



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.

**NEWSME LANDFILL
OPERATIONS, LLC'S
OPPOSITION TO PETITIONERS'
MOTION FOR THE COURT TO
TAKE JUDICIAL NOTICE**

Party-in-Interest NEWSME Landfill Operations, LLC (“NEWSME”) respectfully requests that this Court deny Petitioners Conservation Law Foundation and the Penobscot Nation’s Motion for the Court to Take Judicial Notice (the “Motion”). As Petitioners have noted, NEWSME has changed the planned location for a system to treat leachate from Juniper Ridge Landfill (“JRL”) for per- and polyfluoroalkyl substances (“PFAS”). However, the location of the PFAS treatment system, which will now also treat leachate from a second landfill, is not relevant to this Court’s review of the Department of Environmental Protection’s (the “Department”) decision to issue a Public Benefit Determination (“PBD”). Courts take judicial notice of only relevant facts. Siting the treatment system at JRL is not required by the PBD; will not meaningfully affect the permitting required for the system; and will result in treating landfill leachate for PFAS from two landfills, instead of just one. Accordingly, Petitioners’ Motion should be denied.

I. FACTUAL BACKGROUND

On June 10, 2024, the Bureau of General Services (“BGS”) and NEWSME submitted to the Department an Application for Determination of Public Benefit for a New or Expanded Solid Waste Disposal Facility (“PBD Application”). AR-0032. The PBD Application did not propose development of a PFAS treatment facility as part of the JRL expansion. *See generally* AR-0032-0713. The Department, however, made development of a PFAS treatment system a condition of the First PBD, issued on October 2, 2024. AR-0021. Thereafter, NEWSME began actively designing and testing systems to treat JRL leachate for PFAS.¹

On November 21, 2025, NEWSME and BGS filed an application to amend the solid waste management facility license to expand JRL, which the Department accepted as complete on December 9, 2025.² On March 23, 2026, the Department issued the Second PBD. AR-3132. The Second PBD reaffirmed the PFAS treatment condition and requires that “Casella^[3] design[] and install[] a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations.” AR-3170.

In May and June 2026, Petitioners, NEWSME, and BGS submitted briefing to this Court regarding Petitioners’ appeal of the Second PBD. Although neither the First nor the Second PBD specified where a PFAS treatment system must be located, NEWSME originally intended to locate the PFAS treatment system at JRL. As noted in Petitioners’ Motion, that original plan is reflected

¹ Between December 27, 2024, and January 21, 2026, NEWSME submitted a PFAS treatment implementation schedule and two pilot project proposals, conducted two PFAS treatment pilot projects at JRL, and submitted reports on the results of each pilot project. *See* AR-3167; *see also* Maine Dep’t of Env’t Prot., *Juniper Ridge Landfill*, <https://www.maine.gov/dep/waste/juniperridge/index.html>.

² *See* Maine Dep’t of Env’t Prot., *Juniper Ridge Landfill*, <https://www.maine.gov/dep/waste/juniperridge/index.html>.

³ Casella Waste Systems, Inc. is the ultimate parent company of NEWSME. *See* AR-0080.

in the parties' briefing to this Court. However, as indicated in Exhibit A to the Motion, that plan evolved during the design and licensing process.

NEWSME, in consultation with BGS, now plans to develop the PFAS treatment system at the closed Pine Tree Landfill in Hampden, Maine, approximately twenty miles south of JRL.⁴ The system as now planned will treat PFAS in leachate from both JRL and Pine Tree Landfill.⁵ Pine Tree Landfill, however, operates under a separate solid waste management facility license from JRL.⁶ As such, development of the PFAS treatment system there requires an amendment to Pine Tree Landfill's solid waste management facility license. Therefore, the PFAS treatment system will be evaluated during a separate licensing proceeding from the one to expand JRL but subject to the same substantive review standards. Regardless, operation of the PFAS treatment facility at Pine Tree Landfill for treating JRL leachate will remain a condition of the PBD and will be required before JRL commences expansion operations, just as the Department ordered in the Second PBD. *See* AR-3170.

⁴ Locating the PFAS treatment system at Pine Tree Landfill is contingent on NEWSME securing all required licenses with regulatory agencies and contracts with licensed treatment plants. As such, NEWSME's current plan remains subject to change. That said, NEWSME has submitted an application to the Town of Hampden to upgrade the existing leachate systems at Pine Tree Landfill to allow the safe transfer of leachate from JRL to the storage systems at Pine Tree Landfill and safe transfer from Pine Tree Landfill to tanker trucks for transport off-site, as needed. NEWSME expects to submit an application to the Department for the same purpose within a week from the date of this filing. Future applications to the Town and the Department for the PFAS treatment system are expected to be forthcoming soon. Wherever the PFAS system is located, pursuant to the PBD, NEWSME cannot begin JRL expansion operations until the Department-approved system is designed and installed.

⁵ Because Pine Tree Landfill is closed, it does not accept new waste, *see* AR-0398, though monitoring and maintenance operations continue. *See generally* 06-096 C.M.R., ch. 401, §§ 5-6. Additionally, Pine Tree Landfill continues to generate leachate that is collected and treated. *See generally* Town of Hampden, *Pine Tree Landfill 2025 Annual Report*, https://www.hampdenmaine.gov/vertical/sites/%7B1FCA4F0C4-5C5E-476D-A92E-1BED5B1F9E05%7D/uploads/2025_Annual_Pine_Tree_Landfill_Report_-_April_30_2026.pdf.

⁶ JRL is subject to DEP License #S-020700-WD-N-A, issued April 9, 2004 (which pertains to the originally licensed 68-acre footprint operated by NEWSME). Pine Tree Landfill is subject to DEP Closure Order #S-001987-WN-HC-N.

Petitioners now bring their third motion for judicial notice, seeking yet again to go beyond the administrative record in an effort to expand this Court’s review. *See* Petitioners’ Motion for the Court to Take Judicial Notice (July 8, 2025); Petitioners’ Motion for the Court to Take Judicial Notice (May 11, 2026).

II. ARGUMENT

A. Legal Standard.

Pursuant to Maine Rule of Evidence 201, a Court may take judicial notice of only adjudicative facts that are “*relevant to the proceedings at hand.*” *In re Scott S.*, 2001 ME 114, ¶ 13, 775 A.2d 1144 (emphasis added); *see Seymour v. Seymour*, 2021 ME 60, ¶ 11, 263 A.3d 1079 (“An adjudicative fact is a fact relevant to the particular proceeding”). A fact that is not “of consequence in determining the action” is irrelevant and inadmissible. M.R. Evid. 401(b); *see* M.R. Evid. 402.

B. NEWSME’s Decision to Change the Location of the PFAS-Treatment System Is Not Relevant to the Court’s Review of the Sufficiency of the Department’s Decision-Making.

A Rule 80C appeal is not a free-wheeling review of the underlying merits of the parties’ claims; instead, it is a review of the adequacy of the agency’s decision-making. *See* M.R. Civ. P. 80C; 5 M.R.S. § 11001; *Friends of E. Bay v. Dep’t of Marine Res.*, 2026 ME 90, ¶ 18, ___ A.3d ___ (Courts “review the underlying administrative agency decision . . . for an abuse of discretion, errors of law, or findings unsupported by substantial evidence in the record” (quotations and citation omitted)). A Court assesses the sufficiency of the agency’s decision-making based on the facts available to the agency at the time of its decision. *See* M.R. Civ. P. 80C(d) (“Judicial review shall be confined to *the record upon which the agency decision was based . . .*”) (emphasis added). Only in exceptional circumstances may the Court consider information outside the record. *See* 5 M.R.S. § 11006. Judicial review of administrative agency decisions under M.R. Civ. P. 80C will

sustain an agency's decision *if on the record before it*, the agency could have fairly and reasonably found as it did. *See Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶¶ 12-13, 989 A.2d 1128. Information outside of the record and events that occur after the agency renders its decision necessarily are not relevant to whether the agency's decision was adequate. *See, e.g., Friends of E. Bay*, 2026 ME 90, ¶¶ 32-33 (holding that the agency did not err by declining to make additional findings or reopen the record despite recent regulatory changes and that the agency's decision was proper "given the information available at the time the application was made and deemed complete"). CLF has not alleged that the record before the agency and the Court was somehow incomplete or inadequate.

In this appeal, the sole issue before the Court is whether the Department properly and reasonably applied the law to the facts contained in the record. When the Department issued the Second PBD, NEWSME intended to develop a PFAS treatment facility on JRL's premises. Accordingly, the record before the Department and the Court accurately reflected that plan. Subsequent development of design specifications or plans for the anticipated PFAS treatment system that will satisfy the conditions of the Second PBD does not bear on whether the Department properly issued the Second PBD based on the record before it.

C. The Location of the PFAS Treatment System Is Not Material to the Department's PBD.

The location of the PFAS treatment system also is not relevant to this Court's review of the Second PBD because the location of the treatment system was not material to the Department's decision. As a condition of the Second 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." AR-3170. The Second PBD does not specify *where* Casella must locate the PFAS treatment system. This is unsurprising because the precise location of the PFAS

treatment system is not material for determining whether the JRL expansion provides a substantial public benefit.⁷

What matters for the PBD is that JRL leachate is treated for PFAS. In either location, NEWSME will treat JRL leachate using substantially the same technology and systems. In either location, development of the PFAS treatment system will undergo substantially similar review and scrutiny from the Department and the public. *See* 06-096 C.M.R. ch. 401, § 3(D) (“Prior to implementing any changes to the approved landfill design, the leachate management systems, or project specifications, the applicant must receive approval from the Department through an amendment or minor revision, or through a change order approval”). And in either location, a Department-approved PFAS treatment system *must* be in place and operating before JRL can begin expansion operations. *See* AR-3170; *see, e.g., Gulick v. Bd. of Env’t. Prot.*, 452 A.2d 1202, 1210 (Me. 1982) (stating the well-established principle that agency-imposed conditions must be satisfied before an applicant may proceed). Accordingly, the exact location of the PFAS treatment system is not material to the Second PBD and therefore not relevant to this Court’s review.

D. NEWSME’s New Plan to Voluntarily Treat Leachate from a Second Landfill Strengthens the Department’s PBD.

If the change in the proposed location of the PFAS treatment system has any relevance to the Court’s review of the Department’s decision, it is that it *strengthens* the basis for the Department’s conclusion that expanding JRL provides a substantial public benefit. NEWSME has no duty to treat leachate generated from Pine Tree Landfill for PFAS. *See* 38 M.R.S. § 1310-

⁷ Indeed, changes to the design of complex multi-million-dollar public infrastructure projects in response to feedback from agencies or changes in circumstances during licensing are typical. The Department’s licensing regulations recognize this fact. *See, e.g.,* 06-096 C.M.R. ch. 3, § 16(A) (authorizing Department staff or Presiding Officer to request additional information from the applicant); *id.* § 17 (setting forth procedures for modifying pending license applications). Here, because the PFAS treatment system was a condition of approval and not part of the original application, NEWSME was still designing the system when the Second PBD issued, thus not all system specifications were known.

AA(1-B)(C). But by locating the PFAS treatment system at Pine Tree Landfill, NEWSME will treat leachate from both JRL and from the Pine Tree Landfill. This will reduce the amount of PFAS from landfill leachate entering the Penobscot River Watershed compared to the original planned location. This is a net environmental benefit and advances the Petitioners' own stated goals, consistent with environmental justice. As such, the revised location of the PFAS treatment system is not relevant to Petitioners' arguments regarding the sufficiency of the Department's decision to issue the Second PBD.

III. CONCLUSION

For the foregoing reasons, NEWSME respectfully requests that the Court deny Petitioners' Motion for the Court to Take Judicial Notice.

Dated: September 25, 2026

Respectfully submitted,

By: /s/ Brian M. Rayback

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