, at 15. But the Court stopped short of concluding that it need not defer to the Department's construction of the environmental justice standard generally and determined only that it need not defer to the agency's consideration of the specific historical, geographical, and cultural factors associated with the Penobscot Nation. *See id.* In any event, that conclusion misapplies the standard. A court grants deference to agency findings of fact regardless of whether those factual determinations are within the agency's area of expertise. In assessing factual determinations, a court is limited only to determining whether "the agency could fairly and reasonably find the facts as it did" and "must affirm findings of fact if they are supported by substantial evidence," regardless of the subject matter of those facts. *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 13, 989 A.2d 1128.

fish tissue consumption thresholds, not sustenance-level thresholds; (2) acted arbitrarily and capriciously and abused its discretion by not applying sustenance-level consumption rates and by basing its analysis on available fish tissue data for PFOS and not on data that apparently does not yet exist for 15,000 other PFAS compounds; (3) made its decision without substantial evidence that the Penobscot Nation will not endure “disparate harm”; (4) violated the Remand Order by not sufficiently analyzing the Penobscot Nation’s relationship with the river; and (5) failed to make findings susceptible to judicial review. Pet’rs’ Br. 27-32. Petitioners further fault the Department for supposedly (6) substituting landfill comparison for cumulative burden analysis; (7) omitting discussion of certain cancer metrics; and (8) omitting analysis of legacy toxins. *Id.* at 19-25.

Each of Petitioners’ arguments, however, contradicts either the law or the record. The Department properly applied a three-step reasoning process to determine whether the expansion would unduly burden the Penobscot Nation. First, the Department analyzed the existing environmental condition of the Penobscot River, the Penobscot Nation’s relationship with the river, and the existing environmental burdens borne by Penobscot Nation in light of the condition of the river and the Nation’s relationship to it. Second, the Department analyzed the causes of those burdens and how they compare to similarly situated persons to conclude that the Penobscot River and Penobscot Nation do not currently face an undue environmental burden. Finally, the Department analyzed whether any additional impact from the expansion would render the Penobscot Nation unduly burdened. The Department properly concluded that it would not.

1. The Department Meaningfully Evaluated the Cumulative Environmental Burdens Borne by the Penobscot Nation in Light of Its Relationship with the Penobscot River.

Consistent with the requirements of the environmental justice standard, the Department engaged in a reasoned analysis of the cumulative environmental burdens facing the Penobscot Nation and how those burdens affect the Penobscot Nation because of its relationship to the river.

To begin, the Department analyzed the current environmental condition of the Penobscot River. Among other factors, the Department assessed the impact of 93 (primarily closed) landfills within the watershed, concluding that “historical pollution” from these sites “undoubtedly impacted the Penobscot River.” AR-3155; *see* AR-3159. The Department identified that Maine has established safe eating guidelines for fish from the Penobscot River below Lincoln of no more than one to two meals per month because of the cumulative presence of certain legacy toxins (dioxins, PCBs, and dichloro-diphenyl-trichloroethane (“DDT”)).¹⁵ AR-3154. The Department also identified that Sum of 6 PFAS¹⁶ samples taken from the treatment plant that treats JRL’s leachate range from 11 ppt to 311 ppt prior to discharge. AR-3155. For ambient measures taken at various points throughout the river, the Department noted that PFOS levels were at or below the minimum detectable level of 1.0 ppt, and that fish tissue samples all reported results below the action level of 3.5 n/g. *Id.*

Contrary to Petitioners’ suggestion, the Department’s use of its expertise to consider PFOS fish-tissue data does not render the Department’s analysis invalid as a matter of law. *See* Pet’rs’ Br. 24, 28-29. PFOS is one of the two most prevalent compounds among many thousands of different PFAS compounds. *See* AR-0180, 2629, 2650, 3155. PFOS is the “the primary PFAS of concern in freshwater fish.” AR-1171. Given the still-developing scientific understanding of PFAS, it is also one of only two PFAS compounds that the U.S. Environmental Protection Agency (“EPA”) has yet classified as a hazardous substance. 89 Fed. Reg. 391214 (May 8, 2024) (finding PFOS “may present substantial danger to public health or welfare or the environment”). Faced with the practical realities of obtaining data on thousands of different, but related, compounds, the

¹⁵ Legacy toxins are chemicals once used in the U.S. but now discontinued or banned.

¹⁶ The “Sum of 6” is a measure of six PFAS compounds, including PFOS, for which Maine adopted both individual and combined drinking water standards of 20 ppt. AR-2625-26; P.L. 2021, c. 82, § 2.

available PFOS information is a reasonable representative reference point from which to draw inferences. *See, e.g.*, AR-0270.

The Department also evaluated the Penobscot Nation's intimate relationship with the Penobscot River. The Department found that the Nation is centered in and around the Penobscot River and its tributaries; that the Nation's identity and culture are "inextricably rooted in their sacred relationship to the River"; and that the Penobscot Nation's "cultural traditions" include eating fish, snapping turtle, eel, and other wildlife from the river. AR-3153, 3161-62. It also recognized—by citation to studies by the EPA and the United States Department of Health and Human Services—the sustenance fishing rights of the Penobscot Nation. AR-3162.

The Department further analyzed specific environmental burdens borne by the Penobscot Nation in light of the current state of the river and the Nation's special relationship to it. The Department evaluated how industrialization has impacted the Nation's ability to safely engage with cultural traditions associated with the river, including sustenance-level fishing, and noted the cancer risks associated with consuming more than the recommended amount of traditional foods because of legacy toxins in those foods. AR-3161-62. Based on EPA environmental justice indicators, the Department also considered how the census block that includes Indian Island is at the 95% percentile for several indices, and above the mean for several others. AR-3153-54. Indeed, the Department specifically concluded that "Penobscot Nation have been burdened by the historic siting of landfills within the watershed." AR-3162. Petitioners' insistence that the Department should have expressly addressed two specific metrics, lung and cervical cancer rates, is misplaced. *See* Pet'rs' Br. 23, 30. The Department specifically acknowledged that the Penobscot Nation has been burdened by historic pollution, and no evidence in the record causally links those particular cancer rates to JRL or to PFAS, their primary concern. Tellingly, the data

cited by Petitioner *pre-dates* the existence of JRL, and thus was not caused by JRL. AR-2438, 2493 (citing two 1994 studies).

In short, the Department's findings provided a thorough baseline accounting of the existing cumulative environmental burdens on the Penobscot Nation, enabling the next step of its analysis.

2. The Department Properly Applied Its Findings to Conclude that the Penobscot River and Penobscot Nation Are Not Unduly Burdened.

After establishing an understanding of the existing environmental burdens on the Penobscot River and the Penobscot Nation, the Department then analyzed those burdens within their historical and geographic context, and also fully explored the reasons for the existence of landfills in the Penobscot River watershed.

This comparative analysis is not, as Petitioners contend, merely rote recitation or meaningless “comparison” of “tallies.” Pet’rs’ Br. 23, 30-31. Instead, it is an essential component of the environmental justice analysis as interpreted by this Court and well within the Department’s environmental expertise. Only by comparing the environmental burdens affecting the Penobscot River and the Penobscot Nation to environmental burdens impacting other regions and persons could the Department analyze whether the Penobscot Nation is experiencing materially greater burdens than similarly situated persons. And by analyzing the reasons for those burdens and any disparities, and by putting them in context, the Department could evaluate whether they are the result of intentional disparate treatment. Putting these two analyses together enabled an evaluation of whether the Penobscot River and the Penobscot Nation face an undue burden.

The Department reasonably determined they do not. AR-3162. The presence of 93 landfills in the Penobscot River watershed—an area approximately the size of New Jersey—is neither surprising nor unique. The watershed extends across 8,500 square miles, comprising 25% of Maine’s landmass. AR-2498, 3154. By comparison, the Kennebec River watershed—which is

smaller—contains 125 landfills. AR-3155. Until 1988, many hundreds of unsecure, unlined landfills were developed across the State. AR-2385, 3155, 3159-60. In both the Penobscot and Kennebec River watersheds, and across Maine, these landfills emerged because Maine’s historical “reliance on the timber and paper industry drove the establishment of many towns, and resulting industry and waste sites, along every major river in Maine.” AR-3155. Historically, each municipality typically had at least one landfill, if not more. AR-3159. Because of these and other effects of human development, those living near major river systems across the State face environmental burdens. *See, e.g.*, AR-1170, 1187-248. In short, the Department explained that landfills emerged wherever there was industry and people—regardless of ancestry, race, religion, or any other such classification.

Despite these historic impacts, however, water quality in the Penobscot River watershed remains relatively high, a testament to Maine’s stringent environmental standards. The main stem of the Penobscot is designated as “Class B,” meaning the water is drinkable after treatment, suitable for fishing and swimming, and able to support all indigenous aquatic species. AR-3154. *See* 38 M.R.S. § 465(3). Moreover, some of its tributaries are rated class AA, the highest quality standard. AR-3154.

Additionally, the environmental effects of these landfills and other human impacts are diminishing. In 1988, the Legislature established, and the Department implemented, a closure and remediation program for municipal landfills. *See* AR-2385, 3159. This program has resulted in the closure and/or remediation of the majority of the 93 landfills in the Penobscot River watershed; by Petitioners’ own count, more than 70 are now closed. AR-3158-59. These remediation efforts include the other developed State-owned landfill in the watershed, the Dolby Landfill, which was closed and covered in 2024, reducing leachate it generates from 74.2 MGY to just 22.0 MGY.

AR-3161. And in January 2026, the Department issued permits for additional efforts at the Dolby Landfill to further reduce leachate generation in the future. AR-3161. Indeed, concentrations of legacy toxins in the Penobscot River are also decreasing. AR-1171, 1234-35, 1193, 2578.

The analysis of these factors—that the Penobscot River is neither materially nor intentionally more environmentally burdened than other major river systems in Maine, that water quality in the river is relatively high, and that the historic impacts from landfills are diminishing—support the Department’s reasonable conclusion that the Penobscot River and Penobscot Nation are not currently unduly burdened. That there may nonetheless be some environmental impacts to the Penobscot River does not plainly compel a different conclusion.

3. The Department Properly Determined that the JRL Expansion Will Not Unduly Burden the Penobscot Nation.

With those conclusions in place, the Department then proceeded to analyze the dispositive question of whether expanding JRL would result in an undue burden on the Penobscot Nation. The Department convincingly concluded that it would not.

In making this determination, the Department recognized that environmental justice is not limited only to an analysis of PFAS, as Petitioners’ briefing implies by focusing so heavily on that single issue. Rather, the Department found that the expansion is designed to minimize the generation of leachate, odors, and other off-site impacts. *See, e.g.*, AR-3162-63. Among other factors, the Department found that current groundwater impact from JRL is minimal. AR-3156-57 (noting that the only observed groundwater impact was from road salt application, and maintenance and construction activities, not leachate). The facility is fully lined and secure and the design and phased construction of the expansion cells will continue to minimize leachate generation by limiting the area that is open at any one time. AR-0046, 3156, 3160, 3163. The disuse and diminishing levels of legacy toxins such as dioxins and PCBs indicates that expanding

JRL will not exacerbate their impact. *See* AR-3154, 3162. Moreover, the toxicity testing requirements set by State rules in ND Paper’s wastewater permit already “are far more comprehensive . . . [and] more likely to detect toxic pollutants” than federal requirements specifically for leachate. AR-0804.

The Department further considered the strong environmental record of JRL, which has incurred no Notices of Violation in Casella’s 20 years of management, despite intensive monitoring from the Department. AR-3163. This offers compelling evidence that JRL will continue to operate in compliance with minimal environmental impact. The Department also weighed social and financial programs JRL offers or will offer to the surrounding community, including payments to municipal governments, millions of dollars in property tax reimbursements and guarantees to neighboring residents, scholarships, and other programs for area youth. AR-3164. The Department further factored in JRL’s and BGS’s comprehensive air and water testing, monitoring, and reporting systems. AR-3156-58, 63. Based on the expansion plans and JRL’s operational record, the Department reasonably concluded that the expansion will incur “limited impact, if any, on groundwater and surface waters.” AR-3165.

Critically, the Department addressed that leachate from JRL inevitably contains PFAS and that some of this leachate ultimately is discharged into the Penobscot River through the ND Paper outflow because wastewater standards for treating PFAS in effluent do not yet exist. AR-3155, 3165. Despite this discharge, and the introduction of PFAS into the watershed from various other sources, reported PFAS levels in the river have not reached harmful levels. For example, sampled ambient PFOS levels in the Penobscot River are less than the scientifically detectable threshold of

1.0 ppt.¹⁷ AR-3155. Similarly, available data for PFOS in fish tissue uniformly reported results well below the FTAL of 3.5 n/g. *Id.* However, recognizing that the expansion will continue to generate leachate containing PFAS, the Department conditioned its Second PBD on JRL designing, installing, and operating a PFAS treatment system for its leachate. AR-3165.

The Department instituted this requirement expressly because of the Penobscot Nation's special relationship with the Penobscot River and the cumulative environmental burdens borne by the Penobscot Nation. AR-3165. This will be the first time the Department requires a landfill to treat its leachate for PFAS. *Id.* After the expansion, leachate that currently is being discharged into the Penobscot River without *any* PFAS treatment will be treated for PFAS. Regardless of whether the system can remove all PFAS from the leachate, this condition is an improvement on the status quo. If the expansion does not occur, leachate will continue to be discharged from the existing landfill without PFAS treatment, even after closure.¹⁸ Without the expansion, the Penobscot River likely would receive greater volumes of PFAS than with the expansion. Petitioners' suggestion that PFAS treatment may not be completely effective is speculative and insufficient to undermine the Department's conclusions. *See* Pet'rs' Br. 9. Indeed, Petitioners concede that a "number of PFAS treatment technologies are commercially available and demonstrated to reduce PFAS, while many others remain in development."¹⁹ *Id.* This condition,

¹⁷ For comparison, one part per trillion is equivalent to one second out of nearly 32,000 years. EPA, *Questions and Answers: PFAS National Primary Drinking water Regulation*, at 6 (Apr. 2024), available at https://www.epa.gov/system/files/documents/2024-04/pfas_npwdr_faqsstates_4.8.24.pdf.

¹⁸ Current law requires PFAS treatment for landfill leachate only if a landfill is expanded or newly constructed; existing landfills have no obligation to treat leachate for PFAS. *See* 38 M.R.S. § 1310-AA(1-B)(c). Moreover, this requirement, effective April 13, 2026, did not exist when the Department issued the First PBD, in October 2024, or the Second PBD, in March 2026. If anything, the Legislature's decision is as an endorsement of the Department's decision to require PFAS treatment.

¹⁹ Petitioners initially endorsed a PFAS treatment condition treatment, arguing only that the conditions should be more stringent. *See* Petr's' First Br. 30-33. Now Petitioners inexplicably contend that *no* PFAS treatment condition can be sufficient.

in conjunction with the closure of historic landfills and declining levels of legacy toxins, is a step forward for the environmental health of the Penobscot River and the communities which depend on it, including the Penobscot Nation. Accordingly, the Department, exercising its judgment under the solid waste statutes, reasonably concluded that expanding JRL will not unduly burden the Penobscot Nation and nothing raised by Petitioners compels a different result.

4. Sustenance Fishing Practices Do Not Change the Outcome.

Despite the Department's robust analysis, Petitioners contend the Department committed a reversible error of law and abuse of discretion by analyzing "general-population PFOS fish tissue thresholds" without explicitly analyzing unique impacts on "tribal sustenance fishing." Pet'rs' Br. 19-23, 28. This argument is flawed for two reasons. First, it disregards the record. Second, it seeks to inject criteria into environmental justice that the statute neither requires nor allows.

First, the Second PBD *does* account for the concerns related to sustenance level fishing. Critically, as a condition of approval, JRL must design, install, and operate a treatment system to remove PFAS from its leachate. AR-3165, 3169. This condition was implemented in part because of the Penobscot Nation's relationship with the river and will benefit sustenance and general-population fishermen alike. *Id.* Indeed, the Department considered scientific reports on sustenance fishing among the Penobscot Nation, and associated health risks, in crafting this condition. *See* AR-3162. As part of the licensing process, the Department must also cap the amount of sludge JRL can accept. AR-3150. Regardless of existing PFAS levels, which are extremely low in the river, these conditions of approval are designed to reduce future PFAS contamination. Moreover, the Department issued the Second PBD after consideration of other changes that will moderate PFAS inflows—including the ongoing remediation of closed landfills and the diversion of PFAS-laden sludge into processing facilities elsewhere—and the continued

diminution of legacy toxins. At its core, Petitioners' argument is that the Second PBD did not afford sustenance fishing sufficient space in its written findings. That is not an error of law.

More fundamentally, Petitioners fail to link the JRL expansion to any material degradation in the Penobscot Nation's ability to engage in sustenance fishing. The Department lawfully exercised its discretion in concluding, following analysis of the material facts, that expanding JRL would not unduly burden the Penobscot Nation, including its sustenance fishing practices. Petitioners bear the burden of proving that the record compelled a contrary conclusion, or that this decision was unreasoning or beyond the bounds of reasonable choices. *See Tarason*, 2005 ME 30, ¶ 6, 868 A.2d 230; *AngleZ Behav. Health Servs*, 2020 ME 26, ¶ 23, 226 A.3d 762; *Stein*, 2014 ME 82, ¶ 23, 95 A.3d 612. Petitioners have not done so. Merely pointing to the existence of *current* PFOS levels reported in some fish samples does not show that expanding JRL will increase those levels or that any increase is necessarily "undue." As discussed above, the evidence indicates otherwise and the Department reasonably exercised its discretion to conclude that expanding JRL will not impair sustenance fishing.

Second, Petitioners seek to inject criteria into the environmental justice standard that the statute neither requires nor allows. The public benefit determination process is not the time or place for reevaluating sustenance fishing designated uses. Rather, under 38 M.R.S. § 466-A, the Department establishes water quality criteria for sustenance-level fish consumption, which applies, pursuant to 38 M.R.S. § 467(7), to certain designated portions of the Penobscot River. The Department applies this in determining whether to grant wastewater discharge permits, not in evaluating the public benefits of a landfill expansion. *See, e.g.*, 38 M.R.S. § 412-B(1-A). Sustenance fishing is protected by wastewater discharge permitting under a separate process and

nothing in this record suggests that the Department will not carry that out fully and in a manner that is protective of the Penobscot Nation's sustenance fishing rights.

Instead, the issue before the Court is whether expanding JRL is not inconsistent with environmental justice. Equal protection is the core of the environmental justice standard. It instructs that people should be able to equally "enjoy a clean and healthful environment *regardless of ancestry, class, disability, ethnicity, income, national origin or religion.*" 38 M.R.S. § 1310-AA(3)(E) (emphasis added). This focus on treatment of "suspect classifications" reflects the statute's focus on equal protection principles. *See, e.g., Anderson v. Town of Durham*, 2006 ME 39, ¶ 29, 895 A.2d 944. Indeed, the statute expressly defines environmental justice as including equal protection. 38 M.R.S. § 1310-AA(3)(E). Equal protection is about treating similarly situated people the same. *See Aucella v. Winslow*, 583 A.2d 215, 216 (Me. 1990). The government must apply the law, including public benefit determinations, consistently *regardless* of differences in ancestry or other classifications.

Petitioners ask this Court to flip equal protection on its head. They ask for members of the Penobscot Nation to be treated differently *because* of their ancestry. They ask the Court to hold that because sustenance fishing is a cultural practice of the Penobscot Nation, the Department must apply a more stringent PFOS fish tissue standard to public benefit determinations that implicate the Penobscot Nation than the standard applied to the "general population." Pet'rs' Br. 20. In short, Petitioners argue members of the Penobscot Nation are entitled to greater protection from environmental pollution than others *because* of their ancestry. That intentional differential treatment strikes at the heart of equal protection. *Cf. Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality"). Applying

a heightened standard because of cultural practices specific to the Penobscot Nation would violate the equal protection principles underlying the environmental justice standard.

For both these reasons, the Department did not err in its analysis of sustenance fishing.

5. The Existence of Cumulative Environmental Burdens from Historic Practices Is Insufficient to Preclude a Public Benefit Determination.

The underlying core of Petitioners’ argument is that because the Penobscot Nation has experienced decades of cumulative environmental burdens, no expansion can satisfy the environmental justice standard unless it serves as a “[p]anacea to the Nation’s [c]umulative [h]arm.” Pet’rs’ Br. 25. In Petitioners’ view, the expansion is categorically impermissible if there is a possibility of *any* additional environmental burden on the Penobscot Nation.²⁰ But that view asks too much of the environmental justice standard. No project in the Penobscot River watershed, no matter how small or how far away, could ever pass a test that stringent.

Implicit in the public benefit determination process is the assumption that any solid waste facility inevitably entails tradeoffs; landfilling lies at the bottom of the Waste Hierarchy for a reason. 38 M.R.S. § 2101(1). The purpose of this particular step in the licensing process is to ensure that the public benefits are sufficiently substantial to justify those tradeoffs. And the purpose of the environmental justice standard, as interpreted by this Court, is to ensure that those tradeoffs do not discriminatorily or unduly burden protected classes of persons; it is not to erase the effects of 200 years of industrialization along the Penobscot River. Had the Legislature intended to prohibit expanding JRL, as Petitioners seem to think, it simply would have done so, as it did recently with the Carpenter Ridge Landfill. *See* P.L. 2025, c. 651, § 6.

²⁰ *See, e.g.*, Pet’rs’ Br. 26 (“sensible and critical mitigation measure[s] do[] not erase a landfill’s burden”); Hearing Tr. 10:29-21 (July 18, 2025) (“no conditions . . . could ensure environmental justice”).

Instead, as this Court and the Department have concluded, the relevant inquiry is whether JRL will so add to existing burdens as to render protected classes unduly burdened in comparison to similarly situated persons. This analysis requires the Department's judgment and expertise about environmental impacts, and therefore the Department's conclusion is entitled to deference. Petitioners' focus on existing environmental burdens, without more, is misplaced. Certainly, a reasoned evaluation of existing environmental burdens is an important step in the analysis. But to affect the ultimate determination, Petitioners must show both that expanding JRL will materially worsen burdens facing the Penobscot Nation and that the resulting total burden will disproportionately impact the Nation compared to similarly situated persons.

Petitioners fault the Department for insufficiently evaluating the impact of certain legacy contaminants, such as dioxins and PCBs. It is undisputed that disused legacy toxins continue to impact the Penobscot River and the Penobscot Nation, as well as the citizens of Old Town and Alton generally. But Petitioners fail to demonstrate how expanding JRL would contribute to more contamination from legacy toxins, let alone that any resulting impact would be undue. Similarly, Petitioners contend the Department has insufficiently addressed elevated rates of two types of cancers among the Penobscot Nation. But again, Petitioners do not connect these cancer rates to JRL and do not explain how expanding JRL could worsen them, particularly where the data Petitioners cite pre-dates the existence of JRL and thus is not attributable to JRL. *See* AR-2493. Similarly, pointing to existing PFAS in JRL leachate is insufficient to demonstrate how expanding JRL while treating leachate for PFAS will worsen PFAS contamination. Petitioners' speculation cannot overcome the Department's well-reasoned judgment.

II. THE DEPARTMENT PROPERLY DETERMINED THAT THE JRL EXPANSION PROMOTES THE WASTE HIERARCHY.

Petitioners further argue, briefly, that the Second PBD did not follow the Remand Order's instructions and lacks sufficient findings to enable judicial review of the determination that the JRL expansion promotes the Waste Hierarchy. Pet'rs' Br. 32-33. The Court remanded the First PBD on this issue for the narrow reason that it did not adequately address whether the Department should require construction of a sludge drying facility at JRL, and the Court could not evaluate the Department's reasoning on this point. Remand Order, at 9. Here, the Second PBD could not be more clear. Constructing a sludge drying facility at JRL is not necessary to advance the State's waste management goals.

As the Second PBD explains, JRL currently accepts 90% of the Maine's sludge because State law banned land spreading and composting, leaving landfilling as the only option. AR-3139, 3147; *see* AR-0041-42, 0135-36, 0170-71, 0915, 3102; *see also* 38 M.R.S. §§ 1304(20), 1306(7). However, development of sludge drying and processing capabilities at other facilities should soon significantly reduce landfilling of sludge. Most significantly, a sludge drying facility located at the Crossroads Landfill is expected to open this year. AR-3148-49; *see* AR-3111. When fully operational, this facility will process 80% of Maine's sludge volume, rendering the current landfilling volumes at JRL unnecessary.²¹ AR-3148-49; *see* AR-3111. As such, the Department reasonably concluded that mandating that JRL develop and construct an additional sludge drying facility would be redundant and unnecessary. *See* 06-096 C.M.R. ch. 400, § 4(N)(2) (establishing a balancing test under the Waste Hierarchy to manage waste at levels higher on the hierarchy to the "maximum extent practicable," considering factors such as technology, logistics, and costs).

²¹ Additional facilities and methods for reducing sludge volumes also are under development or in the licensing process. AR-3149. Presumably, the Department does not have the authority to obligate Casella to contract with the owners of the new dryer, and thus Casella would be free to explore these other options.

Petitioners hypothesize, however, that even when sludge processing alternatives come online, JRL might simply elect to continue accepting its current volumes of sludge. Pet’rs’ Br. 32-33. Setting aside that JRL can only accept sludge that municipalities and others choose to send it, this concern is expressly addressed in the Second PBD.

JRL will be unable to continue accepting the same volume of sludge for two reasons. First, JRL requires OBW, a subset of CDD, to safely “bulk” the sludges it accepts because of their high liquid content. AR-3147. Pursuant to P.L. 2023, ch. 283, § 2, and P.L. 2025, ch. 373, the amount of CDD residue, including OBW, that JRL can accept will be reduced through a change to the definition of so-called in-state waste beginning on July 1, 2027. AR-3147-48. Additionally, 38 M.R.S. § 1310-N(5-A)(B) will require ReSource (the primary source of JRL’s OBW) to reuse or recycle 50% of the CDD it accepts, further reducing the volume of bulking materials available to enable JRL to continue accepting current sludge volumes. AR-3147.

Second, the Second PBD imposes a condition that during the licensing phase the Department will set annual limits on the volumes of sludge and CDD, including OBW, that JRL can accept, with a schedule for drawing down those maximums.²² AR-3149-51. Petitioners obfuscate that “perhaps [the Department] assumes that by setting annual limits on sludge and CDD at JRL, they can force disposal arrangements for the sludge” and contend, without explanation, that the Department’s “reasoning is unclear.” Pet’rs’ Br. 32-33. But the Department’s reasons could not be more clear: reducing the volume of sludge that JRL is allowed to accept will reduce the volume of sludge that JRL does accept. Surely, the Department need not connect those two dots any more explicitly to enable judicial review. This new limit on sludge necessarily will promote its processing elsewhere, thereby promoting the Waste Hierarchy.

²² This approach is consistent with JRL’s existing license, which imposes 65,000 ton limit on OBW per year, as a means to ensure compliance with the Waste Hierarchy. AR-0518-20, 536.

CONCLUSION

For the foregoing reasons, NEWSME respectfully requests that this Court affirm the Second PBD for the expansion of JRL.

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Respectfully submitted,

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