



STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT

THE PENOBSCOT NATION and
CONSERVATION LAW FOUNDATION,
Petitioners,

v.

MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
Respondent,

and

NEWSME LANDFILL OPERATIONS, LLC
Party-in-Interest.

MOTION FOR THE COURT TO TAKE
JUDICIAL NOTICE

Pursuant to M.R. Evid. 201

Civil Action No. PENSC-APP-2024-00014

Pursuant to M.R. Evid. 201, Petitioners, the Penobscot Nation and Conservation Law Foundation, by and through their attorneys, respectfully move for this Court to take judicial notice of the following written statements made by the opposing parties: (1) the August 28, 2026 Opposition of Bureau of General Services and NEWSME Landfill Operations, LLC to Intervenors' Request for Modification of Hearing Schedule and Licensing Application ("BGS/NEWSME Opposition") (attached hereto as Exhibit A); (2) the September 3, 2026 Maine Department of Environmental Protection ("DEP") letter to the Maine Bureau of General Services ("BGS") with the subject line "Juniper Ridge Expansion II Leachate Management" ("DEP Letter") (attached hereto as Exhibit B); and (3) the subsequent DEP-issued September 9, 2026 Juniper Ridge Landfill Expansion Fourth Procedural Order ("Fourth Procedural Order") (attached hereto as Exhibit C). In support of this Motion, Petitioners state the following:

1. Pursuant to M.R. Evid. 201(b), this Court may take judicial notice of a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose

accuracy cannot reasonably be questioned and must take judicial notice if requested and supplied with the necessary information. M.R. Evid. 201(c)(2), (d); *Seymour v. Seymour*, 2021 ME 60, ¶ 11, 263 A.3d 1079.

2. The three documents that Petitioners seek judicial notice of establish that the per- and polyfluoroalkyl substances (“PFAS”) treatment plant for the Juniper Ridge Landfill (“JRL”), previously intended for evaluation during the JRL expansion licensing process and originally slated to be located on-site, will now be built off-site and licensed through an entirely different landfill’s licensing proceeding. Those developments are directly relevant because the Second Public Benefit Determination (“Second PBD”) was premised on the evaluation and implementation of the PFAS treatment system at JRL, and because both Respondent DEP and Party-in-Interest NEWSME repeatedly defended the Second PBD by arguing that concerns regarding PFAS treatment would be addressed during the forthcoming JRL licensing proceeding. The three documents now before the Court show that DEP and NEWSME no longer intend for those issues to be evaluated in the licensing proceeding, contrary to what they repeatedly identified to this Court as the proper forum for that review.
3. The BGS/NEWSME Opposition states: “NEWSME does not intend to seek licensure of the PFAS treatment system through *this* licensing process because the system will not be located at JRL.” Ex. A., at 6 (emphasis in original).
4. The BGS/NEWSME Opposition is a public document available on the DEP website, was filed with the DEP hearing officer for the JRL license process, and its contents can be accurately and readily determined from a source whose accuracy cannot reasonably be questioned. *Seymour*, 2021 ME 60, ¶ 12, 263 A.3d 1079. The statements contained in the BGS/NEWSME

Opposition are statements made by opposing party NEWSME, offered against NEWSME and DEP in this proceeding. M.R. Evid. 801(d)(2)(A).

5. Relatedly, the DEP Letter states: “The Department concurs that a separate license application is appropriate for the PFAS treatment system as it will be located at a different Department-licensed solid waste facility.” Ex. B., at 2.
6. The DEP Letter is an official government document whose contents can be accurately and readily determined from a source whose accuracy cannot reasonably be questioned. *Seymour*, 2021 ME 60, ¶ 12, 263 A.3d 1079. Official correspondence, including official letters, are proper subjects of judicial notice. *Torrens v. Lockheed Martin Servs. Grp., Inc.*, 396 F.3d 468, 472 (1st Cir. 2005); *U.S. v. Bello*, 194 F.3d 18, 24 (1st Cir. 1999). The statements contained in the DEP Letter likewise constitute statements made by opposing party DEP, offered against DEP and NEWSME. M.R. Evid. 801(d)(2)(A).
7. Petitioners offer the DEP Letter for the adjudicative facts reflected in the letter itself, including DEP’s acknowledgment that NEWSME proposes to locate the PFAS treatment system at a different licensed facility and to seek approval through a separate licensing proceeding. Those positions are inconsistent with both: (1) representations made by DEP and NEWSME in briefing before this Court; and (2) the factual premises underlying the Second PBD. Second PBD at 36 n.28; Ex. B., at 1-2.
8. The Fourth Procedural Order is an official government document issued in the pending JRL expansion licensing proceeding. The Fourth Procedural Order likewise acknowledges NEWSME’s representation that it does not intend to license a PFAS treatment system at JRL and currently plans to locate that facility at Pine Tree Landfill in Hampden, Maine; the Fourth

Procedural Order suspends the JRL licensing proceeding's deadlines and schedules pending submission of additional information concerning that revised proposal. Ex. C., at 1-3.

9. The three documents for which judicial notice is sought are relevant because the Second PBD was premised on the assumption that the PFAS treatment system would be installed and operated at JRL and thus part of the JRL licensing process.
10. The Second PBD cited and relied upon an implementation plan for the PFAS treatment system that identified only JRL's own licensing process as the regulatory step preceding construction of the treatment facility. Second PBD at 34. No separate licensing proceeding was contemplated in that implementation schedule.
11. The Second PBD also relied upon pilot PFAS treatment projects conducted at JRL. The April 11, 2025 JRL PFAS Treatment System Pilot Proposal described a treatment system "at the Juniper Ridge Landfill" and explained that a demonstration treatment system would be installed to evaluate treatment processes before full-scale implementation. *Demonstration PFAS Treatment System Pilot Proposal Juniper Ridge Landfill Old Town, Maine*, Sevee & Maher Engineers, 1 (Apr. 11, 2025) (admitted by judicial notice through January 7, 2026 Order on 80C Appeal). Both pilot systems were conducted at JRL, with the stated purpose of informing eventual full-scale implementation. The Second PBD therefore consistently relied on treatment at JRL that would be evaluated through the JRL expansion licensing process.
12. The Second PBD further emphasized the central importance of that treatment system, noting that this was "the first time the Department has ever required a *landfill* to design, *install*, and *operate* a PFAS treatment system." Second PBD at 34 (emphasis added). In the context in which it was stated, the plain meaning of that language is that JRL itself would be the site of installation of the PFAS treatment system.

13. These developments bear directly on the issues before this Court. Pursuant to 38 M.R.S. § 1310-AA(3), the Commissioner must determine whether the “proposed” facility provides a substantial public benefit. The Second PBD evaluated a proposal premised upon on-site PFAS treatment at the proposed JRL facility. The DEP Letter and Fourth Procedural Order demonstrate that NEWSME has now presented DEP with a materially distinct proposal under which the PFAS treatment system will be located at Pine Tree Landfill and licensed through a separate proceeding for that entirely different landfill. Judicial notice of these documents will permit the Court to consider developments bearing directly on whether the factual premises underlying the Second PBD remain accurate and whether remand or other relief may be appropriate.
14. The BGS/NEWSME Opposition, DEP Letter, and Fourth Procedural Order are additionally relevant because they demonstrate a material departure from the review process that DEP and NEWSME repeatedly represented to this Court would serve as the forum for meaningful evaluation of the PFAS treatment system’s design, efficacy and regulatory sufficiency.
15. Throughout this appeal, Respondent DEP has argued to this Court that the PBD process was not the appropriate stage to assess the design, efficacy, and operational details of the PFAS treatment system because those issues would be evaluated during the subsequent expansion licensing process for JRL. For example, DEP stated that “[t]he relatively short PBD process does not allow for the fact-intensive considerations that will ultimately inform the specific parameters and design of a leachate treatment strategy. Rather, the licensing process is the time for the Department to consider what specific treatment modalities, metrics, and enforcement mechanisms may be appropriate.” Resp’t’s Br. 23 (Feb. 20, 2025). Following remand, DEP again represented that “the specific details and efficacy of any leachate treatment system for

PFAS will be extensively considered in the lengthy, highly technical licensing process.” Resp’t’s Second Br. 20 (June 10, 2026).

16. Party-In-Interest NEWSME has similarly argued to this Court that the PFAS treatment system would be evaluated at JRL’s licensing stage. Regarding the design of the PFAS treatment system, NEWSME wrote: “Ultimately, the design will be the subject of a rigorous technical review during the solid waste facility licensing process that is still yet to come.” Party-in-Interest Br. 25 (Feb. 20, 2025). Regarding strengthening the condition for the PFAS treatment system, NEWSME wrote: “Further, should the Department determine additional conditions are necessary, including, for example, as to the technology selected and the treatment standards, the Department will impose those during the landfill *expansion* licensing process.” *Id.* at 27 (emphasis added).
17. Considered together, DEP’s and NEWSME’s briefing, the implementation schedule and pilot treatment proposals incorporated into the Second PBD, and the Second PBD itself all reflect the same premise: that the PFAS treatment system would be located at JRL and that its design, efficacy, and regulatory sufficiency would be evaluated in the JRL licensing proceeding. The documents submitted with this motion demonstrate that NEWSME and DEP now contemplate a materially different approach.
18. Accordingly, the Court should take judicial notice of these documents so that it may evaluate the issues presented in this appeal in light of developments demonstrating that the PFAS treatment system and licensing pathway now contemplated by DEP and NEWSME reflect a fundamental departure from those previously represented to this Court and underlying the Second PBD.

19. Petitioners attach to this Motion the three documents they request this Court to take judicial notice of:

Exhibit A:

August 28, 2026 Opposition of Bureau of General Services and NEWSME Landfill Operations, LLC to Intervenor's Request for Modification of Hearing Schedule and Licensing Application

Exhibit B:

September 3, 2026 DEP Letter, Juniper Ridge Expansion II Leachate Management

Exhibit C:

September 9, 2026 Fourth Procedural Order

20. Petitioners do not request judicial notice of the following two documents, though they likewise contain statements made by opposing parties. Rather, these materials are provided solely to furnish context for Exhibit A and to allow the Court to understand the procedural background reflected in the documents for which judicial notice is sought:

Attachment 1:

August 20, 2026 Intervenor's Request for Modification of Proposed Hearing Schedule and for a Complete Licensing Application

Attachment 2:

September 2, 2026 Intervenor's Reply to BGS/NEWSME Opposition to Intervenor's Request for Modification of Hearing Schedule and Licensing Application

WHEREFORE, Petitioners respectfully request that this Court take judicial notice of the August 28, 2026 BGS/NEWSME Opposition, the September 3, 2026 DEP Letter, and the September 9, 2026 Fourth Procedural Order, and consider those subsequently occurring developments in resolving the issues presented in this appeal.

Respectfully submitted,



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Date: September 11, 2026

NOTICE

Any opposition to this motion, along with supporting memoranda, affidavits, or other matter, must be filed with the Court no later than 21 days after the date this motion was filed, unless another time is set by the Court or provided for in the Maine Rules of Civil Procedure. Failure to file timely opposition will be deemed a waiver of all objections to this motion, which may be granted without further notice or hearing.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document has been served on all counsel of record via the Court's e-filing system on September 11, 2026.



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Date: September 11, 2026