STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET 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.

RESPONDENT'S BRIEF

INTRODUCTION

In response to this Court's remand order, Respondent, the Maine Department of Environmental Protection ("Department"), made further findings of fact and issued a revised Public Benefit Determination ("PBD") in which it concluded that the proposed expansion of the Juniper Ridge Landfill ("JRL") will provide a substantial public benefit. As directed by the Court, the Department expressly considered whether sludge drying should be required at JRL as a condition of any license for expansion. The Department explained why such a requirement is not necessary but included a requirement that any license for expansion must set annual limits on the amounts of sludge and construction and demolition debris that can be disposed of in the licensed expansion area.

Also as directed by the Court, the Department applied a standard for analyzing environmental justice that considered the cumulative environmental burdens borne by the

Penobscot Nation and its special relationship with the Penobscot River. The Department specifically considered existing landfills near the Penobscot Nation in the context of the history of waste management in the Penobscot River watershed and the Department's historical and ongoing work to mitigate the effects of those landfills, the vast majority of which are now closed, through inspection, monitoring, and remediation.

The Department considered evidence that operations at JRL have had a minimal effect (if any) on groundwater and surface waters. The Department also considered, however, that JRL's leachate is treated and discharged into the Penobscot River. The leachate is discharged into the river from a wastewater treatment plant that is located *downstream* of all segments of the river that are designated by state law for tribal sustenance fishing. Nevertheless, the Department required that if JRL is expanded, its leachate must be treated for per- and polyfluoralkyl substances ("PFAS") before it is transferred to the wastewater treatment facility.

Based on these and other considerations and record evidence, the Department concluded in the revised PBD that its ongoing work to inspect, monitor, and remediate closed landfills, combined with the requirement to treat JRL's leachate for PFAS, support a determination that the proposed expansion of JRL will not unduly burden the community that includes the Penobscot Nation, even considering the cumulative effect of the existing environmental burdens on that community. The Department applied an appropriate standard for environmental justice as directed by the Court, which was reasonable and is entitled to deference, and committed no error of law in applying the record evidence to that standard. The Department's conclusion regarding environmental justice also is supported by substantial evidence in the record. The Department further complied with the Court's remand order when it carefully explained its well-supported conclusion that sludge drying at JRL is not a necessary condition for any licensed expansion.

For all these reasons, the Court should conclude that the Department has made sufficient factual findings as directed by the Court, committed no error of law, and reached a conclusion regarding the JRL expansion's public benefit that is supported by the administrative record.

RELEVANT BACKGROUND[1]

On January 7, 2026, this Court remanded this matter to the Department for further fact finding as to whether the proposed expansion of JRL will provide a substantial public benefit. Specifically, the Court ordered the Department to (1) "make detailed findings on the necessity and practicability of requiring sludge-drying" and (2) "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." Order on 80C Appeal (Jan. 7, 2026) ("Order") at 16. The Court gave the Department 75 days to make the further findings and issue a revised PBD pursuant to 38 M.R.S. § 1310-AA. *Id.*

On March 23, 2026, the Department issued its revised PBD. Recognizing that the current management of wastewater treatment plant ("WWTP") sludge is inconsistent with both the state waste management and recycling plan ("State Plan") and the solid waste management hierarchy, the Department made a new finding that if a license for expansion is issued, the Department must impose a condition establishing annual limits on the amounts of municipal WWTP sludge and construction and demolition debris ("CDD") that can be disposed of in the expansion area. Administrative Record ("A.R.") 3148-50. Regarding the necessity and practicability of requiring sludge drying on site at JRL, the Department found that because a new sludge-drying facility that

[1] The Department respectfully refers the Court to its prior response brief, dated February 20, 2025, for the complete factual and legal background to this matter and here concentrates on the procedural history since this Court's remand order.

will be able to process approximately 80% of the State's municipal WWTP sludge will soon begin operations, it is not necessary to require that a similar facility be designed and constructed on site at JRL for the proposed expansion to be consistent with the State Plan and the solid waste management hierarchy. A.R. 3148-49.

Regarding the environmental justice criterion—whether the proposed project is "not inconsistent with ensuring environmental justice for the community in which" the project is proposed, 38 M.R.S. § 1310-AA(3)(E) —the Department first outlined its interpretation of the guiding statutory language, while also considering the Court's remand order:[2]

> In the absence of further guidance from the Legislature, the Department applies its expertise, as the agency tasked by the Legislature with conducting the public benefit determination, to interpret the "not inconsistent with ensuring environmental justice" standard. In addition, in issuing this revised PBD determination, the Department is subject to the Order on Appeal of the Penobscot County Superior Court issued on January 7, 2026. Therefore, not only is the Department interpreting the statutory language based on its own expertise, but it is also incorporating certain considerations as ordered by the Superior Court.
>
> Accordingly, for purposes of this revised PBD determination as ordered by the Superior Court, the Department interprets the environmental justice standard to require the Department to determine that the proposed expansion of JRL: (1) does not unduly burden the potentially affected community, considering the cumulative effect of the existing environmental burdens borne by that community; and (2) is subject to a fair review process that includes the meaningful engagement of all people in the potentially affected community.

A.R. 3152. The Department further explained that "[f]or purposes of the environmental justice analysis for this PBD, the Department considers the proposed project's impacts on the municipalities in which JRL is sited, the City of Old Town and Town of Alton[,] and the Penobscot Nation, whose Indian Island Reservation is about 3.5 miles from JRL at the shortest straight-line distance"—what the Department termed the "project community." A.R. 3152-53. The

[2] The Department noted its objection in the revised PBD and continues to respectfully object to this Court's interpretation of the environmental justice standard as requiring consideration of "cumulative environmental burdens" and reserves its right to appeal or otherwise dispute that interpretation.

Department then considered "both existing environmental burdens and the burden of the proposed project itself" on the project community "[t]o assess whether the proposed project will unduly burden" that community. A.R. 3153.

Regarding the Penobscot Nation specifically, the Department recognized, consistent with this Court's remand instructions, the proposed project's "potential impact on, and the Penobscot Nation's special relationship with, the Penobscot River."[3] A.R. 3153. Therefore, to assess whether the proposed project will unduly burden the Penobscot Nation, the Department first considered existing burdens on the Penobscot River, including the present operations of JRL and the status and condition of operating and closed landfills in the Penobscot River watershed. A.R. 3153-62. The Department then considered the potential additional impacts of the proposed project itself on the Penobscot River. A.R. 3165. The Department found, "based on existing JRL operations and the demonstrated minimal effects of those operations on groundwater and surface waters"—that is, the absence of any evidence that JRL is leaking into surrounding waters or that such leaking will occur under the proposed expansion—that the proposed project "will have a limited impact, if any, on groundwater and surface waters." *Id.* However, the Department also found, "based on an evaluation of public comments, consideration of the Penobscot Nation's cultural relationship to the Penobscot River, and the availability and efficiency of technologies for the treatment of leachate for PFAS . . . that it is reasonable and appropriate to require [JRL operator] Casella to design, install, and operate a PFAS treatment system for its leachate prior to the operation of the proposed expansion, if a license is issued by the Department." *Id.* The Department therefore concluded

[3] In their second 80C brief, Petitioners do not raise any arguments regarding the Department's analysis of the environmental justice criterion with respect to the non-Penobscot Nation residents of the City of Old Town and the Town of Alton. The Department therefore confines its discussion of the environmental justice criterion throughout this brief to the Penobscot Nation.

> that [the Department's] ongoing efforts to inspect, monitor and remediate closed landfills, combined with the unprecedented requirement that JRL's leachate be treated for PFAS before it is delivered to [a WWTP for treatment and discharge to the Penobscot River], support a finding that the proposed expansion of JRL will not unduly burden the project community, even considering the cumulative effect of the existing environmental burdens that are borne by that community.

A.R. 3165-66.[4] Finally, given the Department's conclusion that the proposed expansion satisfies all the PBD criteria outlined in 38 M.R.S § 1310-AA(3), including environmental justice, the Department determined that the proposed expansion provides a substantial public benefit such that JRL can apply for a license for its expansion. A.R. 3168-69.

In its order dated April 1, 2026, the Court ordered the parties to file supplemental briefs "limited to discussion of the issues identified by the Court for further Department fact-finding and evaluation in the remand order." Order on Parties' Joint Mot. for Scheduling Order (Apr. 1, 2026).

ARGUMENT

I. The Revised PBD Is Not Affected by Any Error of Law.

Petitioners contend that the Department committed legal error in its analysis of the environmental justice criterion. However, they offer nothing more than conclusory assertions to support their contention. *See* Petitioners' Second 80C Brief ("Pet'rs' Br.") 28. Although Petitioners may criticize various aspects of the revised PBD, they do not demonstrate that the Department violated the governing statutory language or otherwise committed legal error.

In the revised PBD, the Department again applied the PBD statute to assess whether the proposed project 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). The statute defines

[4] In the revised PBD, the Department also assessed whether it had provided "a fair review process that offers a meaningful opportunity for all project community members, including those who have been historically marginalized, to express their concerns" and "weigh[ed] the concerns of the entire project community." A.R. 3166-67. Because this aspect of the PBD was not a subject of the Court's remand, and because Petitioners do not raise any arguments regarding this aspect in their second brief, the Department does not address it further in this brief.

environmental justice, at the highest level of generality, as "the right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment regardless of" individual characteristics, "includ[ing] 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 statute, however, does not specify how the Department is to determine whether an actual project is "not inconsistent with ensuring environmental justice." In the absence of specific statutory directive—and considering that the federal government is no longer providing guidance on environmental justice[5]—the Department has the duty to reasonably interpret the statute the Legislature has charged it with implementing. The Department did so, *see* A.R. 3152, and Petitioners have not identified any *legal error* in the Department's interpretation.

Indeed, Petitioners continue to give short shrift to a fundamental precept of administrative law—that an agency's reasonable interpretation of a statute it administers "is entitled to great deference," *FPL Energy Me. Hydro LLC v. Dep't of Env't Prot.*, 2007 ME 97, ¶ 11, 926 A.2d 1197 (internal quotation marks omitted), and will only be overturned if "the statute plainly compels a contrary result," *Passadumkeag Mountain Friends v. Bd. of Env't Prot.*, 2014 ME 116, ¶ 12, 102 A.3d 1181; *Snakeroot Solar, LLC v. Pub. Utils. Comm'n*, 2025 ME 64, ¶ 30, 340 A.3d 99 (same).

In its remand order, this Court suggested that it would not afford deference to the Department because environmental justice "is not within the agency's expertise." Order at 15. Courts, however, must "defer to the interpretation of a statutory scheme by the agency charged with its implementation as long as the agency's construction is reasonable." *Conservation L.*

[5] *See, e.g.*, "EPA Terminates Biden's Environmental Justice, DEI Arms of Agency" (Mar. 12, 2025), available at https://www.epa.gov/newsreleases/epa-terminates-bidens-environmental-justice-dei-arms-agency (last visited June 8, 2026).

Found., Inc. v. Dep't of Env't Prot., 2003 ME 62, ¶ 23, 823 A.2d 551. The Department recognizes that the Law Court recently quoted from a line of precedent stating that agency deference principles apply to a statutory scheme "that is '*both* administered by [an] agency *and* within the agency's expertise.'" *E. Me. Conservation Initiative v. Bd. of Env't Prot*, 2025 ME 35, ¶ 22, 334 A.3d 706 (quoting *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, ¶ 22, 227 A.3d 1117) (emphasis added). This language could be read to suggest a two-part inquiry before deference will be granted: (1) whether the agency is charged with implementing the statutory scheme; and, if so, (2) whether the subject matter of the statutory scheme is within the agency's expertise. But although courts have occasionally used this "both . . . and" formulation, no court in Maine has ever denied deference to an agency's substantive interpretation and application of its own statutory language based on the court's view that the agency is simply not expert enough in the substantive area of regulation.

Rather, courts have made clear that an agency will receive deference regarding the substance of a statute it administers but is not entitled to deference regarding how that statute is impacted by other laws and legal sources outside the statute itself—that is, by areas manifestly outside the agency's expertise. For example, in *Guilford Transportation Industries v. Public Utilities Commission*, in what is perhaps its fullest explication of when something is outside an agency's expertise, the Law Court explained:

> We do not defer to an agency's interpretation of a statute or legal doctrine when that statute or doctrine is beyond that agency's expertise. *See LeBlanc v. United Eng'rs Constructors Inc.*, 584 A.2d 675, 677 (Me. 1999) (holding that the Workers' Compensation Commission is not entitled to deference in its determination of the jurisdictional requirements of the federal constitution); *Dorr v. Maine Maritime Academy*, 670 A.2d 930, 932 (Me. 1996) (refusing to give deference to the Workers' Compensation Commission's interpretation of a federal statute); *Van Houten v. Harco Const. Inc.*, 655 A.2d 331, 333 (Me. 1995) (reviewing independently the agency's decision that an employer was not collaterally estopped from relitigating an issue).

Guilford, 2000 ME 31, ¶ 11 n.4, 746 A.2d 910. In the examples cited by *Guilford*, the courts refused to give deference where the agency was manifestly outside its area of expertise in opining on the legal effects of the federal constitution, a federal statute, and judicial principles of collateral estoppel. The case law, then, does not support the proposition that, despite the Legislature's assignment of the administration of the PBD statute to the Department, and the Department's expertise in and subject matter focus on environmental issues, a court may deny deference to the agency's reasonable interpretation of the statute because it believes that the agency is not adept at considering environmental justice. Such an approach would upend administrative law, denying deference to agencies based on courts' varying determinations of whether an agency is good at its job and foreclosing deference for emerging issues, like environmental justice, over which an agency is necessarily developing its expertise. Therefore, we respectfully suggest that it would be plain legal error for a court to deny deference to an agency's reasonable interpretation of a statute because the court determines that the agency is "not specially equipped" to administer the statutory scheme it was charged by the Legislature with implementing. *See* Order at 15.

Accordingly, the Department's interpretation of the PBD statute as requiring the Department to determine that the proposed expansion of JRL (1) does not unduly burden the potentially affected community, considering the cumulative effect of the existing environmental burdens borne by that community; and (2) is subject to a fair review process that includes the meaningful engagement of all people in the potentially affected community, is a reasonable reading of the statute that is entitled to deference.

In contrast, Petitioners argue for an interpretation of the environmental justice standard that is wholly unreasonable, contending that if the proposed project would have any impact whatsoever on the Penobscot Nation, it cannot satisfy the environmental justice standard as a matter of law.

See, e.g., Pet'rs' Br. 27 ("[A] sensible and critical mitigation measure *does not erase* a landfill's burden on a neighboring tribal reservation."); 30 ("[A] PFAS treatment system *will not serve to eradicate* the disparate harm that an expansion of JRL will cause the Penobscot Nation, only to dampen it.") (emphases added). This proposed zero impact standard appears for the first time in Petitioners' second 80C brief and is a significant departure from their petition and their first brief, in which they argued that the PBD could be approved with conditions mitigating the proposed project's environmental impact. *See, e.g.*, 80C Pet. ¶¶ 95-105, 120; Pet'rs' First 80C Br. 28-33. Petitioners should not be allowed to propose an entirely new legal standard for environmental justice at this point in these proceedings, essentially amending their petition and taking a different position than in their first brief. But in any event, their new argument that the PBD must be denied because the proposed expansion's impact on the Penobscot Nation will be something greater than zero is not a reasonable reading of the statute. If the Legislature had intended the environmental justice standard to require no impact whatsoever, the Legislature could have simply prohibited any expansion of JRL the way it recently prohibited the development or use of the licensed Carpenter Ridge site as a State-owned landfill. *See* P.L. 2026, ch. 651, § 6.

For these reasons, the Department did not commit legal error, and the revised PBD should be upheld.[6]

[6] Petitioners, in the most cursory way, also assert that the revised PBD is arbitrary and capricious and an abuse of discretion. *See* Pet'rs' Br. 28-29. Their boilerplate argument is that the Department exceeded the bounds of reasonable choices available to it. *See* Pet'rs' Br. 28-29 (citing *Lippitt v. Bd. of Certification for Geologists & Soil Scientists*, 2014 ME 42, ¶ 16, 88 A.3d 154). Regardless of its undeveloped nature, at its core, their argument relies on the contention that the Department misweighed or ignored various pieces of evidence, and the Law Court has recently reiterated that it is not a court's role to weigh the evidence differently in its review of whether a government agency acted arbitrarily or capriciously. *See Mick Land Dev., Inc. v. Town of S. Berwick*, 2026 ME 53, ¶ 26, _ A.3d _. Because these purported errors in assessing the record are also germane to the Petitioners' argument that the revised PBD is unsupported by substantial evidence, they are further addressed in the substantial evidence section below.

II. The Revised PBD Is Supported by Substantial Evidence.

A court "must affirm" the agency's conclusions "if they are supported by substantial evidence in the record, even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency." *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 13, 989 A.2d 1128. The Department's determination that the proposed project is "not inconsistent with ensuring environmental justice" because it will not unduly burden the Penobscot Nation is supported by substantial record evidence and should be affirmed.

In assessing the proposed project's impact on the Penobscot Nation, the Department focused on the Penobscot River.[7] As explained above, to determine whether the proposed project will unduly burden the Penobscot Nation through the project's potential impact on the Penobscot River, the Department considered (1) existing impacts on the Penobscot River, and (2) the proposed expansion's potential impact.

Regarding existing impacts, the Department considered multiple sources of environmental harm but focused on the existence and condition of the 93 landfills within the Penobscot River watershed, for several reasons. First, this Court made clear in its remand order that the existence and condition of other landfills was a critical issue for the Department's consideration: in addition to directing the Department to consider "the existence and condition of other landfills near" the

[7] The Department reasonably focused on the condition of the Penobscot River for several reasons. First, Petitioners have themselves focused on the Penobscot River when discussing the impacts of the proposed expansion on the Penobscot Nation. *See, e.g.*, 80C Pet. ¶¶ 4, 7-8, 30, 32-38; Pet'rs' Br. 5-13. Second, as noted above, this Court specifically instructed the Department to consider the proposed expansion's environmental impacts in relation to the "Penobscot Nation's intimate relationship with the Penobscot River." Order at 16. Third, beyond this Court's directive, the Department has always recognized, including in the first PBD, the deep importance of the Penobscot River to the Penobscot Nation and the necessity of respecting that relationship. *See* A.R. 18; A.R. 3153, 3161. The Department also considered other potential impacts unrelated to the Penobscot River, but because Petitioners do not raise them in their second brief, and because the Department has addressed them in its first brief and in the revised PBD, these other impacts are not discussed further in this brief.

Penobscot Nation, the Court specifically noted the other landfills in the vicinity of the Penobscot River as a critical issue that the Department neglected to consider in the first PBD. *See* Order at 14-15, 16. Second, Petitioners have repeatedly raised the existence and status of other landfills as a critical issue for the Department's consideration when applying the environmental justice criterion. *See, e.g.*, Pet'rs' First 80C Br. 6, 26-27; Order at 14-15 (discussing the issue of existing landfills as raised by Petitioners in their initial briefing). Third, the Department, applying its best judgment as the regulator charged with overseeing the State's solid waste system, reasonably determined that understanding the location and existing impact of landfills in the Penobscot River watershed would be the best way to assess the proposed project's cumulative burden on the Penobscot River and the Penobscot Nation.

Providing context for the 93 landfills within the Penobscot River watershed,[8] the Department found, and Petitioners do not seriously challenge, that the landfills

> are spread throughout the Penobscot River watershed, which occupies over 8,500 square miles—approximately 25% of the state's land mass. For perspective, five of these landfills (including JRL) are located within a five-mile radius of Indian Island. This is not unusual because historically, each municipality typically had at least one landfill with some having two separate ones for MSW [municipal solid waste] and CDD. This history of municipal landfills in Maine is reflected in the four former municipal landfills located within five miles of Indian Island.

A.R. 3159.[9]

The Department then found, and Petitioners do not seriously challenge, that "[t]he vast majority" of these landfills in the Penobscot River watershed "are closed and not operating." A.R.

[8] As explained in the revised PBD, "[t]hese historic waste disposal sites may not all be accurately characterized as 'landfills' as that term is used today, but for ease of reference, they are referred to herein as landfills." A.R. 3159 n.20.

[9] In total, there are five existing or former landfills within five miles of Indian Island—JRL and four municipal landfills that are now closed, except for the CDD portion of the Orono landfill, which continues in operation. A.R. 3159 & n.21.

3159. The Department further described the robust Department programs in place to monitor and eliminate environmental hazards from these closed landfills, including the measures, ongoing monitoring, and positive testing results from the closed municipal landfills near Indian Island. A.R. 3159-60. Concerning the two other State-owned sites in the Penobscot River watershed besides JRL, the Department found that the Carpenter Ridge Landfill site has not been developed,[10] that the Dolby Landfill in East Millinocket has been closed since 2024, and that Dolby's leachate volumes have already been reduced from an average of 74.2 million gallons per year ("MGY") to 22 MGY in 2025, with further reductions expected due to the pending final cover upgrade project. A.R. 3160-61.

Regarding JRL itself, the Department found, and Petitioners do not seriously challenge, that the existing

> risk of groundwater contamination from JRL is minimal because the entire landfill footprint is fully lined and the facility has a robust environmental monitoring plan that is used to detect landfill leakage should it occur. JRL is a modern-day landfill and the only solid waste landfill facility in Maine that is fully lined.

A.R. 3156. The Department further noted that "[b]ased on the Department's most recent review of JRL's annual monitoring report, the Department concluded that '[g]roundwater, surface water, porewater, underdrain and leak detection monitoring results continue to show minimal evidence of impact from landfill leachate.'" *Id.*

Because there is minimal evidence (if any) that JRL's operations affect groundwater or surface waters through leaks, the Department evaluated the disposition of JRL leachate and turned to the discharge of JRL leachate through the Nine Dragons WWTP ("Nine Dragons") to the

[10] As noted above, after the revised PBD was issued, the Legislature enacted a law that prohibits the development or use of the Carpenter Ridge site as a State-owned landfill, thereby ensuring that it will not be developed for this purpose. *See* P.L. 2026, ch. 651, § 6.

Penobscot River. This discharge is licensed pursuant to the federal Clean Water Act, state law, and applicable regulations. *See* A.R. 731. The Department noted the current discharge volume, the demonstrated presence of PFAS in the leachate, and the fact that Nine Dragons is not required to—and currently does not—treat the leachate for PFAS. A.R. 3157.

Based on these findings regarding the status of existing landfills and the minimal impact of JRL's current operations on groundwater and surface waters, the Department supportably concluded that most aspects of the proposed expansion "will have a limited impact, if any, on groundwater and surface waters," including the Penobscot River. A.R. 3165. However, the Department also concluded that, because of the presence of PFAS in the leachate, which is discharged to the Penobscot River via Nine Dragons after treatment for other contaminants, "it is reasonable and appropriate to require Casella to design, install, and operate a PFAS treatment system for its leachate prior to the operation of the proposed expansion, if a license is issued by the Department." *Id.* With this important condition on perhaps the sole source of direct environmental impact from the proposed expansion on the Penobscot River, the Department concluded that the proposed project would not unduly burden the Penobscot Nation and satisfies the environmental justice standard. *See* A.R. 3165-66, 69.

In short, the Department carefully considered the record evidence and reached a conclusion that is fully supported by that evidence.

III. Petitioners' Arguments that the Revised PBD Is Unsupported by Substantial Evidence Are Unavailing.

"[T]he substantial-evidence standard of review 'does not involve any weighing of the merits of evidence'" and a court "'will vacate an agency's factual findings only if there is no competent evidence in the record to support the findings.'" *Ouellette v. Saco River Corridor Comm'n*, 2022 ME 42, ¶ 20, 278 A.3d 1183 (quoting *AngleZ Behav. Health Servs. v. Dep't of*

Health & Hum. Servs., 2020 ME 26, ¶ 12, 226 A.3d 762). Provided "there is *any* competent evidence in the record to support a finding," a court must affirm an agency decision "even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency." *Friends of Lincoln Lakes,* 2010 ME 18, ¶¶ 13-14, 989 A.2d 1128 (emphasis added). As the parties seeking to vacate the Department's decision, Petitioners bear the burden of persuasion on this point. *Somerset Cnty. v. Dep't of Corr.*, 2016 ME 33, ¶ 14, 133 A.3d 1006.

Petitioners, then, must demonstrate that there is *no competent evidence in the record to support the Department's determination* that the proposed project satisfies the environmental justice standard. Petitioners do not even attempt to meet this burden. Instead, they point to individual pieces of evidence they contend the Department misweighed or neglected—what Petitioners term "analytical defects." Pet'rs' Br. 19. But reweighing evidence is precisely what a reviewing court must not do. *Friends of Lincoln Lakes*, 2010 ME 18, ¶ 14, 989 A.2d 1128. More specifically, Petitioners' arguments are misguided on their merits and do not negate the foundation of the Department's environmental justice determination.

1. Consideration of Penobscot Nation Sustenance Fish Consumption

The bulk of Petitioners' brief is addressed to the issue of sustenance fishing. Petitioners contend that the Department's conclusion regarding environmental justice is infirm because the Department did not assess perfluorooctane sulfonic acid ("PFOS") exposure "from sustenance-level consumption of fish and wildlife." Pet'rs' Br. 19. Specifically, Petitioners extensively rely on a 2015 EPA report analyzing the Penobscot Nation's sustenance consumption of fish and other aquatic animals and fault the Department for not assessing the impact of JRL's leachate discharge to the Penobscot River through the lens of that study and its suggested Penobscot Nation consumption rate. *See* Pet'rs' Br. 10-12, 19-23. They further fault the Department's purported

"complete failure to recognize that much of the Penobscot River is legally designated for sustenance fishing for the Penobscot people." Pet'rs' Br. 23. But Petitioners ignore several crucial aspects of the 2015 report and of the State's sustenance fishing designations in relation to the proposed project. Critically, Petitioners ignore the fact that the portions of the Penobscot River that are legally designated for sustenance fishing for the Penobscot people are located *upstream* of Nine Dragons and, therefore, are likely not affected by Nine Dragons' discharges.

The 2015 report, *The Penobscot River and Environmental Contaminants: Assessment of Tribal Exposure Through Sustenance Lifeways*, addressed sustenance fishing and sustenance-level consumption in a portion of the Penobscot River "between Old Town and Medway," A.R. 2501, which is *upstream* of the JRL leachate discharge point in the Penobscot River. Further, the study primarily focused on consumption levels for non-diadromous fish and other aquatic species—small-mouth bass, chain pickerel, white perch, yellow perch, brown bullhead, snapping turtles—that do not migrate over long stretches of the river. A.R. 2494-95, 2556. In other words, the study concerns sustenance fish consumption and exposure pathways in an area of the Penobscot River that is likely unaffected by JRL's leachate discharge via Nine Dragons. Regarding the State's designation of certain waters for sustenance fishing for the Penobscot people, the JRL leachate is discharged into a segment of the Penobscot River that is not designated for sustenance fishing, and which is approximately 1.6 miles downriver from any segment so designated. *See* 38 M.R.S. § 467(7)(A) (designating multiple segments of the mainstem of the Penobscot River for sustenance fishing, but all upstream of Nine Dragons). Because the JRL discharge does not enter or clearly affect any portion of the Penobscot River that has been designated for sustenance fishing or studied as a source of sustenance consumption for the Penobscot people, the Department's decision to not

analyze specific sustenance fishing consumption rates was not an analytical defect that seriously undermines its well-supported environmental justice determination.

2. Consideration of Existing Landfills

Petitioners also fault the Department's consideration of existing landfills, dismissing the Department's analysis as "a simple landfill count" or "landfill tallies." Pet'rs' Br. 23, 31. As previously explained, however, the Department's consideration of existing landfills was a considered and well-supported means of addressing this Court's remand instructions and assessing current and potential impacts on the Penobscot River and the Penobscot Nation. Indeed, it is notable that Petitioners were in favor of counting landfills, repeatedly raising the number of landfills in the Penobscot River watershed, until the Department provided reasoned analysis to put those numbers in context and assessed the status of those sites. Petitioners are also off base in faulting the Department for noting that there are 30 more landfill sites in the Kennebec River watershed than in the Penobscot River watershed. Pet'rs' Br. 23. The Department did not cite this number to bypass a specific analysis of the Penobscot River in any way, but rather to contextualize the number of landfill sites in the Penobscot River watershed and respond to Petitioners' suggestions that the number of existing sites is sufficient evidence of an undue burden on the Penobscot Nation. Finally, contrary to Petitioners' contention, the Department specifically acknowledged and addressed the Dolby Landfill and made specific findings about the impact of all existing landfills on the Penobscot River watershed. *See* A.R. 3158-61.[11]

[11] Petitioners also fault the Department for "overlook[ing] the cumulative burden of wastewater discharges." Pet'rs' Br. 23. It is accurate that the Department did not survey and assess every wastewater discharge to the Penobscot River. It was within the scope of the Department's judgment, however, to focus on the cumulative impact of leaks and discharges from waste facilities, discharges that are either not controlled and permitted under the Maine Pollutant Discharge Elimination System or that contain elevated levels of PFAS.

3. Consideration of Cancer Rates

After failing to mention this issue in their first 80C brief, Petitioners now fault the Department for not addressing the Penobscot Nation's "rates for lung and cervical cancer [that] are some of the highest in the State of Maine." Pet'rs' Br. 24. The relevance of lung and cervical cancer rates is unclear, however, considering that the record does not show a connection between the proposed project and rates of lung and cervical cancer specifically. *Cf*. A.R. 2438 (discussing risk factors for lung and cervical cancer for the Penobscot Nation that are not related to PFAS exposure). As discussed elsewhere in this brief and acknowledged by Petitioners, the Department took into consideration record evidence relating to PFAS and human health, including fish tissue advisories based on toxicological studies. *See* A.R. 3154-55. To the extent the record contains evidence that PFAS have been linked to a variety of negative health effects, including testicular and kidney cancers, *see, e.g.*, A.R. 1254, this was accounted for in the Department's analysis and is one reason that the Department conditioned the PBD on installation of a PFAS-treatment system for leachate. *See* A.R. 3155, 3157, 3165.

4. Consideration of PFOS Testing

After discussing and relying on PFOS testing results at length, Petitioners pivot and claim the Department was unreasonable to "rel[y] on 2025 fish tissue testing that measured only PFOS." Pet'rs' Br. 24. The Department, however, did not arbitrarily consider PFOS testing results as an indicator of PFAS bioaccumulation. Rather, it considered PFOS testing results because PFOS was "the most common PFAS in freshwater fish collected in 2023 and 2024" and because "[c]urrently, PFOS is the only kind of PFAS that is used by [the Maine Center for Disease Control and Prevention] to determine if fish consumption advisories are necessary for PFAS." *Surface Water Ambient Toxics Monitoring Program Report 2023-2024*, Maine Department of Environmental

Protection, Division of Environmental Assessment, Bureau of Water Quality at 6.[12] It was not unreasonable for the Department to consider testing results for the most common PFAS in freshwater fish that is currently used to set fish consumption advisories for PFAS.

5. Consideration of Dioxins, Polychlorinated Biphenyls ("PCBs"), and Other Legacy Toxics

As with their cancer rate argument, Petitioners debut a new argument in their second brief, that the Department failed to adequately address toxics other than PFAS in the JRL leachate. Aside from failing to raise this issue before the remand and thus depriving the Department of an opportunity to address it in the revised PBD, this argument fails to acknowledge that the Maine Pollutant Discharge Elimination System ("MEPDES") permit issued to Nine Dragons by the Department pursuant to its delegated authority under the federal Clean Water Act includes specific conditions addressing "legacy toxics," such as dioxins, mercury, PCBs, and furans. *See* A.R. 731-805. The Department reasonably focused its discussion of the leachate on PFAS because PFAS are emerging substances of concern that have not been subject to effluent limitations in discharge permits and for which there are currently no effluent standards under state or federal law.

6. The Department's PFAS-Treatment Condition

Petitioners contend that the Department's "[r]eliance" on a PFAS-treatment condition for the JRL leachate "is willfully unreasonable." Pet'rs' Br. 25. As an initial matter, it is remarkable that Petitioners now denigrate the importance of a PFAS-treatment condition given that their 80C petition, which is still the operative pleading in this matter, requests the imposition of a PFAS-treatment condition as a means of ensuring the proposed project's compliance with the environmental justice standard. *See* 80C Pet. ¶¶ 95-105, 120. Indeed, in their first 80C brief,

[12] This report is available at https://www.maine.gov/dep/publications/documents/archive/legislative%20reports/2025/2023-2024%20SWAT%20Report%20FINAL.pdf.

Petitioners conceded that a leachate treatment condition is a "step in the right direction," only taking issue with the condition's degree of specificity and perceived stringency. *See* Pet'rs' First 80C Br. 30. Now, apparently, PFAS treatment is "limited and uncertain," such that any leachate treatment condition should be disregarded as essentially meaningless. *See* Pet'rs' Br. 26. As noted above, Petitioners' new argument that any mitigation measures are worthless unless they "erase" all impacts of the proposed expansion on the Penobscot Nation, *see* Pet'rs' Br. 27, is not a reasonable interpretation of the environmental justice standard.

Even beyond this startling shift in their position on leachate treatment, Petitioners continue to ignore that the PBD is a threshold determination, one that is to be made extremely quickly—within 60 days, 38 M.R.S. § 1310-AA(2)—and that the specific details and efficacy of any leachate treatment system for PFAS will be extensively considered in the lengthy, highly technical licensing process, which may take up to 540 days or longer.[13] The Department acknowledges that any PFAS-treatment system is unlikely to remove all PFAS from the leachate. As noted above, however, the environmental justice standard does not require assurance of *zero impact* on a project community. If it did, no project would ever pass that test.

Lastly, Petitioners take issue with the Department's "fram[ing]" of the PFAS-treatment condition as unprecedented. Pet'rs' Br. 26. Even assuming the dubious proposition that "framing" is a relevant issue for this Court's review, Petitioners are once again misguided. When the Department imposed the PFAS-treatment condition in the original PBD in October 2024, no legislation had been introduced proposing that such a condition become the norm. The Department developed the PFAS-treatment condition for the first time in its PBD analysis for this project,

[13] *See* Department of Environmental Protection, "Processing Times for License Applications, Effective: November 1, 2025 to October 31, 2026," available at https://www.maine.gov/dep/processingtimes.pdf; 38 M.R.S. § 344-B; 06-096 C.M.R. ch. 400, § 3(B)(1)(a); A.R. 2220. Code WD will apply to the JRL expansion application.

which was its first opportunity to apply the environmental justice standard. It was during the pendency of this appeal that the Legislature passed a bill, L.D. 2070, providing that the Department may not issue a PBD for a proposed new or expanded solid waste facility owned by the State "unless the solid waste landfill treats the leachate collected from the landfill to reduce the concentrations of [PFAS] in the leachate, in accordance with a license issued by the [D]epartment pursuant to section 1310-N." P.L. 2026, ch. 651, § 5. Contrary to Petitioners' assertions, then, the record shows that the Department broke new ground when it created the condition in the original PBD in October 2024 and that the PFAS-treatment condition for the proposed expansion at JRL would be the first of its kind in Maine. More importantly, the enactment of L.D. 2070 is a strong indication that the Legislature recognizes that PFAS treatment systems for leachate are a significant component of ensuring that proposed projects are not inconsistent with environmental justice.

For all these reasons, Petitioners fail to demonstrate that the revised PBD is unsupported by substantial evidence, and the revised PBD should be upheld.

IV. The Department Complied with the Court's Remand Order and the Revised PBD Contains Sufficient Findings for Judicial Review.

In its remand order, the Court found that the Department had not sufficiently addressed "whether a requirement for sludge drying on site at JRL might be a necessary precondition" to a finding that the proposed project is consistent with the State Plan and promotes the solid waste management hierarchy. Order at 9. Therefore, the Court stated that it could not "determine whether the Department in fact considered such a requirement in its analysis." *Id.* The Court directed the Department to "consider the practicability and necessity for on-site sludge drying as a criterion" for approving the PBD and to "make detailed findings on the necessity and

practicability of requiring sludge-drying" on site at JRL. Order at 9, 16. The Department made such findings in the revised PBD and an additional remand, as Petitioners urge, is not necessary.[14]

In the revised PBD, the Department observed that the PBD application "did not include an evaluation of potential alternative management strategies for municipal WWTP sludge that prioritize maximizing landfill capacity, such as by utilizing sludge drying technology (either by installing an on-site sludge dryer or using a dryer operated elsewhere and transporting dried sludge for disposal at the landfill), or by evaluating whether limitations should be placed on the total amount of WWTP sludge to be accepted for disposal at JRL." A.R. 3148. The Department found that the "current management of WWTP sludge [at JRL] does not prioritize the maximization of landfill capacity and is therefore inconsistent with both the State Plan and solid waste management hierarchy." *Id.* The Department therefore discussed the need to reduce the volume of municipal WWTP sludge at JRL as a means of reducing the amount of bulking materials needed to stabilize the sludge and more efficiently managing landfill capacity. *Id.*

As instructed by the Court, the Department expressly considered the option of requiring on-site sludge drying at JRL as one way to reduce the volume of sludge. The Department concluded, however, that "requiring the applicant to design and construct an on-site sludge dryer is not necessary to determine that the proposed expansion is not inconsistent with the State Plan and solid waste management hierarchy." A.R. 3149. The Department reached this conclusion by considering that a municipal WWTP sludge-drying facility located at the Crossroads Landfill in Norridgewock has been fully licensed and is scheduled to begin operations in 2026. A.R. 3148.

[14] In the revised PBD, the Department significantly expanded its analysis of the proposed project's consistency with the State Plan and the solid waste management hierarchy. *Compare* A.R. 14-15 *with* A.R. 3146-3151.

Notably, this sludge-drying facility has the capacity to manage approximately 80% of Maine's municipal WWTP sludge once it is fully operational.[15] A.R. 3148-49.

In addition to this imminent and substantial sludge-drying operation, the Department pointed to the fact that additional sludge processing facilities, involving drying and gasification, are already in process and may be licensed in the near future. As an example, the Department cited a presentation it gave at the New England Water Environment Association's conference in January 2026, in which it discussed a proposed sludge gasification plant in Sanford. If this proposal were to obtain all necessary licenses and approvals, it could begin construction within a year. *See* A.R. 3113. Another project underway in Portland, which operates the largest publicly owned WWTP in Maine, has the potential to further significantly reduce municipal WWTP sludge volume. *See* A.R. 3114. Relying on these facts in the record, the Department reasonably concluded that it is not necessary to require the design and construction of an on-site sludge dryer at JRL as a condition of the PBD. A.R. 3149.

The Department did not stop there, however. In its remand order, the Court suggested that the Department could address the issue of sludge drying by providing "general guidance to reach [a] result," as it did by requiring leachate treatment for PFAS, in the form of a condition that would require "decreasing the volume of sludge" at JRL. Order at 10. The Department did exactly that in the revised PBD, concluding that "it is appropriate to establish limits on the volume of certain wastes that can be accepted at JRL and to require the applicant to evaluate the best means to achieve these limits." A.R. 3149.

Noting that previous licenses for expansions of JRL (as opposed to PBD approvals) have included conditions that limited the amounts of oversized bulky waste ("OBW") that could be

[15] Commissioning of the full drying system is anticipated to start on or around June 15, 2026, with the facility to be commercially operable in the third quarter of this year.

accepted in the expansion areas, the Department concluded that "it is reasonable and appropriate to impose a condition that limits the amount of municipal WWTP sludge and CDD, including OBW, that can be accepted for disposal in the proposed expansion area if a license is issued for the construction and operation of the proposed expansion." A.R. 3149-50. The Department further concluded that the "specific limitations should be developed during the processing of an application for the proposed expansion based on the Department's thorough review of the [expansion] application including operational considerations to ensure compliance with all applicable standards, and comments from the applicant, the public, and other interested parties," and that the license condition should include a schedule for phasing in the limitations to make compliance feasible for waste generators. A.R. 3150.

The Department's analysis culminated in its inclusion of a finding and conclusion in the revised PBD that was not contained in the original PBD. If a license is issued for the construction and operation of the proposed expansion,

> [t]he Department [will] impose[] a condition that establishes annual limits and a schedule to achieve these limits on the amounts of municipal WWTP sludge and CDD, including OBW, that JRL can accept for disposal. The limits must be established in consideration of statewide and regional operational disposal capacity and with the intent to significantly decrease the amount of municipal WWTP sludge that can be disposed of in the expansion area by 2030.

A.R. 3168; *see also* A.R. 3150-51.

Petitioners contend that the Department's findings on the practicability of requiring a sludge dryer on site at JRL "were not sufficiently specific," Pet'rs' Br. 33, but the Department did specifically explain why it is not practicable to require JRL's operator to design and build a sludge-drying facility when a facility with the capacity to dry approximately 80% of the State's municipal WWTP sludge is about to begin operations. Petitioners argue that the success of that drying facility is not guaranteed, pointing to statements made at oral argument before this Court nearly a year

ago. Pet'rs' Br. 33. Nothing is guaranteed in life, let alone in solid waste management. It would be pointless and unreasonable, however, for the Department to ignore the significant capacity of a sludge-drying facility that has been built, licensed, and is about to begin operating, and instead require the creation of a duplicative sludge-drying facility. Petitioners also find fault in the absence of a condition requiring JRL's operator to send its sludge to the new sludge-drying facility for drying. Pet'rs' Br. 32-33. But as this Court noted in its remand order and as Petitioners themselves acknowledge, a condition that requires decreasing the volume of sludge and CDD that JRL may accept will ensure that sludge goes to whatever drying facility is prepared to accept it, including the Crossroads facility.

For all these reasons, Petitioners have not demonstrated that the Department failed to comply with the Court's remand order or that the revised PBD should be remanded yet again for additional findings. The Department's findings are sufficient for the Court to review the Department's conclusion that the proposed expansion of JRL, with the conditions imposed by the revised PBD, would provide a substantial public benefit.[16]

[16] Petitioners also argue that the Department failed to comply with the remand order and made insufficient findings regarding the environmental justice criterion. *See* Pet'rs' Br. 30-32. Their arguments, however, essentially rehash their contentions that the Department erred in assessing the record evidence, contentions that are addressed above.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that the Court uphold the Department's revised Public Benefit Determination and deny the 80C Petition.

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Respectfully submitted,

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