



STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. PENS-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
IN OPPOSITION TO
PETITIONERS’ MOTION FOR
JUDICIAL NOTICE**

INTRODUCTION

The State of Maine Department of Environmental Protection (“Department”) hereby opposes Petitioners’ Motion for the Court to Take Judicial Notice Pursuant to Maine Rule of Evidence 201(b), filed on September 11, 2026. Petitioners ask the Court to take judicial notice of (1) the August 28, 2026, Opposition of the Maine Bureau of General Services (“BGS”) and NEWSME Landfill Operations, LLC (“NEWSME”), to Intervenor’s Request for Modification of Hearing Schedule and Licensing Application; (2) a September 3, 2026, Department letter to BGS; and (3) the September 9, 2026, Juniper Ridge Landfill Expansion Fourth Procedural Order.

All three of these documents are associated with an ongoing administrative proceeding—the Department’s review of the pending application for the proposed Juniper Ridge Landfill (“JRL”) expansion. In the course of that proceeding, the applicant for the expansion license has

now indicated that, if the expansion is approved, the leachate treatment system for per- and polyfluoroalkyl substances (“PFAS”)—which is required by the Department’s March 23, 2026, revised Public Benefit Determination (“revised PBD”)—will not be located at JRL. Petitioners fail to demonstrate how this development in the distinct expansion licensing proceeding is relevant to the Court’s review of the revised PBD, which the Department issued six months ago on a closed administrative record. The revised PBD does not require the leachate treatment system to be located on the premises of JRL. No matter where the leachate treatment system is ultimately located, it must be approved by the Department through a public licensing process and implemented before any licensed expansion of JRL could begin operating. Therefore, this factual development in a separate administrative proceeding is irrelevant to this Court’s review of the revised PBD, and submissions made in that proceeding should not be judicially noticed in this appeal.

DISCUSSION

Generally, judicial notice in an 80C action must be carefully circumscribed so that it does not become a vehicle for undermining the requirement that judicial review “be confined to the record upon which the agency decision was based.” 5 M.R.S. § 11006(1). Maine Rule of Evidence 201(b) “authorizes a court to take judicial notice of adjudicative facts ‘not subject to reasonable dispute.’” *Seymour v. Seymour*, 2021 ME 60, ¶ 11, 263 A.3d 1079 (quoting M.R. Evid. 201(b)). It is black letter law, however, that “[a]n adjudicative fact is a fact *relevant to the particular proceeding*” and a court need not take judicial notice of irrelevant facts.¹ *Id.* (emphasis added).

In this case, the recent correspondence indicating that the JRL operator now proposes to locate the leachate treatment system at a site other than JRL is not relevant to the Court’s review

¹ Petitioners’ reliance on Maine Rule of Evidence 801(d)(2)(A) is misguided. That Rule simply provides that certain statements are not hearsay. It does not authorize or support the consideration of irrelevant statements.

of the Department's revised PBD. Petitioners' argument for relevance is that this new development in the expansion licensing proceeding is "inconsistent" with (1) "the factual premises underlying" the revised PBD and (2) "representations made by [the Department] and NEWSME in briefing before this Court." Pet'rs' Mot. at 3. Even if events occurring after an agency's decision could be relevant to judicial review of that decision, Petitioners are wrong on both points.

First, contrary to Petitioners' unsupported assertion, the revised PBD is *not* "premised on the assumption that the PFAS treatment system would be installed and operated at JRL and thus part of the JRL licensing process." Pet'rs' Mot. at 4. In the revised PBD, the Department concluded that the JRL expansion would provide a substantial public benefit—pursuant to 38 M.R.S. § 1310-AA—subject to the condition, among others, that "[i]f a license is issued for the construction and operation of the proposed expansion . . . [the JRL operator] designs and installs a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations." Administrative Record ("A.R.") 3170. Nowhere does the revised PBD specify or require that the leachate treatment system be located at JRL. *See* A.R. 3165 (concluding that "it is reasonable and appropriate to require [the JRL operator] to design, install, and operate a PFAS treatment system for its leachate prior to the operation of the proposed expansion, if a license [for the expansion] is issued by the Department"). The words of the revised PBD itself and the operative thrust of the revised PBD's leachate treatment condition require the JRL operator to implement a system to treat JRL's leachate for PFAS prior to the operation of any licensed expansion of JRL. The revised PBD is silent as to precisely where the required leachate treatment system would be located.

Second, the new factual development in the expansion licensing proceeding regarding the location of the proposed leachate treatment system does not undercut or fundamentally contradict

the arguments the Department has made to this Court. The Department has consistently argued that the technical design and engineering specifications for any leachate treatment system must be evaluated in an application process with a longer time frame than the 60-day PBD review process. The Department always recognized that, because the PBD does not specify the location of the leachate treatment system, that process to evaluate any proposed leachate treatment system could be separate from and in addition to the JRL expansion licensing process. As the Department stated in its first 80C brief, the PBD “imposed a condition that will allow for the development of an efficacious and technically feasible leachate treatment plan as part of the expansion licensing process (*or other licensing process as may be required for the leachate treatment system*).” Respondent’s First 80C Br. (Feb. 20, 2025) at 23-24 (emphasis added). Whether evaluation of the leachate treatment system occurs in the JRL expansion licensing process, in a separate licensing process, or both, is irrelevant. Wherever the leachate treatment system is ultimately proposed to be sited, the technical details of that system will be fully aired and evaluated through a public licensing process. Further, pursuant to the revised PBD, unless and until the Department approves a leachate treatment system to treat JRL’s leachate for PFAS, JRL cannot commence any expansion operations.

The Department acknowledges that it made some statements in its legal briefing and argument that reflect an assumption that the leachate treatment system would likely be located at JRL, in which case it would be evaluated in the JRL expansion licensing proceeding. *See, e.g.*, Respondent’s Second 80C Br. (June 10, 2026) at 20 (suggesting that “the specific details and efficacy of any leachate treatment system for PFAS will be extensively considered in the lengthy, highly technical licensing process”). These statements properly reflected the administrative record at the time the Department issued the revised PBD. As stated by NEWSME in its opposition to

the pending motion, NEWSME originally intended to locate the leachate treatment system at JRL. NEWSME Resp. at 2. But the Department always recognized that plans change over the course of a long regulatory process, and the revised PBD was therefore not “premised” on the leachate treatment system being located at JRL, as Petitioners contend. The revised PBD includes the important condition requiring approval and implementation of a leachate treatment system before JRL could operate any expansion, and that requirement remains unchanged.²

In summary, the Department’s revised PBD conditions any expansion of JRL on the implementation of a leachate treatment system for PFAS that will be subject to a public licensing proceeding and Department approval. This condition is not altered by a recent development, coming six months after the revised PBD was issued, regarding the potential location of that leachate treatment system. Therefore, documents concerning this new development are irrelevant to the Court’s assessment of the revised PBD and should not be judicially noticed. Indeed, it would be plain legal error for the Court to consider a new development in distinct licensing proceedings when evaluating an agency decision made six months ago on a closed administrative record.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that the Court DENY Petitioners’ Motion for the Court to Take Judicial Notice.

² The details of the leachate treatment system, including where it may be located, are the subject of ongoing administrative proceedings. The Department has paused the public hearing on the expansion pending its request for additional information from the applicant “to properly address leachate management in the [JRL expansion] license application.” Ex. B to Pet’rs’ Mot. at 2. A “separate license application” would be required if NEWSME seeks approval of a leachate treatment system at a solid waste facility other than JRL. *Id.*

Dated: September 30, 2026

Respectfully submitted,

AARON M. FREY
Attorney General

/s/ Valerie A. Wright
Valerie A. Wright, Maine Bar No. 9166
Jack Dafoe, Maine Bar No. 010401
Assistant Attorneys General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8800
valerie.a.wright@maine.gov
jack.dafoe@maine.gov

*Attorneys for Respondent
Maine Department
of Environmental Protection*