STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
NO. PENSC-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.

ORDER ON 80C APPEAL

Before the court is the Penobscot Nation and Conservation Law Foundation's petition for review of a final agency action under 5 M.R.S. §§ 11001-11008 (2025) and M.R. Civ. P. 80C. Petitioners challenge Respondent Maine Department of Environmental Protection's (the Department) determination that a proposed expansion of the Juniper Ridge Landfill (JRL) in Old Town and Alton provides a substantial public benefit within the meaning of 38 M.R.S. § 1310-AA (2025).

Also pending is the ancillary matter of Petitioners' motion for the court to take judicial notice, dated July 8, 2025. The court will describe the factual context of the appeal, address the motion, then consider the appeal itself.

BACKGROUND

JRL is located on a 780-acre parcel in Old Town and Alton, four miles from Indian Island, on which the Penobscot Nation is located. R. 43, 1389. JRL accepts more waste than all other landfills in Maine combined, including nearly 90% of the sludge produced by the State's wastewater treatment plants. R. 7. In addition to wastewater treatment plant sludge, JRL accepts substantial amounts of construction and demolition debris (CDD); municipal solid waste; oversized bulky waste (OBW); and pulverized CDD (CDD fines) used for shaping, grading, and daily cover for the landfill. R. 8, 135. The State, through the Department of Administrative and Financial Services, Bureau of General Services (BGS), owns and holds the license for JRL. R. 2. Party-in-Interest NEWSME Landfill Operations, LLC (NEWSME), operates the landfill pursuant to an agreement with BGS. R. 2. NEWSME is a wholly owned subsidiary of Casella Waste Systems (Casella). R. 2.

On June 10, 2024, BGS submitted an application to the Department for a determination of public benefit. R. 3. BGS seeks to expand JRL by approximately 61 acres to create 11.9 million cubic yards of additional capacity. R. 3. On October 2, the Department issued the public benefit determination (PBD) challenged here. R. 3, 5-7. On November 12, Petitioners filed a petition for review of the PBD. On January 21, 2025, Petitioners filed a brief. The Department and NEWSME each responded with a brief on February 20, 2025. On March 13, Petitioners filed a reply brief. The court held oral argument on July 18.

DISCUSSION

A. Motion for Judicial Notice

Petitioners ask the court to take notice pursuant to M.R. Evid. 201(b) of two facts: the enactment of LD 297, *An Act Regarding the Management of Wastewater Treatment Plant Sludge at the State-Owned Landfill,* and a document dated April 11, 2025, titled, *Demonstration PFAS Treatment System Proposal Juniper Ridge Landfill Old Town, Maine.* NEWSME and the Department object to the motion on the basis that it seeks to expand the factual record.

The court does not rely on either document in this decision and therefore need not rule on the motion, but a ruling is nonetheless advisable because the documents may be cited in future proceedings. Although the documents are in one respect factual, the court sees them more broadly as part of the context in which the existing factual record must be viewed and the parties' arguments assessed. The motion is therefore GRANTED over objection.

B. Standard of Review—80C Appeal

Judicial review of administrative agency decisions is "deferential and limited." *Passadumkeag Mountain Friends v. Bd. of Env't Prot.*, 2014 ME 116, ¶ 12, 102 A.3d 1181. The court may reverse or modify an agency's decision only if it "violates the Constitution or statutes; exceeds the agency's authority; is procedurally unlawful; is arbitrary or capricious; constitutes an abuse of discretion; is affected by bias or error of law; or is unsupported by the evidence in the record." *Kroeger v. Dep't of Env't Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566 (citing 5 M.R.S. § 11007(4)(C)).

When reviewing an agency's interpretation of an unambiguous statute, the court "construe[s] the statute in accordance with its plain meaning." *E. Me. Conservation Initiative v. Bd. of Env't Prot.*, 2025 ME 35, ¶ 22, 334 A.3d 706. When a statute that is "both administered by [the] agency and within the agency's expertise" is ambiguous, the court defers to the agency's interpretation so long as it is reasonable. *Id.*

"Meaningful judicial review of an agency decision is not possible without findings of fact sufficient to apprise the court of the decision's basis." *Ram's Head Partners, LLC v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 16, 834 A.2d 916.

> When confronted with an inadequate record, the Superior Court has two choices. First, the court may set aside the [agency's] decision and require a new hearing by the [agency]. Second, it can remand to the [agency] for further findings to develop the record within a stated time period, while explicitly retaining jurisdiction in order to demonstrate that the decision is not a final judgment. In either case, the order must clearly state which course has been chosen to avoid . . . confusion . . . .

Sanborn v. Town of Eliot, 425 A.2d 629, 631 (Me. 1981) (citation modified).

C. The Department's Public Benefit Determination

Before an applicant can seek a license to expand a solid waste disposal facility, the applicant must apply to the Department for a determination of whether the proposed facility provides a substantial public benefit. 38 M.R.S. § 1310-AA(1). Section 1310-AA(3) lists the standards a proposed facility must meet before the Department finds it provides a substantial public benefit. Four of those standards are relevant to the proposal here: (1) whether the facility "[m]eets immediate, short-term or long-term capacity needs of the State"; (2) whether the facility "is consistent with

the state waste management and recycling plan and promotes the solid waste management hierarchy"; (3) whether the facility "[i]s not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal"; and (4) whether the facility "is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed." *Id.* § 1310-AA(3)(A)-(C), (E).

Petitioners do not challenge the Department's determination that the proposed expansion of JRL meets the first and third of these criteria. A brief consideration of the first criterion is nonetheless warranted because it overshadows the entire dispute.

JRL lies at the base of a statewide system of waste disposal that relies heavily on JRL's available capacity and continued operation. All facilities upstream of JRL send it waste they cannot manage themselves. Limits on the capacity of those upstream facilities, and the ever-growing volume of waste requiring disposal, lend an urgency to BGS's application for expansion. The record demonstrates that the State will simply have no place to put a vast volume of waste if JRL cannot take it. This sense of urgency informs the Department's and NEWSME's arguments to such a degree that they seem to regard it as practically, if not legally, definitive of this appeal.

The court recognizes urgent reality but cannot read the statute as the Department and NEWSME seem to. There is nothing in the statute affording to one

of the four stated criteria greater weight than the other three. The court will therefore address the two contested criteria on a basis equal to the two not in dispute.

1. The State Waste Management and Recycling Plan and Solid Waste Management Hierarchy

The proposed expansion of JRL provides a substantial public benefit only if it "is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy." 38 M.R.S. § 1310-AA(3)(B). The Department prepares the state waste management and recycling plan every five years pursuant to 38 M.R.S. § 2122 (2025). Section 2122 provides:

> The department shall prepare an analysis of, and a plan for, the management, reduction and recycling of solid waste for the State. The plan must be based on the priorities and recycling goals established in sections 2101 and 2132. The plan must provide guidance and direction to municipalities in planning and implementing waste management and recycling programs at the state, regional and local levels.

38 M.R.S. § 2122. The Department published the most recent plan in January 2024. R. 4.

The solid waste management hierarchy establishes an order of priority that forms the basis for the State's approach to solid waste management. *See* 38 M.R.S. § 2101(1) (2025). The hierarchy provides:

> 1. Priorities. It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, which must be based on the following order of priority:
>
> A. Reduction of waste generated at the source, including both amount and toxicity of waste;
>
> B. Reuse of waste;

C. Recycling of waste;

D. Composting of biodegradable waste;

E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and

F. Land disposal of waste.

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

2. Waste reduction and diversion. It is the policy of the State to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts by encouraging new and expanded uses of solid waste generated in this State as a resource.

Id. § 2101 (2025).

The parties' dispute over this criterion centers primarily on whether the Department should require Casella to dry (or "dewater") the wastewater treatment plant sludge it receives before landfilling it, rather than to continue its current practice of mixing undried sludge with CDD and OBW to stabilize it. *See* R. 136. Petitioners argue sludge drying is necessary for the proposed expansion of JRL to be consistent with the state waste plan and the solid waste management hierarchy because drying the sludge would greatly reduce the volume of waste that is landfilled. *See* Pet'rs' Br. 19-20. The Department argues sludge drying is not necessary because the state waste plan identifies expanding JRL's capacity as "necessary," Resp't's Br. 11, and because requiring sludge drying at this stage would be "premature," Resp't's Br. 15.

There are many pages in the parties' briefs dedicated to the issue of sludge drying. There are many public comments in the record urging that Casella be required to dry the sludge. *See* R. 1384-85, 1488, 1591, 2013, 2179. But the record does not show the Department ever actually considered requiring Casella to dry the sludge before disposing of it. Instead of addressing the issue directly in the PBD, the Department circled it by touching on related matters. The Department said, for example, concerning the possibility of sludge drying at outside facilities, "If Casella were . . . to require the generators to dry [sludge] further, this would increase the burden on municipalities and require time to develop and implement a solution." R. 15. The Department found that "landfill space will still be required for sludge when drying or anaerobic digestion facilities are not operating due to planned maintenance of malfunction events." R. 15. The Department also "recognize[d] that new facilities may become operational in the future to reduce the volume of wastewater treatment plant sludge either by drying or anaerobic digestion." R. 15. Additionally, the Department included a condition in the PBD requiring Casella to evaluate and to report on "the availability and capacity of regional facilities in Maine to reduce the volume of municipal wastewater treatment plant sludge prior to landfilling at JRL." R. 15.

As the Department acknowledged in the PBD, "[r]eduction in volume of waste is one of the priorities in Maine's solid waste management hierarchy." R. 15. The Department's discussion of sludge drying at outside facilities may support a finding that JRL's landfilling of sludge, in some form, is consistent with the state waste plan

and promotes the solid waste management hierarchy. Left unaddressed is whether a requirement for sludge drying on site at JRL might be a necessary precondition to such a finding. Because the Department did not address directly whether it should require sludge drying, the court cannot determine whether the Department in fact considered such a requirement in its analysis. In turn, the court cannot evaluate the Department's conclusion that the proposal is consistent with the state waste plan and the solid waste management hierarchy. The court must remand the case for the Department to consider the practicability and necessity for on-site sludge drying as a criterion for a positive determination of public benefit.

This conclusion is not undermined by the state waste plan's statement that expansion of JRL will be necessary. That statement of virtually indisputable fact does not override the Department's obligation to assess all the statutory criteria thoroughly, including the necessity for sludge drying at JRL. As the Department acknowledges, the plan states that expansion of JRL "will be necessary *in addition to* proactive steps to increase waste infrastructure options as well as enhancing efforts toward meeting statutory waste reduction, diversion, and recycling goals." Resp't's Br. 11 (emphasis added) (quoting R. 139).

Although the court does not reach the ultimate question of whether sludge drying should be required, it will comment on the Department's argument that such a requirement would be premature. The Department contends that "[r]equiring a specific technology or sludge management modality during the threshold PBD process . . . could well result in imposition of a condition that is inconsistent with

other technological aspects of the proposal, impracticable, or inferior to other technologies that emerge during the licensing process." Resp't's Br. 14-15. The Department adds that, "[w]ithout even knowing what specific design BGS is going to propose in its license application, the Department would be putting the cart before the horse by restricting what BGS may propose." *Id.* at 15. These arguments may be intuitive in a vacuum, but the Department's decisions in this very PBD belie its contentions.

In the environmental justice section of the PBD, the Department mandated that Casella "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." R. 21. This condition does not specify any particular method or system but rather specifies the broader result that must be achieved—treating landfill leachate for PFAS—and gives Casella and the Department general guidance to reach that result. The Department has not provided any reason why an analogous condition for decreasing the volume of sludge would be inherently incompatible with the current stage. The Department's inclination to defer practical requirements to the licensing stage also overlooks the present-tense language in the PBD statute, which requires the proposal to meet the standards at that stage and not later. *See* 38 M.R.S. § 1310-AA(3)(B) (applicant must demonstrate to Department that proposed facility "is consistent with" state waste plan and "promotes" solid waste management hierarchy).

In addition to urging a sludge-drying requirement, Petitioners argue the Department should have placed a cap on the volume of CDD fines that Casella imports to JRL each year and should have established a maximum fill rate for JRL. Unlike sludge-drying, the court finds the Department considered these proposals. The Department found that 9% of the waste JRL receives consists of CDD fines, R. 8, and that "JRL's daily cover, as a percentage of the total waste received, appears reasonable in comparison to similar landfills in Maine," R. 11. The Department also discussed in detail the capacity of the proposed expansion and its projected lifespan. *See* R. 3, 7-12, 14-15. Because the PBD must be remanded for other reasons, the court need not decide whether these findings were supported by substantial evidence.

2. Environmental Justice

To find a proposed facility provides a substantial public benefit, the Department must determine that the proposed facility "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).

> As used in this paragraph, "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. "Environmental justice" 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. The environmental justice criterion was added to the statute in 2022, *see* P.L. 2021, ch. 626, § 5 (effective Aug. 8, 2022). It has not yet been interpreted in any reported decision.

The environmental justice criterion carries with it a procedural challenge generated by an apparent statutory anomaly. In response to Petitioners' arguments about sludge-drying, the Department and NEWSME argue with vigor that the public benefit determination is a preliminary step with a truncated timeline that a PBD, if granted, will generate a much longer and more expansive licensing inquiry into the same subject matter. By contrast, environmental justice appears as an issue only in that preliminary step with its truncated timeline. As this case demonstrates, issues of environmental justice can be factually complex and legally determinative of whether a project will be approved.

The statute requires that a proposal ensure an affected community's "right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment[.]" 38 M.R.S. § 1310-AA(3)(E). This criterion compels consideration of the circumstances in which that community exists. In the case of the Penobscot Nation, those circumstances are historical, cultural, and geographic.

The Penobscot Nation is an Indigenous community that originated in a specific region and melded its economy, diet, folkways, and religion to that place. The nature of this historic connection is captured in the record. *See* R. 1376, 1389, 1393, 1573-74, 1593, 1609, 1804, 1806, 1868, 1888, 2008, 2013, 2044-45, 2182. Although the Penobscot Nation still occupies part of its historic geographical location, it has been engulfed by a larger society defined by economic, cultural, and ecological norms incompatible with the Penobscot Nation's understandings and practices. To state this historic fact is not to evaluate the Penobscots' way of living as superior or inferior to

the culture that substantially displaced it. It is simply to state the reality that generates the environmental justice element of the statute: The Penobscot Nation is a group distinguished by "ancestry, . . . ethnicity, . . . national origin or religion." It is also, as such a group, distinguished by having 3 major landfills and 72 closed but insecure landfills in its immediate vicinity. R. 1393-94

The Department's assessment of environmental justice for this group appears to have fallen in three categories: to gather commentary and information about the history and circumstances outlined above; to reflect that information back to the community and show it has been heard; then to set the information aside in favor of a narrow evaluation that excludes history entirely.

In the environmental justice section of the PBD, the whole of the discussion of the Penobscot Nation consists of the following two sentences:

> The Penobscot Indian Nation [*sic*], a federally recognized tribe, which is based on Indian Island near Old Town, has deep connections to the land and waterways of the Penobscot River. The Penobscot River is considered the heart of the Penobscot culture and is relied on for food, drinking water, transportation, and other cultural facets.

R. 18. The Department then limited its actual evaluation to reciting the chemical burden the Penobscot Nation bears and comparing it to that of neighboring communities. The Department wrote:

> Based on EPA's Environmental Justice Screening and Mapping Tool (Version 2.3), Indian Island and the Penobscot River to just above the Mattaseunk Dam is part of a block ground identified as a Designated Disadvantaged Community according to EPA Justice40 criteria (designated for energy, health, and American Indian Reservation Lands) and EPA Inflation Reduction Act ("IRA") Data 2.0 criteria. The tract of land where JRL is located is identified as disadvantaged according to EPA IRA Data 1.0. There are 20 disadvantaged tracts in

> Penobscot County and 127 disadvantaged tracts in Maine according to EPA Justice40 criteria.
>
> Based on environmental justice indicators, the block group that includes Indian Island is above the 95th percentile when compared to state date for several indexes including wastewater discharge, hazardous waste proximity, underground storage tanks, and toxic releases to the air. Within the 19.36-square-mile block, 7 regulated sites (1 water discharger and 6 brownfields) report data to EPA. For the block group that includes JRL, there are 2 environmental justice indexes (toxic releases to air and wastewater discharge) that are in the 50th to 80th percentile range when compared to state data. There are no environmental justice indicators at higher percentiles. As part of this block group, there is one regulated water discharger and two regulated air polluters that are required to report data to EPA.
>
> . . . .
>
> Based on the Department's draft *2024 Integrated Water Quality Report,* a total of seven segments on the mainstem of the Penobscot River from the confluence of the East and West Branches to Reed Brook in Hampden and the West Branch Penobscot River between Millinocket Stream and East Branch Penobscot River are listed as impaired for aquatic life. Maine has established safe eating guidelines for fish from the Penobscot River below Lincoln of no more than one to two meals per month of any fish species based on testing for PCBs, dioxins, and DDT.

R. 17-18 (citation modified).

NEWSME noted in its argument that JRL was originally built next to a paper mill, which suggests JRL's placement reflected utility rather than disregard for the Penobscot Nation. NEWSME Br. 22. But the Department did not explore the reason why the Penobscot Nation has had 72 other landfills inflicted on it in addition to two other State-owned facilities. The bare historical record suggests the landfills other than JRL were built not because the Penobscot Nation acquiesced in their construction but because it was powerless to prevent it; whether or not this is true, the Department made no effort to consider it. To the contrary, at oral argument

NEWSME disputed the record that the landfills exist. Oral Argument at 1:27:29-39, July 18, 2025.

In summary, the Department recited but did not analyze the Penobscot Nation's intimate relationship with the Penobscot River and surrounding region, evaluate how that particular characteristic might bear on environment justice, or meaningfully assess how that interest was burdened before BGS's application was presented.

The court must yield to an agency interpretation of a statute it administers, so long as that interpretation is reasonable. But the court need not defer if the subject matter under review is not within the agency's expertise. *See E. Me. Conservation Initiative,* 2025 ME 35, ¶ 22, 334 A.3d 706 (court defers to agency's statutory interpretation only when it is "both administered by [the] agency and within the agency's expertise"). The Department's interpretation as derived from its narrow focus on empirical observations of environmental chemistry show it is not specially equipped to assess the complex assembly of historical, geographical, and cultural factors presented by BGS's application. This conclusion is amplified by a number of statutes that recognize the particular interests of the Penobscot Nation and other Wabanaki communities, a status not reflected in the Department's evaluation. *See, e.g.,* 5 M.R.S. §§ 11051-56 (2025) (Tribal-State Collaboration Act); 30 M.R.S. §§ 6201-14 (2025) (Act to Implement the Maine Indian Claims Settlement); 22 M.R.S. §§ 3941-55 (2025) (Maine Indian Child Welfare Act); 30 M.R.S. §§ 7201-10 (2025) (Mi'kmaq Nation Restoration Act).

CONCLUSION

With respect both to the waste management hierarchy and the issue of environmental justice, the Department did not complete fact finding critical to its public benefit determination. The record therefore cannot support meaningful judicial review. The court must remand the case for the Department to make further factual findings and, in accordance with *Sanborn*, 425 A.2d at 631, retain jurisdiction. On remand, the Department must make detailed findings on the necessity and practicability of requiring sludge-drying. The Department must also 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 Nation's intimate relationship with the Penobscot River permit a finding that the proposal fulfills environmental justice. Finally, the Department must reevaluate whether the proposed expansion of JRL—with the original conditions or additional ones—meets the criteria for a determination of public benefit.

The entry is:

1. Petitioners' motion for judicial notice is granted.
2. Case remanded to Maine Department of Environmental Protection for further proceedings consistent with this order.
3. The Department shall make further findings and issue a revised public benefit determination within 75 days of this order.
4. The court retains jurisdiction over this matter.

The clerk is directed to incorporate this order into the docket by reference. M.R. Civ. P. 79(a).

Dated: 01/07/2026

Bruce C. Mallonee
Justice, Maine Superior Court

Entered on the docket: 01/07/2026

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