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Admitted in: MA, ME

November 22, 2024

VIA ELECTRONIC MAIL

Commissioner Loyzim
Maine Department of Environmental Protection
17 State House Station,
Augusta Maine, 04333-0017

RE: #S-020700-W5-CV-N
Juniper Ridge Expansion Public Benefit Determination

Dear Commissioner Loyzim:

On behalf of NEWSME Landfill Operations, LLC, please find enclosed an Opposition to Conservation Law Foundation's and the Penobscot Nation's application for stay in this matter.

Please let me know if you have any questions.

Sincerely,



Brian M. Rayback

Enclosure

Cc: Valerie Wright, Maine AG's Office
Karen Knutti, Maine DEP
Wayne Boyd, NEWSME
Alexandra Enriquez St. Pierre, CLF
Nora Bosworth, CLF

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

STATE OF MAINE)
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL)
SERVICES, BUREAU OF GENERAL SERVICES)
OLD TOWN, PENOBSCOT COUNTY, MAINE)
JUNIPER RIDGE LANDFILL EXPANSION)
OPERATIONS LLC, #S-020700-W5-CV-N)
#PENSC-APP-2024-00014)

**OPPOSITION OF NEWSME LANDFILL OPERATIONS LLC TO CONSERVATION LAW
FOUNDATION & PENOBSCOT NATION'S APPLICATION FOR STAY**

NEWSME Landfill Operations, LLC ("NEWSME") hereby responds to the application of Conservation Law Foundation ("CLF") and the Penobscot Nation's for a stay of the Department of Environmental Protection's October 2, 2024 Public Benefit Determination ("PBD") for the expansion of Juniper Ridge Landfill ("JRL"). The Department should deny the application for a stay because CLF and the Penobscot Nation cannot meet the high burden for a stay.

Pursuant to the Administrative Procedure Act, a petitioner for a stay must affirmatively demonstrate three elements: (1) irreparable injury to the petitioner; (2) a strong likelihood of success on the merits; and (3) no substantial harm to adverse parties or the general public. 5 M.R.S. § 11004. The Law Court has stated that the first two criteria are the most critical and require a showing of more than mere possibility. *In re Maine Today Media, Inc.*, 2013 ME 12, ¶ 13, 59 A.3d 499, 502 (citing *Respect Maine PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010)). However, failure to demonstrate any one of these criteria requires that injunctive relief must be denied. *See Bangor Historic Track, Inc. v. Dep't of Agric.*, 2003 ME 140, ¶ 10, 837 A.2d 129, 132-33. CLF and the Penobscot Nation fail to demonstrate that any of the elements for a stay are satisfied.

I. Irreparable Injury to Petitioner

First, CLF and the Penobscot Nation fail to show irreparable injury if the PBD is not stayed. Proof of irreparable injury – which is defined as “injury for which there is no adequate remedy at law” – is a prerequisite to the granting of injunctive relief. *Bangor Historic Track*, 2003 ME 140, ¶ 10, 837 at 133 (citing *Bar Harbor Banking & Trust Co. v. Alexander*, 411 A.2d 74, 79 (Me. 1980)). For harm to be “irreparable,” it must be immediate. *See Stanley v. Town of Greene*, 2015 ME 69 ¶ 13, 117 A.3d 600, 604 (noting that harm must be “immediate” and finding that generalized arguments of “irreparable harm” were insufficient).

Here, there is no irreparable harm because the JRL expansion has not even been permitted yet. CLF misconstrues the landfill expansion permitting process, claiming that the PBD should be stayed because if it is not JRL is “likely . . . already expanding.” *See Stay Application* at 6. This is inaccurate. The PBD is just one step in the permitting process for the JRL expansion. *See* 13 M.R.S. § 1310-AA(1) (requiring a PBN before one can even apply for a license to expand a solid waste facility). It serves only to authorize NEWSME to file an application to expand JRL, a process that, according to the Department’s processing time schedule, will take as long as 18 months, and will require JRL to comply with stringent environmental regulations. *Id.* § 1310-N. By treating the permitting process as a forgone conclusion, CLF and the Penobscot Nation fail to recognize that the alleged harm from the expansion is, as yet, merely speculative—and certainly not imminent. There is, therefore, no irreparable injury.

II. No Strong Likelihood of Success on Merits

Second, CLF and the Penobscot Nation cannot show a strong likelihood of success on the merits. This criterion requires a showing of more than a mere possibility of success on the merits. *In re Maine Today Media, Inc.*, 2013 ME 12, ¶ 13, 59 A.3d at 502 (citing *Respect Maine*, 622 F.3d at 15). CLF and the Penobscot Nation cannot make this showing, as their claims are likely to fail.

CLF and the Penobscot Nation dispute the Department's findings under 38 M.R.S. § 1310-AA(3) that the JRL expansion (1) is not inconsistent with environmental justice and (2) is consistent with the State Waste Plan and Waste Management Hierarchy. Notably, they do not assert that the Department misinterpreted the language of those provisions. As such, they identify no error of law. CLF and the Penobscot Nation instead challenge the Department's application of the statutory standards in this proceeding. Thus, CLF and the Penobscot Nation's challenge raise questions of fact that the courts would review with significant deference to the Department's expertise and experience in solid waste management. *See* 5 M.R.S. § 11007(4)(C)(5); *see Dyer v. Superintendent of Ins.*, 2013 ME 61, ¶ 15, 69 A.3d 416.

The arguments raised by CLF and the Penobscot Nation are conclusory at best. They simply assert that the PBD fails to meet the statutory standards, without explaining what they believe those standards require. Instead, they claim that the PBD's conditions of approval, which specifically address concerns about environmental justice, are inadequate and that the Department should have imposed additional conditions regarding waste diversion and volume. *See* Stay Application at 8-10. CLF and the Penobscot Nation have not carried their heavy burden to show that the Department's conclusions were arbitrary or lacked substantial supporting evidence. There is "competent evidence in the record to support [the Department's] decision." *Friends of Lincoln Lakes v. Bd. of Env'tl. Prot.*, 2010 ME 18, ¶ 14, 989 A.2d 1128, 1134.

The PBD proceeding has taken the Department months of intensive work, resulting in a record of hundreds of pages. The Department painstakingly and comprehensively reviewed NEWSME's PBD application, heeded public comment, and conditioned its decision on still more requirements. Indeed, to ensure sufficient public input, the Department, with agreement from NEWSME, extended its review period overall well beyond the statutorily required 60-days,

extended the public comment period by a week on the draft PBD, and extended its review of the application by 3 days to provide adequate time to comprehensively review all comments on the draft PBD. *See* PBD at 6-7. The PBD itself is a comprehensive document that addresses the concerns raised by the public, including those presented in comments from CLF and the Penobscot Nation, and that sets forth the Department's reasoned findings and conclusions. Further, it includes significant conditions of approval intended to address concerns raised by the public and flesh out substantive changes to the project that will be required as part of licensing (including for a PFAS treatment system for which there are currently no standards).

CLF and the Penobscot Nation have not shown that the Department's findings lack support in the record. Instead, they criticize DEP for not imposing sufficiently stringent requirements for PFAS remediation. But this ignores the fact that DEP, in processing the application for the permit expansion, will be able to impose specific criteria addressing PFAS. CLF and the Penobscot Nation also claim that the proposed expansion is inconsistent with the state waste plan and hierarchy, but ignore substantial evidence showing that the landfill is an essential part of the plan hierarchy and that other waste management options have been appropriately prioritized. *See, e.g.*, PBD 12-15 (discussing steps to support both the plan and the hierarchy); *id.* at 22 (adding conditions of approval to enhance recycling and volume reduction).

Given that the record contains substantial evidence supporting the Department's decision to issue a PBD, and that CLF and the *Penobscot* Nation have only posed conclusory arguments, they cannot show a strong likelihood of success on the merits.

III. No Substantial Harm to Adverse Parties or the General Public

Finally, CLF and the Penobscot Nation fail to articulate the substantial harm to the public that will result from the stay of the landfill expansion. On the contrary, failing to allow the expansion permitting

process to proceed will harm the public's interest in having adequate secure landfill capacity to manage Maine's solid waste needs. JRL accepts over half of Maine's solid waste. *See* PBD at 7. It also accepts wastes which are difficult to manage such as sludge – JRL accepts about 90% of wastewater treatment plant sludge – and wastes that support other waste management streams, such as certain wastes from Maine's three incinerators. *Id.* at 7-8. Maine would be harmed if landfill capacity were unduly limited.

JRL is expected to run out of landfill space in early 2028 if state disposal continues at current rates, which means that construction of the expansion must begin in 2027. *Id.* Given the long-lead time required for permitting, even if the expansion application were submitted in January 2025, the permitting process (without appeals or other procedural hurdles) will last well into the summer of 2026, leaving little room for further delay. If the PBD were stayed while the appeal process plays out in the courts, which could take 6-8 months in the Superior Court alone and perhaps as much as a year and a half during any appeal to the Maine Law court, the additional capacity may not be available when the existing JRL runs out of space. This would be a significant public health problem for the entire State.

The Department has already separately concluded that “the expansion of Juniper Ridge Landfill . . . will be necessary to ensure there is adequate capacity for the entire State of Maine over the next ten years.”¹ The Department's consultant advised that “[i]f JRL is not expanded, the state faces a dire situation for solid waste generally in Maine” and, with respect to biosolids that “there is no current or proposed alternative outlet in the state that would be able to accept the tonnage currently handled at JRL.”² Thus, if JRL's expansion is not approved in time to begin building in 2027, it will cause a state-wide solid waste crisis.

¹ Maine Materials Management Plan: 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report, Maine DEP.

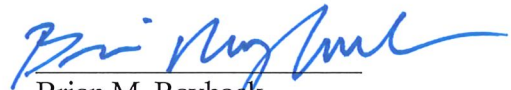
² Evaluation of Biosolids Management in Maine and Recommendations for the Future, Brown & Caldwell.

Further, and ironically, should DEP grant the requested stay, it would only serve to *increase* exposure to PFAS. The application, if stayed, would simply result in delayed installation of a PFAS remediation system. The remediation system, which would apply to JRL as a whole, is only being imposed as a condition to the proposed expansion of JRL. If the expansion is not allowed, then no PFAS remediation system would be installed at all.

CONCLUSION

For the foregoing reasons, NEWSME requests that the Department deny CLF and the Penobscot Nation's application for stay.

Dated this 25th day of November 2024.



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