

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
IN THE MATTER OF:

STATE OF MAINE, DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES, ALTON, OLD TOWN, PENOBSCOT COUNTY #HQH-D4D1-RJBBR

APPLICATION FOR JUNIPER RIDGE LANDFILL EXPANSION LICENSE MAINE HAZARDOUS WASTE, SEPTAGE AND SOLID WASTE MANAGEMENT ACT PUBLIC HEARING

REPLY OF PENOBSCOT BAY WATERKEEPER TO OPPOSITION OF NEWSME LANDFILL OPERATIONS, LLC TO PETITIONS TO INTERVENE OF MAINE RIVERS AND PENOBSCOT BAY WATERKEEPER

I. Introduction

NEWSME Landfill Operations, LLC (“NEWSME”) opposes Penobscot Bay Waterkeeper’s (“Waterkeeper”) Petition to Intervene (“Petition”) in the proposed expansion of the Juniper Ridge Landfill (“JRL”) on the grounds that Waterkeeper has not demonstrated the organization and its members will be substantially and directly affected by the proposed expansion because the members Waterkeeper identified in its Petition do not live in sufficient proximity to the proposed JRL expansion. This argument fails because: (1) Waterkeeper alleges direct and specific injuries to itself and its members in the Petition that NEWSME fails to respond to and; (2) governing law does not require proximity to demonstrate standing nor does it require that Waterkeeper or its members reside “in the vicinity” of the JRL expansion to be directly and substantially affected by the proposed project.

II. Standard for Intervention

“[T]he question of whether a party has standing to bring an administrative appeal depends on the language of the governing ordinance[.]” *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 12, 973 A.2d 735. In the context of establishing administrative standing, a party has fewer formal requirements than those imposed by the Rules of Civil Procedure. *See Witham Family Ltd. P’ship v. Town of Bar Harbor*, 2011 ME 104, ¶ 9, 30 A.3d 811. Intervention in the Juniper Ridge

Landfill Expansion License Application is proper where the prospective intervenor “is or may be, or is a member of a class that is or may be, substantially and directly affected by the proceeding[.]” 5 M.R.S. § 9054(1). Alternatively, the lead agency “may, by order, allow any other interested person to intervene and participate as a full or limited party to the proceeding.” 5 M.R.S. § 9054(2). “Substantially and directly affected by the proceeding” is not statutorily defined, nor have Maine courts defined the term.

III. Penobscot Bay Waterkeeper Members are Substantially and Directly Affected

NEWSME argues that Waterkeeper lacks standing necessary to intervene for one reason: Waterkeeper’s members do not reside in sufficient proximity to the JRL expansion to be substantially and directly affected by the proposed project. This argument fails for two reasons.

First, the concerned Waterkeeper members identified in Waterkeeper’s Petition for Leave to Intervene (“Petition”) will be substantially and directly affected by the proposed JRL expansion. Identified Waterkeeper members Foster Bartovics, Zebediah Campbell, Michael Kersula, and David Black all work in the Penobscot Bay, which the leachate currently discharged by the JRL impacts. The increased leachate discharged from the proposed JRL expansion poses a direct and substantial risk to their livelihoods and personal health. Further, Logan Perkins, another Waterkeeper member identified in the Petition, is a recreational canoeist on the Penobscot River. Stormwater runoff from increased trucking operations and the proposed JRL expansion itself will likely affect the Penobscot River watershed, impact Mr. Perkin’s ability to recreate on the Penobscot River, and risk his personal health. NEWSME does not deny or otherwise respond to the injuries identified in the Petition and instead bases its opposition to Waterkeeper’s standing on the basis of proximity of residency alone. The proposed JRL expansion risks an increase in long-term leachate generation, and contaminant loading and impacts not just the immediate location of the expansion, but all waters hydrologically connected to JRL’s discharge points. These potential impacts may be acutely felt by the Waterkeeper members who enjoy, recreate,

work, and live in and around the Penobscot River watershed. Waterkeeper has clearly established that its members will be directly and substantially affected by the proposed expansion.

Second, contrary to NEWSME's argument, proximity of residency is not necessary to establish that the proposed JRL expansion will substantially and directly affect Waterkeeper and its members. *See Fitzgerald v. Baxter State Park Auth.*, 385 A.2d 189, 196-97 (Me. 1978) (granting standing to recreators that visited a park four times annually where an agency's actions would adversely affect recreators' right to use and enjoy the park). NEWSME fails to identify any case law that requires prospective intervenors reside "in the vicinity" of JRL or on the Penobscot River. NEWSME does not, and cannot, define what "in the vicinity" of JRL Landfill means, nor why proximity of residency is a necessary condition for the proposed agency action to have a substantial and direct impact on Waterkeeper's members. This standard is wholly manufactured by NEWSME and is contrary to law. *See Upstream Watch v. City of Belfast*, 2023 ME 43, ¶ 26, 299 A.3d 25 (holding potential impact of the project on members' actual enjoyment of local environment confers standing); *Black v. Bureau of Parks & Lands*, 2022 ME 58, ¶ 28, 288 A.3d 346 (holding individuals' history of recreating and operating a business near the challenged project confers individual standing and organizational standing to challenging organization of which the individuals are members).

Even if the Department of Environmental Protection finds that Waterkeeper does not satisfy statutory standing requirements, it may still discretionarily grant intervenor status to Waterkeeper. *See* 5 M.R.S. § 9054(2). Here, it is appropriate to grant Waterkeeper discretionary intervenor status as an organization dedicated to the protection of watershed health and public trust resources and to represent its members who may be substantially and directly affected by the Department of Environmental Protection's decision regarding this application.

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IV. Conclusion

Penobscot Bay Waterkeeper respectfully requests that the Department of Environmental Protection grant Penobscot Bay Waterkeeper's Petition to Intervene in administrative proceedings regarding the Juniper Ridge Landfill Expansion Application #HQH-D4D1-RJBBR.

Respectfully submitted,



Pete Nichols
Penobscot Bay Waterkeeper

Dated: June 24, 2026