

STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT

THE PENOBSCOT NATION
and
CONSERVATION LAW FOUNDATION,
Petitioners,

v.

MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Respondent.

BRIEF FOR PETITIONERS
Pursuant to M.R. Civ. P. 80C

Civil Action No. PENSC-APP-2024-00014

January 21, 2025

Table of Contents

Table of Contents	ii
I. INTRODUCTION	1
A. A Positive PBD Must Fulfill Four Requirements.	3
B. Petitioners Seek a Reversal or Modification of the PBD Approval.....	4
II. BACKGROUND & PROCEDURAL HISTORY	5
A. JRL Already Contaminates the Penobscot Nation and Neighboring Residents with Forever Chemicals, Methane, Smog, and Foul Odors.	5
B. Casella Has Filled JRL with Out-of-State Waste and Extra Debris to Stabilize Huge Volumes of Toxic, Wet Sludge.....	8
C. The State Waste Plan Affirms that Casella’s Current Management of JRL Encourages Landfilling, the Last Priority in the State’s Solid Waste Management Hierarchy.	11
D. MEDEP’s PBD Process Timeline and the Penobscot Nation’s and CLF’s Involvement in the Public Process.	12
E. MEDEP’s Final Agency Action is the Issuance of the PBD Approval.	13
III. STANDARD OF REVIEW	15
IV. ARGUMENT	16
A. The PBD Approval Misinterpreted the Plain Meaning of the Statute and Relevant Regulations in Finding that the Proposal Was Consistent with the State Waste Plan and State’s Solid Waste Management Hierarchy and thus the Approval was Affected by an Error of Law.	16
B. The PBD Approval Was Unsupported by Substantial Evidence and was thus Arbitrary and Capricious in Finding that the PBD Application was Consistent with the State Waste Plan and Solid Waste Management Hierarchy.	20
C. The PBD Approval Violated the Plain Meaning of the Environmental Justice Criterion in Not Assessing if the Penobscot Nation was Distinguished by the Statute’s Enumerated Classes and the Decision was thus Affected by an Error of Law.	22
D. The PBD Approval Was Unsupported by Substantial Evidence and was thus Arbitrary and Capricious in Finding that the PBD Application Was Consistent with Ensuring Environmental Justice for the Affected Communities.....	25
F. The PFAS Treatment Conditions Must be Strengthened to Ensure Environmental Justice for the Affected Communities.	28
G. The Agency’s Interpretation of “Meaningful Involvement” as Stated in the PBD Environmental Justice Criterion was Unreasonable and is an Error of Law.	33

V. CONCLUSION.....	37
CERTIFICATE OF SERVICE	39

Table of Authorities

Cases

<i>Centamore v. Dep’t of Hum. Servs.</i> , 664 A.2d 369, 371 (Me. 1995)	25
<i>Cent. Maine Power Co. v. Pub. Utilities Comm’n</i> , 2014 ME 56, ¶ 18, 90 A.3d 451, 458	23
<i>Cent. Me. Power Co. v. Waterville Urban Renewal Auth.</i> , 281 A.2d 233, 242 (e.1971)	16, 21
<i>Cobb v. Board of Counseling Professionals Licensure</i> , 2006 ME 48, ¶ 13, 896 A.2d 271, 275	15
<i>Competitive Energy Servs. LLC v. Pub. Utilities Comm’n</i> , 2003 ME 12, ¶ 15, 818 A.2d 1039, 1046.....	16
<i>Deutsche Bank Nat. Tr. Co. v. Wilk</i> , 2013 ME 79, ¶ 15, 76 A.3d 363, 368	14
<i>Doe v. Roe</i> , 2022 ME 39, ¶ 18, 277 A.3d 369, 375	22
<i>Fox Islands Wind Neighbors v. Dep’t of Envt’l Prot.</i> , 2015 ME 53, ¶ 11, 116 A.3d 940, 944	15
<i>FPL Energy Me. Hydro LLC v. Dep’t of Envt’l Prot.</i> , 2007 ME 97, ¶ 25, 926 A.2d 1197, 1204, cert denied, 552 U.S. 1100, 128 S.Ct. 911, 169 L.Ed.2d 730 (2008)	16
<i>Friedman v. Bd. of Env’t Prot.</i> , 2008 ME 156, ¶ 9, 956 A.2d 97, 100	16
<i>Friends of Lincoln Lakes v. Bd. of Envtl. Prot.</i> , 989 A.2d 1128, 1133 (Me.2010)	16, 21
<i>Gagnon’s Case</i> , 144 Me. 131, 133, 65 A.2d 6, 8 (1949)	21
<i>Hammer v. Sec’y of State</i> , 2010 ME 109, ¶ 8 A.3d 700, 705	15
<i>International Paper Co. v. Board of Envt’l Prot.</i> , 1999 ME 135, ¶¶ 13, 29, 737 A.2d 1047	15

<i>Kroeger v. Dep’t of Env’l Prot.</i> , 2005 ME 50, ¶ 7, 870 A.2d 566, 568	16, 21
<i>Madison, Dep’t of Elec. Works v. Pub. Utils. Comm’n</i> , 628 A.2d 231, 234 (Me. 1996)	16, 22
<i>Mullen v. Liberty Mut. Ins. Co.</i> , 589 A.2d 1275, 1277 (Me. 1999)	16, 22
<i>Osprey Fam. Tr. v. Town of Owls Head</i> , 2016 ME 89, ¶ 10, 141 A.3d 1114, 1117	21
<i>Rangeley Crossroads Coal. v. Land Use Regul. Comm’n</i> , 2008 ME 115, ¶ 10, 955 A.2d 223, 227	20
<i>Richard v. Sec’y of State</i> , 2018 ME 122, ¶ 21, 192 A.3d 611	15, 20
<i>Rockland Plaza Realty Corp. v. City of Rockland</i> , 2001 ME 81, 772 A.2d 256: [¶12]	16, 22
<i>Sinclair Builders, Inc. v. Unemployment Ins. Comm’n</i> , 2013 ME 76, ¶ 10, 73 A.3d 1061, 1065	23, 25
<i>Thurston v. Galvin</i> , 2014 ME 76, ¶ 13, 94 A.3d 16, 20	23

Statutes

M.R. Civ. P. 80(C)(g)	1
M.R. Evid. 201(b)(2)	14
5 M.R.S. § 11001	2
5 M.R.S. § 11007(4)(C)	15
38 M.R.S. § 1310N	3
38 M.R.S. § 1310-AA	3
38 M.R.S. § 1310-AA(1)	3
38 M.R.S. § 1310-AA(2)	12, 33
38 M.R.S. § 1310-AA(3)	3, 4

38 M.R.S. § 1310-AA(3)(B)	passim
38 M.R.S. § 1310-AA(3)(E)	passim
38 M.R.S. § 1310-AA(7)	3
38 M.R.S. § 1310-AA(7)(A).....	3
38 M.R.S.A. § 2101	17

Regulations

06-096 C.M.R. ch. 400 § 1(TT-1)	4, 33
06-096 C.M.R. ch. 400, § 4(N)(1)	16
06-096 C.M.R. ch. 400, § 4(N)(2)(a)	19
06-096 C.M.R. ch. 400 § 5	3
06-096 C.M.R. ch. 400 § 5(E)	3
06-096 C.M.R. ch. 400 § 5(H)	3
06-096 C.M.R. ch. 401 § 2	3

Other Authorities

Abagael Giles, <i>Spill of landfill leachate into stormwater pond leaves Coventry locals concerned</i> , VT PUBLIC (March 8, 2024), https://www.vermontpublic.org/local-news/2024-03-08/spill-of-landfill-leachate-into-stormwaterpond-leaves-coventry-locals-concerned	32
<i>Consistent</i> , MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/consistent (last visited Dec. 26, 2024)	17
Emma Cotton, <i>Environmental Groups Allege that Casella has Violated its Water Quality Permit</i> , VT DIGGER (Oct. 12, 2023), https://vtdigger.org/2023/10/12/environmental-groups-allege-that-casella-has-violated-its-water-quality-permit/	32
<i>Learn About Environmental Justice</i> , U.S. ENV’T PROT. AGENCY, https://www.epa.gov/environmentaljustice/learn-about-environmental-justice (last visited Jan. 19, 2025)	24
<i>Maximum</i> , MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/maximum (last visited Jan. 16, 2025)	19

<i>Per- and Polyfluoroalkyl Substances (PFAS)</i> , U.S. ENV'T PROT. AGENCY, https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas (last visited Jan. 19, 2025)	29
<i>Practicable</i> , MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/practicable (last visited Jan. 16, 2025)	19
<i>Promote</i> , MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/promote (last visited Dec. 26, 2024)	17
Sevee & Maher Engineers, Inc. & Crawford Engineers, <i>Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills</i> , STATE OF ME DEP'T OF ADMIN. & FIN. SERVS., BUREAU OF GENERAL SERVS. (Jan 2023), <i>available at</i> https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inlinefiles/Resolves%202021 %2C%20ch.%20172%20Study.pdf	8

Pursuant to M.R. Civ. P. 80(C)(g), Petitioners the Penobscot Nation and Conservation Law Foundation (“CLF”) (altogether “Petitioners”) respectfully submit this brief regarding Respondent Maine Department of Environmental Protection’s (“MEDEP,” “Department,” or “Respondent”) final agency action: a public benefit determination (“PBD”) for the proposed expansion of the Juniper Ridge Landfill (“JRL”), entitled, an Approval with Conditions Public Benefit Determination (“PBD Approval”).

I. INTRODUCTION

Petitioners bring this case because MEDEP has recently approved a PBD for the proposed expansion of the JRL—an expansion that would perpetuate environmental injustice against the Penobscot Nation and completely undermine the State’s Solid Waste Management Hierarchy. JRL has been mismanaged for years, with its operator filling the landfill with out-of-state waste, toxic construction and demolition debris, and untreated sludge seeping with “forever chemicals.” The Penobscot Nation disproportionately suffers from JRL’s pollution; the landfill has poisoned their river, compromised their air quality, and degraded their traditions, identity, and culture. Members of the Penobscot Nation are already above the 95th percentile for various environmental justice indicators, including proximity to hazardous waste, exposure to wastewater discharge, and toxic air releases. They now assert their statutory right to equal protection from the pollution of waste management decisions and seek a denial of the proposed landfill expansion.

JRL is owned by the Maine Department of Administrative and Financial Services’ Bureau of General Services, operated by NEWSME Landfill Operations, LLC, a wholly-owned subsidiary of Casella Waste Systems (“Casella”) (altogether the “Applicant” or “Casella”)¹. *Id.*

¹ On November 25, 2024, counsel for NEWSME Landfill Operations, LLC filed a notice of appearance for the purposes of supporting affirmance of the PBD Approval. While there is a legal distinction between all three entities, for ease of reference and consistency’s sake with the PBD Approval, this brief also refers to the Applicant as “Casella.” *See generally*, R. 0001–00031.

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. *Id.* On October 2, 2024, MEDEP Commissioner Loyzim issued the PBD Approval as a final agency action. R. 0001–0030. In 2022, Maine passed legislation that requires MEDEP to consider environmental justice impacts in making its PBD for a proposed new or expanded solid waste facility. Petition for Review at 2. Importantly, the administrative process for the proposed expansion of JRL was the first time that MEDEP was required to assess the potential environmental justice impacts on the communities in which the expansion is proposed under this new law. Petitioners bring this Petition for Review under 5 M.R.S. § 11001 as persons aggrieved by Respondent’s final agency action and to challenge the lawfulness of Respondent’s final agency action.

The Penobscot Nation lives in concert with the Penobscot River Watershed. In the words of Chief Kirk Francis of the Penobscot Nation:

“The people of the Penobscot Nation and our relatives already suffer the negative impacts of JRL and the pollution it creates. This expansion will be yet another injustice in their history, but it is one that Maine has the chance to correct and improve.”

Id. at Ex. A, at 5. JRL takes up a 780-acre parcel in Old Town and Alton, Maine. R. 0041. It is located between Pushaw and Birch streams, two tributaries that flow into the Penobscot River, a sacred source of sustenance for the Penobscot Nation. 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. Petition for Review 4. The Penobscot Nation is centered on Indian Island, a large island that sits in the Penobscot River about six miles from JRL. *Id.* The Penobscot River’s significance to the Penobscot Nation cannot be overstated. The Penobscot Nation fears their rights and sovereignty will be violated by an expansion that threatens their people, their land, and the River which is both their kin and a recognized citizen of their tribe. *Id.* at Ex. A, at 1.

In this case, Petitioners assert that Respondent violated the PBD statute, 38 M.R.S. § 1310-AA(3), by issuing the PBD Approval for the proposed expansion of JRL. Specifically, the proposed expansion runs contrary to the State Waste Management and Recycling Plan (“State Waste Plan” or the “Plan”) and the Solid Waste Management Hierarchy and is inconsistent with ensuring environmental justice for the affected communities, first and foremost the Penobscot Nation. MEDEP has ignored the plain text of the PBD statute and has unreasonably relied on insufficient evidence in determining the Approval with Conditions sufficed to fulfill the statutory requirements; their decision, if upheld, contravenes both the State’s Solid Waste Management Hierarchy and the substantive legal protections afforded by the environmental justice standard for determination in the PBD statute and regulation.

A. A Positive PBD Must Fulfill Four Requirements.

Respondent is responsible for overseeing the application process for licenses for expanded solid waste disposal facilities. 38 M.R.S. § 1310N. Prior to submitting a license application to expand a solid waste disposal facility, an applicant must apply to the MEDEP Commissioner for a determination of public benefit. 38 M.R.S. § 1310-AA; 06-096 C.M.R. ch. 400 § 5. The MEDEP Commissioner then determines whether the proposed facility would provide “a substantial public benefit.” *Id.* For the decision on an application for a determination of public benefit, the MEDEP Commissioner can “issue a full or partial approval of an application, with or without conditions.” 38 M.R.S. § 1310-AA(7)(A); 06-096 C.M.R. ch. 400 § 5(H). Once the MEDEP Commissioner issues a full or partial approval for the PBD, an applicant can apply for a license to expand the solid waste disposal facility. 38 M.R.S. § 1310-AA(1), (7); 06-096 C.M.R. ch. 401 § 2.

For a PBD for state-owned solid waste disposal facilities, the MEDEP Commissioner must analyze an application for determination of public benefit under four requirements. 38 M.R.S. § 1310-AA(3); 06-096 C.M.R. ch. 400 § 5(E). The Commissioner will find that a proposed facility

provides a substantial public benefit if the facility meets the following four requirements: (1) meets the immediate (within the next 3 years), short-term (within the next 5 years) or long-term (within the next 10 years) waste capacity needs of the State, considering local and regional needs; (2) is consistent with the State Waste Plan and promotes the Solid Waste Management Hierarchy; (3) is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and (4) is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed. *Id.* The PBD statute and regulation define environmental justice 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” and “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.” 38 M.R.S. § 1310-AA(3)(E); 06-096 C.M.R. ch. 400 § 1(TT-1). The statute does not give more weight to any one of the four requirements, and thus they are all weighted equally. 38 M.R.S. § 1310-AA(3).

B. Petitioners Seek a Reversal or Modification of the PBD Approval.

Petitioners 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 or capricious. As such, Petitioners request this Court reverse MEDEP’s PBD Approval and find that the Application does not satisfy the criteria of the PBD statute and regulations. In the alternative, Petitioners request this Court require MEDEP to modify the PBD Approval to include the following:

- a. Casella must implement a sludge dewatering system to reduce the volume of sludge buried at JRL;
- b. Strengthen the leachate treatment condition as laid out in Section IV.F, *infra*;

- c. Place a cap on the amount of construction and demolition debris fines that JRL can accept in a given year and add an accountability measure for any request to exceed that limit; and
- d. Place a maximum fill rate on the waste JRL can accept in a given year.

In the alternative, should this Court choose not to reverse or modify the Commissioner's decision, Petitioners request this Court remand the case for MEDEP to reopen the PBD process and direct MEDEP to require additional community engagement proceedings, conduct new findings of fact and/or conclusions of law based on these additional proceedings, and direct MEDEP to hold such proceedings and/or take such action as the Court deems necessary.

II. BACKGROUND & PROCEDURAL HISTORY

A. JRL Already Contaminates the Penobscot Nation and Neighboring Residents with Forever Chemicals, Methane, Smog, and Foul Odors.

The State of Maine has a history of polluting the Penobscot River and surrounding areas, and the Penobscot Nation has borne and continues to bear a disproportionate environmental harm from Maine's landfilling and JRL in particular.

Landfills inevitably contaminate the communities in which they are sited. Landfills are the third greatest source of human-created methane emissions. R.1390. The air pollutants from landfills cause respiratory and other health issues for nearby residents, and the odors diminish quality of life. *Id.* Landfill fires are commonplace across the country, exacerbating air quality concerns for those living close by. *Id.* When a landfill leaks, landfill leachate poisons nearby groundwater. But even when landfills do not leak and they function exactly as intended, landfill leachate filled with per- and polyfluoroalkyl substances ("PFAS") is pumped to local wastewater treatment plants that lack the capacity to remove PFAS; these wastewater treatment plants then dump the PFAS-filled effluent into local waters. *Id.* These harms from JRL and other landfills are felt most acutely by one community: the Penobscot Nation.

The Penobscot Nation has long borne a disproportionate amount of the State's trash and pollution. All three state-owned landfills were built along a 50-mile stretch of land "at the heart of the Penobscot Reservation." R. 1393–1394. There are 72 closed landfills in the Penobscot River watershed; many of them are unlined landfills that can easily leak toxics into groundwater. *Id.* Both the active and inactive landfills lining the Penobscot River have contributed to the poisoning of the river and to the erosion of the Penobscot people's cultural heritage as centuries-old stewards of the watershed.

To comprehend the extent of this harm, it is necessary to understand the salience of the Penobscot River to the Penobscot Nation's identity and way of life. Beyond depending on the River to practice their ancestral traditions, the Penobscot Nation considers the Penobscot River a citizen of their tribe. Petition for Review Ex. A, at 1. The Penobscot Nation depends on the River and its adjacent wetlands to practice their traditional hunting and fishing rights. *Id.* at Ex. A, at 2. The Penobscot Nation has expressed deep fear that the expansion of JRL will worsen the existing harm to their people, their land, the River, and the salmon and other sea-run fish they have worked tirelessly to restore. *Id.* at Ex. A, at 1–3. Their traditional customs, including fishing, hunting, and gathering plants for sustenance and healing, are deeply rooted in the River's ecosystem. *Id.* However, pollutants in local fish populations have significantly impeded the Nation's capacity to maintain their customary practices and enjoy their fishing rights over time, and an expansion will only further impede those rights. R. 1393.

JRL's highly toxic leachate is dumped into the Penobscot River. The landfill's leachate is trucked to the Nine Dragons wastewater treatment plant ("WWTP") in Old Town, where it is treated for various contaminants, and discharged directly into the Penobscot River. R. 1392. Casella does not treat the leachate in any way before sending it to Nine Dragons WWTP. *Id.* Nine

Dragons WWTP is one mile downriver from Indian Island and thus from the Penobscot Nation. R. 1389. Nine Dragons does not treat the leachate for PFAS before releasing their effluent into the river. R. 1392.

PFAS are a group of nearly 15,000 synthetic chemicals that all share a carbon fluorine bond. *Id.* They are called “forever chemicals” because they are practically indestructible in nature. 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 U.S. Environmental Protection Agency (“EPA”) has expressed significant concern over PFAS in landfill leachate and just last year, the agency announced plans to develop new effluent limitations and pretreatment standards for leachate to address the widespread presence of PFAS. *Id.*

JRL’s leachate is no exception. Sampling of the leachate at JRL shows it has PFAS concentrations that far exceed the 20 parts-per-trillion interim drinking water standard (“IDWS”) for the six PFAS (“the PFAS(6)”) currently regulated by the State of Maine—at times JRL’s leachate displayed levels of the PFAS(6) as much as 146 times higher than the drinking water standard. R. 0019.

The PFAS in the effluent discharged from Nine Dragons WWTP bioaccumulates and disperses into the wider environment. R. 1392. Once released into the environment, PFAS are extremely difficult to contain and remediate. *Id.* In a study of fish in the Penobscot River, the EPA 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. R. 1393. Maine has declared it unsafe to eat any fish species from the Penobscot River more than once or twice a month, based on testing for PCBs, dioxins, and

DDT. R. 0018. The findings from a study commissioned by the Bureau of General Services, “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. R. 1393. Moreover, on average the highest concentrations of PFAS found in JRL’s leachate were “short-chain” PFAS, which are particularly challenging to filter as discussed below. *Id.* (citing 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/inlinefiles/Resolves%202021%2C%20ch.%20172%20Study.pdf>).

Contamination of the river is not the only harm the Penobscot suffer from JRL. Along with other neighboring residents in Old Town and Alton, they have endured diminished quality of life from poor air quality, odors, and landfill fires. Petition for Review 7. Common landfill hazards further burden the populations living around JRL. For example, on May 17, 2023, JRL caught fire. Penobscot Nation Chief Kirk Francis reported that tribal members saw ash raining down and suffered burning eyes and sore throats from the fire’s smoke. *Id.* The odors of JRL have overwhelmed its neighbors, including the Penobscot Nation. Residents of Old Town and Alton described smells so strong they caused headaches and facial swelling or forced them to stop outdoor work. *Id.* at 6. Living near JRL comes with a high cost; meanwhile, the landfill has filled up with out-of-state waste, toxics, and PFAS-laden sludge.

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

Between 2012 and 2022, construction and demolition debris (“CDD”) at JRL increased from 369,069 tons to 485,298 tons. R. 1381. CDD is now the largest waste stream filling up JRL,

making up 60% of the waste accepted at JRL between 2012 and 2022. *Id.* CDD is a particularly dangerous waste stream that contains chemical additives “and is likely to generate harmful leachate.” *Id.* The chemicals found in CDD “contaminate surface and groundwater resources as well as surface soils.” *Id.*

Much of the waste currently filling up JRL originated from Massachusetts. Until 2022, Maine waste laws had a gaping loophole wherein out-of-state waste could be somewhat broken up by waste processing facilities inside Maine and then shipped to a Maine landfill under the misnomer of “in-state waste.” R. 1381. Because of this loophole, a large volume of out-of-state CDD now filling JRL came from Massachusetts. MEDEP affirmed this, stating, “Notably a significant amount of Maine’s CDD originates in Massachusetts due to a ban on the disposal of CDD in Massachusetts.” R. 1380. This gaping loophole was largely closed by the passage of LD 1639, in 2022. R. 1381.

While LD 1639 intended to put a cap on the amount of CDD (and waste generally) that JRL could accept as “in-state waste,” the legislation did not completely stop Casella’s ability to fill JRL with out-of-state CDD—only now this toxic material comes in the form of pulverized CDD, known as “CDD fines.” R. 1382–1383. CDD that comes from out of state is processed and turned into CDD fines used for shaping, grading or alternative daily cover materials at JRL. R. 1383. CDD fines, in turn, are filled with contaminants that likely contribute to the toxicity of landfill leachate. R. 1436. Much of this material still comes from outside Maine, and JRL continues to receive thousands of tons of this. R. 1383. This form of CDD still counts as “recycling” under the laws and regulations and therefore does not count against the cap that LD 1639 placed on Casella’s acceptance of CDD. *Id.* While the fines are ostensibly used for shaping, grading, or as alternative daily cover for the landfill, there is currently no accountability mechanism to track how

much of this pulverized CDD is genuinely needed, and how much is merely extra profit for the landfill operator. *Id.* Most of the material converted into CDD fines comes from Massachusetts and New Hampshire. *Id.*

Moreover, regardless of its origin, in-tact construction and demolition debris (“CDD”) remains a major issue at JRL. Since Maine banned the land application of sludge due to its dangerously high levels of PFAS, JRL has been taking in more and more of this toxic sludge—90% of all of the state’s municipal sludge. R. 0008. The result is a snowball effect: Casella justifies huge increases in landfilling of CDD and oversized bulky waste (“OBW”) to balance the wet sludge at JRL. R. 1381.

A public health crisis emerged in 2023 when Casella abruptly refused to landfill large amounts of toxic sludge at JRL, claiming LD 1639 prohibited them from importing enough CDD to stabilize the sludge. R. 1382. Wastewater treatment plants were left scrambling, as sludge—now prohibited from being used as fertilizer due to its high PFAS content—could not be disposed of locally. *Id.* Casella rejected alternatives proposed by MEDEP to stabilize JRL, instead transporting sludge to Canada, increasing costs for Maine municipalities. *Id.* At the time, Susanne Miller, MEDEP’s Director of Remediation and Waste Management, stated in an internal email, “Casella appears to keep finding reasons for not using the materials we keep finding for them.” *Id.* Using the negotiation power of the impending public health crisis, Casella initially sought to be able to import 235,000 more tons of CDD from out-of-state. *Id.* This amount *far* exceeded what Casella asserted they needed to stabilize the sludge. *Id.* As a result, the legislature delayed the full effect of LD 1639 for two years to allow Casella to import 25,000 tons more of CDD each year. *Id.* This importation of out-of-state CDD is set to expire in 2025; however, as of now, Casella has taken no concrete steps to achieve a sustainable solution to sludge imports. *Id.*

C. The State Waste Plan Affirms that Casella's Current Management of JRL Encourages Landfilling, the Last Priority in the State's Solid Waste Management Hierarchy.

MEDEP has thoroughly documented the above management practices at JRL in their State Waste Plan. "The current trajectory of sludge and CDD disposal encourages the expansion and use of landfilling, and without alternative options, Maine's landfills will likely fill up more quickly than originally planned for," the Plan states. R. 0136. JRL accepts about 90% of wastewater treatment plant sludge in the state. R. 0007–0008. JRL accepts over half of the municipal solid waste from the entire state. *Id.*

The State Waste Plan unequivocally establishes that "CDD, CDD residue and other similar material, and OBW 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." R. 0136.

In the State Waste Plan, MEDEP has not only been clear that JRL's practices encourage landfilling, they also clarify that the "far more sustainable" solution to more sludge disposal, rather than balancing the sludge with more bulky waste, is a sludge drier like the one planned for at Crossroads Landfill. R. 0136. The State Waste Plan notes that Crossroads Landfill has determined that the "best path forward" to minimize their fill-rate from increased sludge disposal is to invest in sludge drying. With this projected sludge drier, the volume of municipal wastewater treatment plant sludge can be reduced by 75%. *Id.* The Plan explains that this much smaller and drier volume of sludge can then be landfilled "without the need for significant bulking materials." *Id.* The Plan adds that this model "could serve as a model or prototype for other facilities accepting WWTP sludge including other landfills." *Id.* The Plan determines 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." *Id.* The Plan summarizes,

“Adding more wastes in the form of both sludge and bulking materials increases the overall rate at which Maine landfills will reach maximum capacity.” R. 0110.

Discussion of how the State Waste Plan thus establishes that the current management of JRL runs counter to the Solid Waste Management Hierarchy can be found below in Sections IV.A and B.

D. MEDEP’s PBD Process Timeline and the Penobscot Nation’s and CLF’s Involvement in the Public Process.

On June 10, 2024, the Applicant filed the PBD Application with MEDEP to expand JRL by about 61 acres. R. 0032–00713. On June 24, 2024, MEDEP accepted the PBD Application. R. 0715. After accepting the PBD 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. R. 0715, 1399.

On July 16, 2024, MEDEP held two public meetings for the public to provide in-person comments on the PBD Application. R. 1282. CLF requested MEDEP allow virtual attendees of the meetings to be able to provide oral comments, as well. R. 1287–1288. Instead, MEDEP held a separate virtual public meeting on July 26, 2024, for the public to provide comments virtually. R. 1291.

On July 30, 2024, MEDEP sent the Applicant a letter (“Request for Additional Information”) stating that upon their initial review of the PBD Application, MEDEP had several comments and questions for which they would like additional information. R. 1371–1374. CLF then requested MEDEP extend the review and comment timeline in light of MEDEP’s Request for Additional Information. R. 1398–1402. The Applicant sent a response letter (“Response”) to MEDEP’s Request for Additional Information on August 9, 2024. R. 1403–1430.

MEDEP sent the Applicant a letter requesting a 30-day extension of the processing time for the PBD Application. R. 1431. The Applicant sent MEDEP a letter agreeing to MEDEP's 30-day extension request. R. 1432. On August 13, 2024, MEDEP pushed the deadline to September 23, 2024. R. 1431–1432.

On September 13, 2024, MEDEP issued a Draft PBD, which was a conditioned approval. R. 1442–1467. MEDEP stated it would accept comments on the Draft PBD until September 20, 2024. R.1468. On September 16, 2024, CLF filed a request to MEDEP to extend the comment period. R. 1469–1472. 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. R. 1475. Throughout the period, Petitioners submitted three letters commenting on the Draft PBD. R. 1376–1397; R. 1433–1440; R. 1479–1513.

On October 2, 2024, MEDEP Commissioner Loyzim issued the PBD Approval. R. 0001–0030. On November 12, 2024, Petitioners filed their Petition for Review.

E. MEDEP's Final Agency Action is the Issuance of the PBD Approval.

In the PBD Approval, MEDEP found that the proposed expansion met the first and third standards of determination and did not place any conditions on Casella when they apply for a license. R. 0022–0023.

For the second standard, MEDEP found that the proposed expansion is consistent with the State Waste Plan and promotes the Solid Waste Management Hierarchy, provided that Casella submits a report to MEDEP detailing its plans and schedule for implementing a mattress recycling program within six months of the PBD Approval. R. 0022. If a license is issued for the construction and operation of the expansion, Casella would also be required to: (i) continue to expand deployment of its mobile recycling app and include information in each landfill annual report

regarding where the app has been deployed; (ii) include in each landfill annual report a discussion regarding Casella's work to encourage and assist towns to engage in all possible recycling and diversion activities; and (iii) submit an evaluation in each annual report about the availability and capacity of regional facilities in Maine to reduce the volume of municipal wastewater treatment plant sludge prior to landfilling at JRL and that includes recommendations to further reduce the volume of sludge prior to landfilling. *Id.*

For the fourth standard requiring environmental justice, MEDEP found that the proposed expansion is not inconsistent with ensuring environmental justice for the community in which the expansion is proposed, provided Casella satisfies certain conditions. R. 0023. First, MEDEP stated that if a license is issued for the construction and operation of the expansion, Casella must "design and install a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations and submit[] an implementation schedule with tasks to the Department for review and approval to meet this timeframe." *Id.* MEDEP required this schedule to be submitted to MEDEP within 90 days of issuance of the PBD Approval (which Casella submitted on December 27, 2024).² MEDEP also required Casella to "pay[] 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." *Id.* This report must be reviewed by the Department. *Id.* Another condition is that "Casella conduct[] 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

² A court may sua sponte take judicial notice of facts if a fact is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." M.R. Evid. 201(b)(2); *Deutsche Bank Nat. Tr. Co. v. Wilk*, 2013 ME 79, ¶ 15, 76 A.3d 363, 368.

landfill gas emissions and conduct[] repairs of the cover material accordingly.” *Id.* The last condition under the fourth standard is that Casella must establish a MEDEP-approved “system to inform the public about significant landfill events in near real time such as through a website or other means.” *Id.*

III. STANDARD OF REVIEW

In reviewing a final agency action, this Court may “reverse or modify the decision if the administrative findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by bias or error of law; (5) unsupported by substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion.” 5 M.R.S. § 11007(4)(C).

For a finding that an error of law affected the agency action, courts may consider if the agency has erroneously interpreted the relevant statute such that the “language and purpose of the statute” contradict the agency’s action. *International Paper Co. v. Board of Env’t Prot.*, 1999 ME 135, ¶¶ 13, 29, 737 A.2d 1047. If the agency erroneously interpreted the plain language of a statute or unreasonably interpreted the ambiguous language of a statute, the Court will not defer to the agency’s decision. *Cobb v. Board of Counseling Professionals Licensure*, 2006 ME 48, ¶ 13, 896 A.2d 271, 275; *Hammer v. Sec’y of State*, 2010 ME 109, ¶ 8 A.3d 700, 705. The court reviews issues of statutory interpretation de novo. *Fox Islands Wind Neighbors v. Dep’t of Env’t Prot.*, 2015 ME 53, ¶ 11, 116 A.3d 940, 944.

The court may also find that an agency’s decision is not supported by substantial evidence such that “a reasonable mind” would not “rely on that evidence as sufficient for a conclusion.” *Richard v. Sec’y of State*, 2018 ME 122, ¶ 21, 192 A.3d 611. Moreover, the court may find a lack

of substantial evidence and an agency's "willful and unreasoning" decision "without consideration of facts of circumstances" to be arbitrary and capricious. *Friends of Lincoln Lakes v. Bd. of Env'tl. Prot.*, 989 A.2d 1128, 1133 (Me.2010); *Kroeger v. Dep't of Env'l Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566, 568 (citing *Cent. Me. Power Co. v. Waterville Urban Renewal Auth.*, 281 A.2d 233, 242 (e.1971)).

IV. **ARGUMENT**

A. **The PBD Approval Misinterpreted the Plain Meaning of the Statute and Relevant Regulations in Finding that the Proposal Was Consistent with the State Waste Plan and State's Solid Waste Management Hierarchy and thus the Approval was Affected by an Error of Law.**

When a statute is unambiguous, the court interprets the statute without applying rules of construction or examining legislative history. *Friedman v. Bd. of Env't Prot.*, 2008 ME 156, ¶ 9, 956 A.2d 97, 100. Statutory language should be given its plain and ordinary meaning, and often dictionaries will determine such meanings. *Rockland Plaza Realty Corp. v. City of Rockland*, 2001 ME 81, 772 A.2d 256: [¶12]; *Mullen v. Liberty Mut. Ins. Co.*, 589 A.2d 1275, 1277 (Me. 1999); *Madison, Dep't of Elec. Works v. Pub. Utils. Comm'n*, 628 A.2d 231, 234 (Me. 1996). An unambiguous statute is to be plainly construed, along with implementing regulations. *Competitive Energy Servs. LLC v. Pub. Utilities Comm'n*, 2003 ME 12, ¶ 15, 818 A.2d 1039, 1046; *FPL Energy Me. Hydro LLC v. Dep't of Env'tl Prot.*, 2007 ME 97, ¶ 25, 926 A.2d 1197, 1204, cert denied, 552 U.S. 1100, 128 S.Ct. 911, 169 L.Ed.2d 730 (2008).

The statutory provision mandating that the MEDEP Commissioner may only issue a positive public benefit determination if the proposed expansion "is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy" is unambiguous. 38 M.R.S. § 1310-AA(3)(B); 06-096 C.M.R. ch. 400, § 4(N)(1). Specifically, "consistent with" and "promotes" are not susceptible to multiple interpretations. "Consistent with"

means “marked by agreement” or “compatible.” *Consistent*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/consistent> (last visited Dec. 26, 2024). “Promote” means “to contribute to the growth or prosperity of” or “further.” *Promote*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/promote> (last visited Dec. 26, 2024). Hence, the proposed expansion of JRL had to both be “marked by agreement” or “compatible” with the State Waste Plan and “further” the Solid Waste Management Hierarchy to receive a positive PBD.

MEDEP erroneously interpreted the plain language of the statute when issuing a positive determination because the proposed expansion, as conditioned, is incompatible with the State Waste Plan and runs contrary to the State’s Solid Waste Management Hierarchy. 38 M.R.S. § 1310-AA(3)(B); 38 M.R.S. § 2101. While the State Waste Plan recommends expanding JRL due to the State’s decreasing landfill capacity, this recommendation is not a blank check to expand JRL and does not obviate the need for the expansion to meet all the criteria of the PBD statute, each of which has equal weight. The Plan goes into detail to explain how JRL’s current management “encourages landfill expansion.” As explained more thoroughly above, the Plan underscores in numerous places that the use of CDD as a bulking material to balance sludge or for daily cover, combined with increased imports of CDD and increased imports of sludge, continues to accelerate the consumption of limited landfill space at JRL. *See supra* Section II.C. The Plan singles out sludge drying as the best available solution to this encouragement of landfilling, and the State’s Solid Waste Management Hierarchy places landfilling as the very last of its priorities. *Id.*; 38 M.R.S.A. § 2101. The State Waste Plan thus plainly lays out that the current management of JRL encourages landfilling and landfill expansions, contrary to the Solid Waste Management Hierarchy.

The PBD statutory and regulatory criterion does not imply that every detail within the State Waste Plan had to be incorporated into the PBD. However, a plain reading of “consistent with” and “promotes” means that the major issues raised in the State Waste Plan demonstrating how JRL’s practices of accelerating landfilling were contrary to the Solid Waste Management Hierarchy should have been resolved in the PBD—MEDEP did not do this. Instead, MEDEP asked that Casella submit a plan on its mattress recycling program, expand its mobile phone recycling app, and continue to report on their encouragement of towns to recycle. R. 0015–0016. These conditions are impermissibly weak; they do not address the problematic management of waste at JRL as detailed in the State Waste Plan, and only minimally promote recycling more broadly. The only condition placed on Casella pertaining to the sludge and CDD issue is that Casella annually evaluate, in a report, how to reduce the volume of sludge prior to landfilling. R. 0015. However, there is no requirement that anything be done with the recommendations in the report, making the report likely ineffectual. *Id.*

Furthermore, the discussion in the PBD of the CDD-sludge issue simply says that Casella will jeopardize municipalities if it refuses to accept the sludge, and that dewatering facilities “may” come online in the future. R. 0015. As stated above, Casella accepts around 90% of the state’s sludge. R. 0008. Relying on a non-existent sludge drier at another facility to reduce the volume of this sludge by 75% is both a derogation of MEDEP’s obligation to conform the PBD with the State Waste Plan and Solid Waste Management Hierarchy, it is also a violation of the plain language of the statute. “Is consistent with” and “promotes” are both in the present-tense, meaning that the proposed expansion must meet these criteria upon its approval, not possibly at some point in the future. Moreover, JRL serves as a back-up when other waste facilities in Maine breakdown or shut down. R. 1350. Even if the Crossroads dewatering system existed, which it currently does not,

relying on one such system to dewater all JRL's sludge would be grossly irresponsible. Anything other than a requirement by MEDEP that Casella implement technology at JRL to dewater the sludge themselves fails to conform with the State Waste Plan, with the Solid Waste Management Hierarchy, and with the legal criteria for a positive PBD.

The plain language of the public benefits determination statute is reinforced by the Agency's own regulations clarifying how a solid waste facility must conform with the Solid Waste Management Hierarchy. 38 M.R.S. § 1310-AA(3)(B); 06-096 C.M.R. ch. 400, § 4(N)(2)(a). The regulations specify that to be licensed, a solid waste disposal facility must demonstrate consistency with the State's Solid Waste Management Hierarchy by showing that "waste has been reduced, reused, recycled, composted, and/or processed to the *maximum extent practicable* prior to landfilling." 06-096 C.M.R. ch. 400, § 4(N)(2)(a) (emphasis added); R. 0014. Firstly, this clear language required MEDEP to consider JRL's management of the waste entering JRL, not look to Casella's other facilities for "existing programs" to meet this requirement. The PBD conditions either do not directly relate to the waste entering JRL, or only minimally, if at all, reduce waste prior to landfilling. R. 0014. Secondly, reducing JRL's waste "*to the maximum extent practicable*" means dewatering their sludge. "Maximum" means "the greatest quantity or value attainable," while "practicable" means "capable of being put into practice or of being done or accomplished." *Maximum*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/maximum> (last visited Jan. 16, 2025); *Practicable*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/practicable> (last visited Jan. 16, 2025). The current plans at the Crossroads facility to build a dewatering system demonstrate that implementation of such a system is feasible. Thus, "to the maximum extent practicable" means the sludge entering JRL should be reduced as much as possible, and the most practicable way to do so is to dewater it, reducing the volume by about 75%,

vastly preserving the landfill space that the sludge consumes and also obviating the need for thousands of extra tons of CDD to stabilize the wet sludge. In addition, a cap should be placed on the CDD fines filling up JRL, and there should be a maximum fill rate at JRL. These three conditions combined would achieve maximum practicable reduction of waste volume. A mattress recycling program, a mobile recycling app, and an update in a yearly report on encouraging towns to recycle fall far short of achieving a reduction of the volume of waste coming to JRL to the “maximum extent practicable.”

MEDEP deviated from the plain text and purpose of the statute when they issued a positive determination for the proposed expansion. Certain conditions were needed to bring the PBD Application in line with the State Waste Plan and Solid Waste Management Hierarchy: requiring Casella to implement sludge drying technology at JRL, placing a cap on CDD fines that may be imported each year, and creating a maximum fill rate for JRL. These conditions would have meaningfully addressed JRL’s current practices that encourage landfill expansion and run contrary to the State’s Solid Waste Management Hierarchy. Failure to implement conditions that rectified these documented practices while still approving the PBD Application was a violation of 38 M.R.S. § 1310-AA(3)(B). The PBD Approval erroneously interpreted and misapplied the statute and thus committed an error of law.

B. The PBD Approval Was Unsupported by Substantial Evidence and was thus Arbitrary and Capricious in Finding that the PBD Application was Consistent with the State Waste Plan and Solid Waste Management Hierarchy.

When reviewing an agency decision, the court must “examine the entire record to determine whether the agency could fairly and reasonably find the facts as it did.” *Rangeley Crossroads Coal. v. Land Use Regul. Comm’n*, 2008 ME 115, ¶ 10, 955 A.2d 223, 227. Substantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion. *Richard v. Sec’y of State*, 2018 ME 122, ¶ 21, 192 A.3d 611. An agency decision that

is not supported by substantial evidence may be found to be arbitrary and capricious. *Friends of Lincoln Lakes v. Bd. of Env't'l. Prot.*, 989 A.2d 1128, 1133 (Me.2010); *Kroeger v. Dep't of Env't'l Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566, 568 (citing *Cent. Me. Power Co. v. Waterville Urban Renewal Auth.*, 281 A.2d 233, 242 (Me.1971)). When the evidence before the agency compels a contrary finding, it is the duty of the court to set aside the Agency's decision. *Osprey Fam. Tr. v. Town of Owls Head*, 2016 ME 89, ¶ 10, 141 A.3d 1114, 1117; *Gagnon's Case*, 144 Me. 131, 133, 65 A.2d 6, 8 (1949).

MEDEP's finding that the PBD was consistent with the State Waste Plan and promoted the State's Solid Waste Management Hierarchy was unsupported by substantial evidence and thus arbitrary and capricious.

First and foremost, to assess if a PBD Application is consistent with the State Waste Plan, it is unreasonable to ignore key issues raised in the State Waste Plan itself. The State Waste Plan clearly says JRL is operating contrary to the Solid Waste Management Hierarchy. *See supra*, Section II.C. The State Waste Plan establishes that one major solution to this mismanagement is to dry the sludge that JRL receives. *Id.* Failure to rectify the increased landfilling of more watery sludge and more CDD is a failure to conform the PBD with the State Waste Plan and the Solid Waste Management Hierarchy. A review of the entire record reveals that no reasonable person could have found the statutory criterion to be fulfilled by the conditions placed on the expansion and the decision is therefore arbitrary and capricious.

The initiatives or promised initiatives that MEDEP relied on to find that the PBD conformed with the State Waste Plan and State's Solid Waste Management Hierarchy were unreasonable. A currently nonexistent mattress recycling program and an expanded mobile recycling app cannot rectify a massive trend of encouraging landfill expansion through the

acceptance of untreated sludge that requires more and more construction and demolition debris to avoid turning the landfill into a watery, toxic quagmire. R. 0015. Further, an update in a yearly report on how Casella encourages towns to recycle and what methods they envision for reducing sludge in the future also does not suffice to rectify JRL's nonconformity with the Solid Waste Management Hierarchy. *Id.* The State Waste Plan aptly describes an urgent mismanagement of JRL that runs entirely contrary to the Solid Waste Management Hierarchy. MEDEP has ignored this glaring evidence of the proposed expansion's inconsistency with both the State Waste Plan and the Solid Waste Management Hierarchy by citing measures that will do nothing to rectify the central inconsistency. The evidence before the agency compelled a contrary finding and is therefore arbitrary and capricious.

In sum, the PBD Approval should be vacated as it violates the plain meaning of M.R.S. § 1310-AA(3)(B), was based on insufficient evidence, and unreasonably relied on conditions that do not fulfill the statute's requirements. In the alternative, conditions must be added that require Casella to dewater the sludge JRL receives, place a cap on CDD fines allowed for shaping, grading or use as alternative daily cover and an accountability measure for any request to exceed that limit, and set a maximum fill rate on the landfill.

C. The PBD Approval Violated the Plain Meaning of the Environmental Justice Criterion in Not Assessing if the Penobscot Nation was Distinguished by the Statute's Enumerated Classes and the Decision was thus Affected by an Error of Law.

Statutory language should be given its plain and ordinary meaning. *Rockland Plaza Realty Corp. v. City of Rockland*, 2001 ME 81, 772 A.2d 256: [¶12]; *Mullen v. Liberty Mut. Ins. Co.*, 589 A.2d 1275, 1277 (Me. 1999); *Madison, Dep't of Elec. Works v. Pub. Utils. Comm'n*, 628 A.2d 231, 234 (Me. 1996). A statute should be read as a whole. *Doe v. Roe*, 2022 ME 39, ¶ 18, 277 A.3d 369, 375. A statute should not be read to have superfluous or meaningless language, instead

attempting to give all of its words meaning. *Thurston v. Galvin*, 2014 ME 76, ¶ 13, 94 A.3d 16, 20. An agency must adhere to a plain construal of an unambiguous statute. *Cent. Maine Power Co. v. Pub. Utilities Comm’n*, 2014 ME 56, ¶ 18, 90 A.3d 451, 458.

MEDEP was tasked with assessing whether the proposed expansion “is not inconsistent with ensuring” “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” and the “equal protection” of “all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions.” 38 M.R.S. § 1310-AA(3)(E). The PBD statute thus creates a duty on MEDEP to ensure that all people are *equally* protected from the impacts of the development and implementation of any waste management licensing decisions, including licensing of a proposed landfill expansion, and also including the generation, discharge and emission of pollution.³ There is no language in the statute giving one of the four statutory requirements more weight than the others, and thus the criteria in the statute for a positive public benefit determination must each be given equal weight. Specifically, the fact that JRL’s expansion purportedly meets the State’s pressing capacity needs can neither overshadow nor render meaningless the requirement that the expansion be consistent with ensuring environmental justice, as defined by the statute.

The PBD Approval violated the plain text and purpose of the environmental justice provision in this statute by discussing how the Penobscot Nation is unequally impacted by pollution but then failing to consider whether the Penobscot Nation is also distinguished by the

³ While the license itself is acquired at a later stage in the process, a positive PBD is a prerequisite to acquiring a license and thus part of the “development” of the licensing decision. Moreover, statutory language must be read to avoid an illogical or absurd result, and there would be no weight to this criterion in the PBD statute if it instead applied to a later stage in the process and not to the PBD itself. *Sinclair Builders, Inc. v. Unemployment Ins. Comm’n*, 2013 ME 76, ¶ 10, 73 A.3d 1061, 1065.

classes the statute names, including ancestry, ethnicity, and national origin. The PBD statute specifies that people must be protected from environmental pollution “regardless of ancestry, class, disability, ethnicity, income, national origin or religion.” The inclusion of this language must be considered intentional; therefore, the environmental justice criterion requires assessing whether a group suffering from such unequal protection is distinguished by ancestry, class, disability, ethnicity, income, national origin or religion. This definition underscores the statute’s commitment to ensuring that no group of people, including groups distinguished by ancestry, ethnicity, or national origin, should bear a disproportionate share of negative environmental consequences resulting from waste management decisions. This definition aligns with environmental justice definitions nationwide, including the EPA’s.⁴ The PBD mentions that the bloc including Penobscot Nation is above the 95th percentile for various environmental justice indicators and that the Nation is a “federally recognized tribe”; however, MEDEP’s analysis stops there and fails to connect the dots. The PBD entirely neglects to discuss or consider whether the group suffering a disparate impact from pollution is also a group specifically identified by the statute as a class of peoples who have a legally protected right to equal protection from the pollution resulting from waste management decisions. R. 0018. Such a failure is contrary to the plain language of the statute.

The Penobscot Nation is a federally recognized Native American tribe with ancestry tracing back thousands of years to the Wabanaki Confederacy in the region now known as Maine. R. 0018. Through their distinct cultural heritage, traditions, and language, they are set apart from the broader population in Maine by their ancestry and ethnicity. Petition for Review Ex. A, at 1.

⁴ “Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment [...]”. *See Learn About Environmental Justice*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last visited Jan. 19, 2025).

The Penobscot Nation is a sovereign tribal nation with inherent self-governance rights. *Id.* While its members are U.S. citizens, the Nation's sovereignty and federal recognition distinguish its members from the general population of Maine. *Id.* The Penobscot people are thus distinguished by ancestry, ethnicity, and national origin. The PBD Approval establishes that various environmental harms disproportionately afflict the Penobscot Nation but fails to directly consider the assessment mandated by statute: whether this community that is unequally impacted by pollution is also distinguished by ancestry, ethnicity and national origin.

If MEDEP had done the analysis that the statute requires, the only reasonable conclusion would have been that the expansion could not meet the letter, purpose and spirit of the environmental justice criterion. Failure to analyze the above went against the plain text and purpose of the environmental justice criterion and was an error of law. The PBD Approval should be vacated on those grounds alone.

D. The PBD Approval Was Unsupported by Substantial Evidence and was thus Arbitrary and Capricious in Finding that the PBD Application Was Consistent with Ensuring Environmental Justice for the Affected Communities.

An agency's factual determinations will be upheld unless clearly erroneous. *Centamore v. Dep't of Hum. Servs.*, 664 A.2d 369, 371 (Me. 1995). The court will not overrule findings of fact supported by substantial evidence, defined as 'such relevant evidence as a reasonable mind might accept as adequate to support the resultant conclusion.' *Sinclair Builders, Inc. v. Unemployment Ins. Comm'n*, 2013 ME 76, ¶ 9, 73 A.3d 1061, 1065. The Department's findings are unsupported by the record and clearly erroneous. No reasonable person could find that the conditions in the PBD Approval adequately mitigate the undue burdens of pollution already placed on the Penobscot Nation, who are distinguished by ancestry, ethnicity and national origin.

Expanding a landfill that will exacerbate ongoing harms on the already overburdened Penobscot Nation deprives this community of equal protection from the impacts of waste management licensing decisions. The Penobscot Nation has been and continues to be deprived of their right to be protected from environmental pollution and to enjoy a clean and healthful environment, far more so than other communities. MEDEP's final decision acknowledges that, based on the EPA's Environmental Justice Screening and Mapping Tool (Version 2.3), Indian Island and the Penobscot River (up to Mattaseunk Dam) are part of a block group identified as a Designated Disadvantaged Community under EPA's Justice40 and Inflation Reduction Act criteria. R. 00017. Environmental indicators place this block group above the 95th percentile for risks associated with wastewater discharges, proximity to hazardous waste, underground storage tanks, and air toxic releases. *Id.* These indicators highlight the Penobscot Nation's ongoing, significant exposure to pollutants, with wastewater discharge alone posing high risks due to untreated pollutants flowing into rivers. The Penobscot Nation has found their cancer rates exceed state averages, underscoring their community's vulnerability. Petition for Review Ex. A, at 1. Moreover, all three state-owned landfills in Maine, including JRL, are concentrated within a 50-mile stretch along the Penobscot River watershed, which traverses Penobscot Nation lands. R. 1393. The River, saddled with 74 landfills, many unlined, suffers from ongoing contamination. R. 1393–1394. JRL alone processes 90% of the state's toxic municipal sludge and over 50% of Maine's total waste since 2018, making it the state's largest landfill by volume. R. 0008. Despite this waste being generated statewide or imported from out of state, Penobscot County—and specifically the Penobscot Nation—bears the brunt of this environmental burden. The Penobscot Nation can no longer freely fish in their sacred river due to PFAS and other toxic contamination poisoning aquatic life. R. 1393. Millions of gallons of leachate from JRL are minimally treated and discharged into

the Penobscot River, filling it with “forever chemicals.” *Id.* This disproportionate concentration of landfills near the Penobscot Nation’s ancestral lands is emblematic of systemic environmental injustice, where marginalized communities shoulder the heavy burden of pollution and waste disposal.

The environmental justice criterion exists to address cases like this one. MEDEP fails to draw the only reasonable conclusion from the PBD’s own glaring evidence: expanding JRL is inconsistent with ensuring environmental justice for the Penobscot Nation, who are already unequally protected from the environmental pollution of waste management in Maine and are distinguished by ancestry, ethnicity and national origin. R. 0017–0021; 38 M.R.S. § 1310-AA(3)(E).

MEDEP not only failed to reach the only reasonable conclusion but also ignored material evidence that was before it. MEDEP clearly understands the environmental justice criterion as requiring the agency to consider cumulative harms to a given population, which is key to ensuring equal protection from the pollution of waste management. This understanding is evidenced when they expound on the existing pollution of the Penobscot River, its centrality to the Penobscot Nation, and the fact that the residents of Indian Island are above the 95th percentile for environmental justice indicators. R. 00017. But despite understanding its obligations, MEDEP’s PBD Approval fails to consider and address other preexisting environmental harms caused by Maine’s waste management decisions, such as the 74 landfills now lining the Penobscot River, some of which are unlined and likely leaking toxic chemicals into groundwater. They also do not discuss health disparities afflicting the Penobscot Nation, as raised by the Penobscot themselves. Petition for Review Ex. A, at 1. MEDEP was unreasonable in discussing the evidence they cite in their PBD Approval without also considering the above. Moreover, MEDEP fails to address how

a PFAS treatment system could further perpetuate environmental injustice on local communities if the system is not adequately regulated and safeguarded. MEDEP's decision that the PBD Approval as conditioned would satisfy the environmental justice requirement was unsupported by substantial evidence and was thus arbitrary and capricious.

F. The PFAS Treatment Conditions Must be Strengthened to Ensure Environmental Justice for the Affected Communities.

If the Court does not determine that any expansion, regardless of conditions, is at odds with ensuring environmental justice for the Penobscot Nation, then the conditions that were included with the PBD Approval must be modified to at least require that PFAS treatment is adequate to meet the environmental justice legal standard. The PFAS condition, as laid out in the PBD Approval, was insufficient to ensure equal protection and meaningful involvement because it lacked terms safeguarding the system, defining and requiring efficacy, and establishing a transparent administrative process for the system's selection, with public input and agency scrutiny.

PFAS treatment for leachate is an evolving field that requires strict oversight. Certain treatment processes are known to be effective at removing one type of PFAS (long-chain), without removing another (short-chain). The processes themselves can also pose additional dangers, like emitting more PFAS into the air, or creating a leftover mass of PFAS-concentrate that must be safely disposed of or destroyed.

In 2023, MEDEP commissioned a study to assess how to treat leachate for PFAS in Maine. The study's engineers ultimately recommended foam fractionation, the same technology that Casella chose to use in Vermont. R. 1486. In the PBD Approval, MEDEP ordered Casella to implement technology at JRL that would treat the leachate for PFAS. R. 0023. However, the PBD Approval does not specify what technology Casella should use. Because foam fractionation is likely to be used at JRL now that Casella has been ordered to treat their leachate, it is necessary to

explain the risks associated with this technology and the risks associated with a lack of supervision over its implementation.⁵ The following provides a thorough and concrete example of the dangers of mandating leachate treatment to remove PFAS without mandating success criteria and safeguards.

Firstly, foam fractionation does not remove short-chain PFAS or precursors. Short-chain PFAS often dominate in landfill leachate, specifically Perfluorobutanoic Acid (“PFBA”) and Perfluorobutanesulfonic Acid (“PFBS”). R. 1494–1495. Foam fractionation has been shown to specifically not capture PFBA and PFBS. *Id.* Both PFBA and PFBS have demonstrated toxicology concerns and often dominate in landfill leachate. R. 1495. The list of PFAS regulated by Maine is indubitably going to continue to expand, both due to federal regulation and state pressure. R. 1485. Short-chain PFAS also include candidate PFAS that are facing scrutiny and possible regulation in the near future due to emerging toxicology findings. R. 1494. One such short-chain PFAS, PFBS, has now officially been regulated by the EPA in their National Primary Drinking Water Regulations released in April 2024. R. 2183; *Per- and Polyfluoroalkyl Substances (PFAS)*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last visited Jan. 19, 2025). If Casella once again chooses foam fractionation as a stand-alone treatment for its treatment technology, the leachate released from Nine Dragons will continue to fill the Penobscot River with short-chain PFAS and continue its harm to the Penobscot Nation.

Additionally, foam fractionation does not remove PFAS precursors, chemical compounds that degrade or transform into identified PFAS. R. 1493. It is now well known that wastewater

⁵ Much of the below concerns come from a formal analysis of Casella’s plan for their Vermont pilot; the analysis was conducted by two experts in the field of civil and environmental engineering, Yang Yang, PhD and Thomas Holsen, PhD. Their report can be found in the Record beginning at R. 1492 [hereinafter Expert Report].

treatment plants like Nine Dragons convert PFAS precursors into identified and regulated PFAS, including many of those now regulated by Maine. *Id.* This means that the effluent leaving Nine Dragons may contain higher and broader levels of PFAS than the leachate going into it, even after treatment.

Secondly, foam fractionation, as recommended by a study the State commissioned, will result in toxic residue that must be responsibly disposed of or destroyed. Petition for Review 27. In Vermont, Casella chose to solidify this residue in cement and bury it, a practice about which experts have “serious doubts” and found likely to result in the encapsulated PFAS leaching out of the cement into the landfill at large. R. 1496. Such disposal of the residue actually *worsens* environmental hazards.

Third, foam fractionation risks creating air emissions of PFAS, semi-volatile organic compounds (“SVOCs”) and volatile organic compounds (“VOCs”), all found in leachate. R. 1495. The treatment system, if not properly regulated, could thus become an *additional* source of air pollution for the affected communities—the Penobscot Nation, residents of Old Town, and residents of Alton.

The PBD Approval condition requiring Casella to implement a treatment system to remove PFAS from JRL’s leachate is a step in the right direction, but it is not enough as-is to ensure the Penobscot Nation’s right to be equally 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. 38 M.R.S. § 1310-AA(3)(E). The following additional safeguards must be placed on the condition to ensure that the Penobscot Nation is adequately protected from environmental harm:

(1) MEDEP Must Include Clear Metrics for Success:

The condition should contain clear success criteria with which the treatment system must conform, such as acceptable effluent concentrations of PFAS. If MEDEP needs more time to determine appropriate standards, the condition should explicitly state that MEDEP will release such criteria by a specific date, in time for the treatment system to be selected and built *based on* said criteria, and in time for the public to provide comment on it.

(2) MEDEP Must Mandate Removal of the Broadest Spectrum of PFAS:

The condition should mandate that the system remove the broadest spectrum of PFAS reasonably removable, including short-chain PFAS and PFAS precursors. At a minimum, the condition should require that the treatment system effectively remove the PFAS now regulated by the EPA's National Drinking Water Regulations, which include PFBS, a short-chain PFAS.

(3) MEDEP Must Require Air Monitoring:

The condition should require air monitoring for whatever system is selected. The monitoring method should be capable of determining whether PFAS, SVOCs or VOCs will be discharged through the system's continued operation and is therefore critical to protecting Maine's environment and nearby communities.

(4) MEDEP Must Ensure Transparency and Meaningful Involvement:

The condition should require transparency and ensure meaningful involvement from the public in approving the proposed treatment system. Specifically, the condition should require that the proposed system first be presented publicly and to the Department as a "Treatment Plan" subject to notice and comment and final agency review. The "meaningful involvement" prong of the PBD environmental justice standard requires numerous opportunities for the public to be informed throughout the process, as well as the ability to comment on the proposed technology. As written, the condition merely requires an implementation schedule to be proposed by Casella

that sheds no light on the upcoming system or selection process. While the condition states that Casella's treatment system must be "Department-approved," R. 0021, this language provides insufficient oversight. The condition must *plainly state* that Casella's system *can neither have begun construction nor become operational before the system's plan has undergone public notice and comment and full agency review and final approval*.

While a commonsense reading of the PBD Approval's terms establishes Casella's obligation to receive MEDEP approval before selecting, let alone operating, their technology, Casella's actions in Vermont display the necessity to make this language clearer and stronger. R. 1580 (citing Emma Cotton, *Environmental Groups Allege that Casella has Violated its Water Quality Permit*, VT DIGGER (Oct. 12, 2023), <https://vtdigger.org/2023/10/12/environmental-groups-allege-that-casella-has-violated-its-water-quality-permit/>). In Fall 2023, Casella began operating a pilot version of their leachate treatment technology at Vermont's Coventry Landfill without waiting for agency review and approval by the Vermont Department of Environmental Conservation ("VTDEC"), in blatant disregard of Casella's Pretreatment Discharge Permit No. 3-1406. R. 1486. Local community groups, along with CLF, demanded that the Department halt the treatment system until it had undergone thorough public and agency scrutiny. *Id.* (citing Abagael Giles, *Spill of landfill leachate into stormwater pond leaves Coventry locals concerned*, VT PUBLIC (March 8, 2024), <https://www.vermontpublic.org/local-news/2024-03-08/spill-of-landfill-leachate-into-stormwaterpond-leaves-coventry-locals-concerned>). VTDEC did not halt the pilot treatment system. On February 24, 2024, close to 9,000 gallons of leachate spilled out of the malfunctioning treatment system, whereupon the public discovered the system had been operating under a temporary tent. R. 2047. Clearly, the urgent need to treat landfill leachate for PFAS does not justify abdicating procedural safeguards around the PBD's required treatment system. Rather,

the necessity of installing a system to safely and effectively treat JRL's leachate for PFAS makes it even more critical that the public have meaningful involvement in the treatment plan's approval and that the agency assess the proposed system's efficacy and safety before it is underway.

Ultimately, the condition is so vague as written that it fails to fulfill the environmental justice criterion. The PBD environmental justice criterion *requires* that the PBD Approval itself be consistent with ensuring environmental justice, not wait until some point in the future to determine whether heretofore unequally protected communities will receive equal protection.

G. The Agency's Interpretation of "Meaningful Involvement" as Stated in the PBD Environmental Justice Criterion was Unreasonable and is an Error of Law.

The PBD statute and regulations state that environmental justice includes the "meaningful involvement of all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions." 38 M.R.S. § 1310-AA(3)(E); 06-096 C.M.R. ch. 400 § 1(TT-1). MEDEP's PBD process did not include the meaningful involvement of all people, as MEDEP did not allow enough time for: (1) the public to weigh in during the PBD process; and (2) MEDEP to address the concerns raised through the public comment process in the PBD Approval, which resulted in the final PBD Approval not adequately addressing the public comments MEDEP received.

Maine law requires the MEDEP Commissioner to issue its PBD within 60 days of accepting a PBD application. 38 M.R.S. § 1310-AA(2). Within this timeline, MEDEP must review the application, host public meetings, take into consideration comments provided at these meetings, and review submitted written comments. *Id.* Despite the compressed nature of the determination timeframe, MEDEP is permitted to issue a decision before the 60 days run out. *Id.* Originally, the only established date in the timeframe was August 23, 2024, which caused some confusion and concern in the public. R. 1399. For example, it was unclear as to when people should

submit their written comments so that MEDEP could adequately review and consider the comments before issuing its determination. The only guidance the public originally received from MEDEP on the deadline submit comments was, “The sooner the better,” and “by mid-August,” which lacked clarity and left open the possibility that a concerned citizen may put in the time and effort to prepare a comment, just to have the rug pulled out from under them because MEDEP rendered a decision early. R. 1399; R. 1338 at 01:45:45; 01:54:12.

On July 16, 2024, MEDEP hosted two public meetings for the public to provide comments in person on the PBD Application. R. 1282. Only one public meeting was held where virtual comment could be provided, which occurred on July 26, 2024. R. 1291. The virtual public meeting was provided at CLF’s request. R. 1287–1288.

CLF requested two timeline extensions during the PBD process. R. 1398–1402, 1469–1472. The first timeline extension was requested after MEDEP sent a Request for More Information to Sevee & Maher Engineers, Inc, expressing that it had completed an initial review of the PBD Application and had about four pages of comments and questions to which it would like the Applicant to respond. R. 1371–1374, 1398–1402, 1403–1430. MEDEP did not set a date for when they wanted the Applicant to submit its response, and therefore it was unclear when the Applicant was going to do so and how much time MEDEP and the public would have to review the information the Applicant eventually submitted. R. 1398–1402. As a result of CLF’s timeline extension request, MEDEP extended the PBD timeline by 30 days. R. 1431–1432.

The second timeline extension was requested after MEDEP issued the Draft PBD. R. 1442–1467, 1469–1472. CLF requested a timeline extension because MEDEP has a legal duty to consider each comment submitted before issuing its PBD, and with the proposed timeline, the public could not be assured that their comments would be fully considered because MEDEP was

planning to publish their final PBD the following business day after comments were due. R. 1469–1472. As a result of CLF’s timeline extension request, MEDEP announced that they would extend the comment due date by seven days and the Final PBD due date by nine days. R. 1475. This still left MEDEP with only three business days to consider public comments.

As CLF articulated in both timeline extension requests, there was not enough time for the public to weigh in during the PBD process. The PBD Application is over 600 pages; just reviewing it takes significant time, especially for a member of the public who is not an expert on waste issues and has familial, work, and other personal obligations. R. 0031–0713. On top of that, preparing comments, written or verbal, takes even more time. For both timeline extensions, the PBD process was only barely adjusted to allow additional time for comment. There is nothing in the PBD statute nor regulation that prohibited MEDEP from extending the timeline further—there is no cap on how much time MEDEP could extend the timeline.

MEDEP should have extended the PBD process from the start given the complicated and highly technical nature of the proceeding and the intense public interest and public impact, which MEDEP Commissioner Loyzim was aware of and acknowledged on multiple occasions. R. 1338 at 2:39, 1:48:49 (“I know that there is a lot of interest in this public benefit determination application and concern”) (“I understand that there have been a lot of interest in this application); R. 1339 (“I understand that there is a lot of interest in this application and concern.”). Moreover, the extensions did not foster meaningful involvement because each extension took MEDEP time to grant and the extensions themselves were short. The extensions were granted close to the original time of the due date, likely not giving the public enough notice of the extension and especially impacting those who may have not provided comments because of the timeline and may have done so if the timeline had been extended from the beginning. R. 1431–1432, 1475. Though

MEDEP providing extra time was a step in the right direction, both timeline extension requests were really necessitated based on MEDEP's own actions (e.g., MEDEP sending questions after the fact and issuing a Draft PBD so close to when the Final PBD was due). In addition, most of this process took place over the summer when many people—including students—were out of town. Furthermore, virtual testimony should be an option as a matter of course after COVID-19—allowing it subject to a request does not, in and of itself, satisfy environmental justice. MEDEP should have offered the ability for individuals to provide virtual comment at the July 16, 2024 meetings, which would have been entirely consistent with other government proceedings within the state and around the New England region that have offered virtual-comment options. R. 1287–1288. Doing so is not technically difficult and allows the meetings to be accessible to many, fulfilling the spirit of what “meaningful involvement of all people” means.

Lastly, MEDEP's PBD timeline calls into question whether MEDEP had time to adequately consider public comments in their evaluation of the PBD Application and address the concerns raised through the public comment process in their PBD Approval. For example, for comments on the Draft PBD, in the original proposed timeline, MEDEP requested comments one business day before their Final PBD was due. R. 1468. This raises concerns about how much MEDEP truly intended to consider and incorporate comments received into the final PBD Approval. Once MEDEP granted the extension, which was announced at the end of the business day the day before comments were originally due, the comment period was only extended by five business days, and after the comment period, only an extra three business days for MEDEP before the Final PBD was due. R. 1475. There is no indication that MEDEP actually considered the public comments received, especially given the immense negative feedback articulated in the numerous public comments and the lack of serious discussion of these concerns in the resulting decision.

The plain text of the environmental justice definition clearly requires meaningful involvement, which MEDEP did not fulfill. MEDEP's actions contradict the plain language of the statute, resulting in a clear error of law. As stated above, this is the first time the environmental justice criterion has been interpreted. The standard that MEDEP has currently set for this PBD process cannot be reasonably interpreted as fulfilling the meaningful involvement part of the statute and regulation.

V. CONCLUSION

For the foregoing reasons, Petitioners 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 or capricious. As such, Petitioners request this Court reverse MEDEP's PBD Approval and find that the PBD Application does not satisfy the criteria of the PBD statute and regulations. In the alternative, Petitioners request this Court require MEDEP to modify the PBD Approval to include the following:

- a. Casella must implement a sludge dewatering system at JRL;
- b. Strengthen the PFAS condition as laid out in in Section IV.F, *supra*;
- c. Place a cap on the amount of CDD fines that JRL can accept in a given year and an accountability measure for any request to exceed that limit;
- d. Place a maximum fill rate on the waste JRL can accept in a given year.

In the alternative, should this Court choose not to reverse or modify the Commissioner's decision, Petitioners 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, direct MEDEP to hold such proceedings and/or take such action as the Court deems necessary.

Date: January 21, 2025

Respectfully submitted,

THE PENOBSCOT NATION,
CONSERVATION LAW FOUNDATION

By its attorneys,



Alexandra Enríquez St. Pierre, Esq.
MA Bar No. 706739
Application for Pro Hac Vice Granted
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 04010
(207) 210-6439 x 5017
nbosworth@clf.org

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served via the Court's e-filing system on January 21, 2025 to the attorneys for Maine Department of Environmental Protection and NEWSME Landfill Operations, LLC.

Alexandra St. Pierre

Alexandra Enríquez St. Pierre, Esq.

MA Bar No. 706739

Application for Pro Hac Vice Granted

CONSERVATION LAW FOUNDATION

62 Summer Street

Boston, MA 02110

(617) 850-1732

aestpierre@clf.org