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Via Electronic Mail: karen.knuuti@maine.gov

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Re: Application DEP# S-020700-W5-CV-N: Application for a Determination of Public Benefit Juniper Ridge Landfill Expansion

Dear Specialist Knuuti:

Conservation Law Foundation (“CLF”) and the Penobscot Nation appreciate the opportunity to comment on the Application for a Determination of Public Benefit Juniper Ridge Landfill Expansion (DEP# S-020700-W5-CV-N) (“Application”).¹ CLF protects New England’s environment for the benefit of all people and uses the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Through its Zero Waste Project, CLF aims to protect communities from the dangers posed by unsustainable waste management practices. The Penobscot Nation is the oldest government in the Western Hemisphere; “[s]ince time immemorial, the Penobscot Nation, *penawahpkekeyak*, the people of the place of the white rocks, has inhabited its ancestral homeland situated within the drainage area of the Penobscot River and its many tributaries, lakes, and ponds.”² “As a proud riverine people, Penobscot epistemology, culture, and society are rooted in their intimate relationship to the [Penobscot] river- the source of life that provides all that is needed; the river to which the Penobscot people belong,”³ and the river along which Juniper Ridge Landfill (“JRL”) is located and polluted.

¹ Maine Bureau of General Services (Owner) and NEWSME Landfill Operations, LLC (Operator), *Application for A Determination of Public Benefit Juniper Ridge Landfill Expansion*, SEVEE & MAHER ENGINEERS (June 2024), available at https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/PBDApplication/20240607_APPLICATION%20FOR%20A%20DETERMINATION%20OF%20PUBLIC%20BENEFIT.pdf [hereinafter JRL Expansion PBD Application]; Letter from Karen Knuuti to Lisa Turner, *Application for Determination of Public Benefit, Juniper Ridge Landfill*, STATE OF ME. DEP’T OF ENV’T PROT. (June 24, 2024), available at https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/PBDApplication/2024_06_24%20JRL%20PBD%20accept.pdf.

² *Penobscot Nation, penawahpkekeyak*, WABANAKI ALLIANCE, available at <https://www.wabanakialliance.com/penobscot-nation/>.

³ *Id.*

In this letter, we explain why the proposed expansion cannot meet the standards for a positive Public Benefits Determination. In particular, the expansion is inconsistent with the State of Maine's Solid Waste Management Hierarchy and with ensuring environmental justice for the communities where the expansion is proposed.

I. Introduction

The Juniper Ridge Landfill ("JRL") is located on a 780-acre parcel in Old Town and Alton, Maine, and is owned by the Maine Department of Administrative and Financial Services' Bureau of General Services ("BGS"). It is operated by NEWSME Landfill Operations, LLC, a wholly-owned subsidiary of Casella Waste Systems ("Casella"), under a 30-year Operating Services Agreement, which was entered into on February 5, 2004.⁴ The Application is to expand JRL by about 61 acres.⁵

When making the Public Benefits Determination ("PBD"), the Commissioner of the Maine Department of Environmental Protection ("MEDEP" or the "Department") may issue a full or partial approval, with or without conditions.⁶ In order to issue a positive determination, the Commissioner must find that the proposed facility provides a "substantial public benefit."⁷ The criteria for such a finding are comprised of four distinct evaluations: (1) capacity needs; (2) consistency with the State's waste management and recycling plan and promotion of the State's solid waste management hierarchy; (3) consistency with local, regional, or state waste management systems; and lastly, (4) consistency with ensuring environmental justice for the community in which the expansion is proposed.⁸

The Application does not meet the necessary criteria for a positive determination because it runs contrary to the State's Solid Waste Management Hierarchy, and because it would further deprive the public, in particular the Penobscot Nation, of the right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. As it stands, the Commissioner must issue a negative determination.

If the Commissioner chooses to issue a positive determination despite the Application failing to meet the requisite criteria, the Commissioner must include necessary conditions with such approval that bring the Application closer in line with the law.

II. The Proposed Expansion Runs Contrary to the State's Solid Waste Management Hierarchy and thus Fails to Fulfill the Requirements for a Positive PBD.

⁴ *Id.* at 1, 1-1.

⁵ *Id.* at 1.

⁶ 38 M.R.S. § 1310-AA(7)(A).

⁷ 38 M.R.S. § 1310-AA(1).

⁸ 38 M.R.S. § 1310-AA(3).

The Department may only issue a positive PBD if the Commissioner finds that the proposed facility “promotes the solid waste management hierarchy as set out in section 2101.”⁹ 38 M.R.S.A. § 2101 provides that it is the policy of the State to implement a waste management approach based on the solid waste management hierarchy.¹⁰ To carry out this policy, the law requires the State to plan for and implement an integrated approach to solid waste management, which must be based on the following order of priority: (a) reduction of waste generated at the source, including both amount and toxicity of the waste; (b) reuse of waste; (c) recycling of waste; (d) composting of biodegradable waste; (e) waste processing that reduces the volume of waste needing landfill disposal, including incineration; and (f) land disposal of waste.¹¹ In addition, 38 M.R.S.A. § 2132, established the goal of recycling or composting 50% of the municipal solid waste tonnage generated within Maine each year, by 2021.¹² This statute also set the goal to reduce the disposal of municipal solid waste (“MSW”) to 0.55 tons per capita by 2019, and further reduce the tonnage by 5% every 5 years thereafter.¹³

A. Expanding Landfill Capacity is the Very Last Priority in the Hierarchy and Completely Subverts the State’s Recycling and Composting Goals.

MEDEP has been unambiguous about the State’s current failure to achieve its statutory goals: “Maine has not been making progress towards reaching its waste diversion and recycling goals. The amount of MSW and CDD [construction and demolition debris] Maine generates annually has increased, the amount of waste material Maine is landfilling has increased, and the rates of recycling and waste diversion has remained, at best, stagnant in some areas of the state and has decreased in others.”¹⁴ According to the most recent data from the Department, Maine’s recycling rate is faltering at 33.8% and the reduction rate remains .138 tons per capita short of the current goal.¹⁵

In order to meet the substantial public benefit criteria, a landfill must meet the immediate, short-term, or long-term capacity needs of the state.¹⁶ “Immediate” means within the next three years, “short-term” within the next five years, and “long-term” within the next ten years.¹⁷ MEDEP has stated that JRL has approximately five years of remaining capacity, and that the expansion of JRL will be necessary to ensure “adequate capacity for the entire State of Maine

⁹ 06-096 C.M.R. ch. 400, § 4(N)(1).

¹⁰ 38 M.R.S.A. § 2101.

¹¹ *Id.*

¹² 38 M.R.S.A. § 2132(1).

¹³ 38 M.R.S.A. § 2132(1-B).

¹⁴ *Maine Materials Management Plan: 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report*, ME. DEP’T OF ENV’T PROT. 49 (Jan. 2024), available at <https://www.maine.gov/tools/whatsnew/attach.php?id=12222463&an=1> [hereinafter *Maine Materials Management Plan 2024*].

¹⁵ *Id.* at 21, 23.

¹⁶ 38 M.R.S. § 1310-AA(3)(A).

¹⁷ *Id.*

over the next 10 years.”¹⁸ According to Maine’s 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report (the “2024 Materials Management Plan”), Maine’s disposal needs are increasing.¹⁹ As a result of the continued increase in the generation of solid waste, MEDEP has stated that JRL’s expansion in particular is key to meeting capacity needs, as the landfill accepts 50% of Maine’s waste.²⁰ Specifically, MEDEP states that JRL’s expansion will add 15 to 20 years to its capacity, which allows Maine to ensure its ten year long-term capacity goals as required by the PBD statute.²¹ **But that statement is based on capacity needs that arise only because JRL’s operator, Casella, has been squandering Maine’s limited landfill capacity on imported waste, untreated sludge, and huge volumes of Construction and Demolition Debris (“CDD”).**

MEDEP acknowledges that any expansion of JRL is a band-aid solution that will not address the long-term shortcomings of the state’s current waste management system. Specifically, they have found that “if considerable *reduction in the amount of material* going to landfills is not achieved, or *unless new technology and infrastructure is brought online in multiple locations* in Maine, a sizeable portion of Maine’s landfill capacity will be gone within 20 years.”²² **Expanding JRL without implementing specific conditions to reduce the volume of disposed waste, increase diversion, and recycle more, would be a violation of the public benefit requirement that any planned expansion must promote the Solid Waste Hierarchy.**

In 2017, in the Board of Environmental Protection’s conditional approval of Casella’s most recent expansion of JRL, the Board conditioned its approval of Casella’s expansion upon Casella continuing to explore and implement “evolving waste management techniques and practices sufficiently within the control of the applicant . . . as appropriate to reduce, reuse, recycle, compost and/or process to the maximum extent practicable prior to landfilling.”²³ In violation of this condition, Casella has failed to take necessary measures to reduce the fill rate at JRL and has in fact continuously fought to fill JRL more quickly, abdicating their legal obligation to implement feasible measures to reduce the volume of landfilled waste. Casella’s current practices at JRL run counter to the solid waste management hierarchy, and the proposed expansion will further undermine the State’s waste management priorities.

The more cubic yards of landfill capacity there are in Maine, the more likely it is for companies and regulators to take the “easy” option and bury Maine’s waste rather than commit to reduction, reuse, or the development of recycling and composting programs as required by Maine law. **Approving the Application would run counter to the State’s Solid Waste**

¹⁸ Maine Materials Management Plan 2024 at 3, 34.

¹⁹ *Id.* at 26.

²⁰ *Id.* at 3, 31, 32, 36, 41.

²¹ *Id.*

²² *Id.* at 42 (emphasis added).

²³ Juniper Ridge Landfill Expansion #S-020700-WD-BI-N and #L-19015-TG-D-N, Approval with Conditions, STATE OF ME. 46 (June 1, 2017), available at https://www.maine.gov/dep/waste/juniperridge/documents/2015expansion/2017_06_01%20JRL%20License.pdf [hereinafter 2017 JRL Expansion License].

Hierarchy that mandates promoting waste reduction, diversion, and recycling, and would further exacerbate the State's failure to achieve the statutory waste reduction and recycling goals laid out in 38 M.R.S.A. § 2132.

B. JRL's Fill Rate Has Been Climbing Significantly and Expanding Its Capacity Will Not Help Maine Reach Its Waste Management Goals.

Maine remains far from its statutory reduction and recycling goals, yet JRL continues to request higher and higher waste limits and bring in vast amounts of CDD. Casella has also significantly increased their disposal rate of oversized-bulky waste ("OBW") without regard for waste reduction, toxicity reduction, or preserving landfill capacity.

i. Much of the Waste Taking Up JRL's Capacity is From Out-of-State.

Over three decades ago, the Maine legislature grew increasingly concerned about the amount of out-of-state waste entering Maine for disposal. To protect Maine from being New England's dumping ground, the Legislature passed a law that prohibited the development of new commercial landfills²⁴ and reserved state-owned landfills for Maine-generated waste.²⁵ The ban on new, privately owned landfills was singularly aimed at legally preventing the importation of out-of-state waste. Landfilling takes an environmental and public health toll on the surrounding communities and environment and consequently, most of New England has fought to minimize landfilling within their territory.

However, much of the waste now filling up JRL originated from Massachusetts. Massachusetts banned the disposal of CDD within their state to preserve their own landfill capacity.²⁶ Until LD 1639 took effect this past year (discussed below), Maine waste laws had a gaping loophole wherein out-of-state waste could be minimally "processed" at a Maine waste processing facility, and then shipped to a Maine landfill as "in-state waste." Consequently, a large volume of out-of-state CDD now filling JRL was simply crushed by waste processing facilities in Maine with the leftover CDD winding up in JRL under the misleading designation of "in-state" waste.²⁷ MEDEP affirmed this recently, stating: "Notably a significant amount of Maine's CDD originates in Massachusetts due to a ban on the disposal of CDD in Massachusetts."²⁸ **In short, rather than meeting Maine citizens' projected capacity needs, JRL's expansion largely meets Massachusetts' "capacity needs" because Casella has been filling up Maine's limited landfill capacity with CDD, much of it from Massachusetts.**

²⁴ 38 MRSA §1310-X.

²⁵ PL 1989 Chapter 585, An Act to Promote Reduction, Recycling and Integrated Management of Solid Waste and Sound Environmental Regulation; see 38 M.R.S. § 1310-N.11.

²⁶ Maine Materials Management Plan 2024 at 37.

²⁷ *Id.*

²⁸ *Id.*

Between 2012 and 2022, CDD at JRL increased from 369,069 tons to 485,298 tons. **CDD is now the largest waste stream filling up JRL, making up 60% of the waste accepted at JRL between 2012 and 2022.**²⁹ This massive stream of CDD runs counter not only to the State’s waste reduction goals, but also to their toxicity reduction goals. **CDD is a particularly dangerous waste stream that contains chemical additives “and is likely to generate harmful leachate.”**³⁰ The chemicals found in CDD “contaminate surface and groundwater resources as well as surface soils.”³¹

MEDEP has stated unequivocally that “CDD, CDD residue and other similar material, and OBW have been utilized as bulking material for stabilization,” and that “[t]hese **additional bulking materials compounded by sludge volumes have shortened the timeframe by which JRL is expected to reach its maximum capacity.**”³² Casella’s proffered justification for the increase in CDD is that it is needed to balance out an increase in the disposal of municipal sludge, but Casella is merely seeking the most profitable (and unsustainable) solution at the expense of the State’s landfill capacity and environment. Casella must not be rewarded for its current unfettered expansion of waste disposal in violation of previous permit conditions; if such conditions are added again this time around, Casella must be *required* to comply with them.

In 2021, advocates and community members fought to close the aforementioned legal loophole that was allowing Casella to bury huge amounts of CDD from out-of-state. The loophole allowed out-of-state waste that was first minimally processed by a facility called ReSource in Lewiston, Maine, to be counted as “in-state” waste.³³ The Legislature rectified much of this through the passage of LD 1639, which stipulated that the tonnage of “residue” that a processing facility like ReSource could dump in Maine landfills could not exceed the tonnage of in-state waste the processing facility had originally received.³⁴ 1,604 Mainers signed a petition in support of LD 1639, with strong support from the Penobscot Nation who has been unjustly and disproportionately harmed by the poisonous leachate discharged from JRL (discussed below). At the time of LD 1639’s passage, more than 30% of the waste landfilled at JRL each year was this kind of toxic debris that originated from out-of-state.³⁵

²⁹ *Id.*; Figure 7 at 39; Figure 9 at 40.

³⁰ Adane Sewhunegn Molla, et al., *Chemicals of concern in construction and demolition waste fine residues: A systematic literature review*, 299 JOURNAL OF ENV’T MGMT. (2021), <https://doi.org/10.1016/j.jenvman.2021.113654>.

³¹ *Id.* at 2 (citing flame retardants like hexabromocyclododecane, organic pollutants like polyaromatic hydrocarbons, and heavy metals).

³² Maine Materials Management Plan 2024 at 38.

³³ *ReSource Waste Solutions, Our Facilities: ReSource Lewiston*, available at <https://resourcewasteservices.com/our-facilities/resource-lewiston/>; 38 MRSA § 1303-C, sub-§ 40-A (2019).

³⁴ 38 MRSA § 1303-C, sub-§ 40-A.

³⁵ Sarah Nichols, *Testimony in Support of LD 1639*, NAT. RES. COUNCIL OF ME., (May 17, 2021) available at <https://legislature.maine.gov/testimony/resources/ENR20210517Nichols132657281789873265.pdf>.

Casella's reliance on an increase in sludge disposal to justify their CDD imports came to a head in Spring 2023, when Casella suddenly started refusing to landfill large amounts of toxic sludge at JRL. This decision put Maine on the brink of a public health crisis. Wastewater treatment plants scrambled to contain the sludge, which legally can no longer be sold as fertilizer because of its toxic levels of per- and polyfluoroalkyl substances ("PFAS"), otherwise known as "forever chemicals."³⁶ Casella claimed that JRL had become unstable due to too much sludge, and that the only viable solution was to continue importing more out-of-state bulky waste (like washing machines and couches) to stabilize the landfill.³⁷ In the meantime, Casella provided sludge transport services for their customers to dispose of sludge in New Brunswick, Canada, increasing costs to the wastewater treatment facilities, which in turn raised sewer bills for struggling Mainers. MEDEP worked hard to find alternatives for Casella to stabilize JRL without relying on out-of-state waste, but Casella refused all of them. At the time, Susanne Miller, MEDEP's Director of Remediation and Waste Management stated in an internal email, "Casella appears to keep finding reasons for not using the materials we keep finding for them."³⁸

Using the negotiation power of the impending public health crisis, Casella initially sought, through LD 718, to be able to import 235,000 more tons of CDD from out-of-state.³⁹ This amount *far* exceeded what Casella asserted they needed to stabilize the sludge. Casella's original intent behind this bill was clearly to increase their profits, not reserve JRL's capacity for in-state waste, as State law required.⁴⁰ After much pushback from communities, advocates, and legislators, LD 718 was amended to limit Casella's continued use of "out-of-state waste" to 25,000 tons a year. Casella is currently allowed to bury these additional 25,000 tons of waste at JRL until 2025, ostensibly to temper the sludge crisis.⁴¹ Nevertheless, Casella, as of yet, has taken no concrete steps to achieve a more sustainable solution to their increase in sludge at JRL; all signs point to Casella demanding continued importation of CDD after 2025, when the loophole ends.

Notably, LD 1639 did not completely stop Casella's ability to fill JRL with out-of-state CDD. Much of the CDD that the ReSource facility processes and turns into powder, known as "CDD fines," comes from outside Maine, and ReSource continues to send thousands of tons of this to JRL. The catch is that this form of CDD still counts as "recycling" under the laws and regulations and does not count against the cap LD 1639 places on Casella's acceptance of

³⁶ Sawyer Loftus, *The Showdown Behind the Scenes of Maine's Sludge Crisis*, BANGOR DAILY NEWS (April 20, 2023), <https://www.bangordailynews.com/2023/04/20/mainefocus/behind-the-scenes-maine-sludge-crisis-joam40zk0w/>.

³⁷ *Id.* Maine's resistance to letting Casella bring in more out-of-state waste has a long history, stemming from the State's decision in 1989 to ban all new commercial landfills so that Maine could legally preserve landfill capacity for in-state waste.

³⁸ Loftus, *The Showdown Behind the Scenes of Maine's Sludge Crisis*, BDN.

³⁹ LD 718, available at <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280086366>.

⁴⁰ Penelope Overton, *Lawmakers Clash Over Bill to Delay Out-of-State Trash Ban*, PORTLAND PRESS HERALD (May 9, 2023), <https://www.pressherald.com/2023/05/08/lawmakers-clash-over-bill-to-delay-out-of-state-trash-ban/>.

⁴¹ LD 718.

CDD.⁴² **The fines are ostensibly used for shaping, grading, or as alternative daily cover for the landfill, but there is no current accountability mechanism to track how much of this pulverized CDD is genuinely needed, and how much is merely extra profit for the landfill operator and for ReSource.** Most of it comes from out-of-state. To illustrate, in 2022, the ReSource facility took in just 36,563 tons of waste that was generated in Maine. That total was about 22% of the total waste they took in that year, which amounted to 164,677 tons. 88% of the total waste that ReSource took in that year came from Massachusetts and New Hampshire, amounting to 128,114 tons.⁴³ In turn, ReSource sent 66,464 tons of CDD *fines* to JRL that year—in other words the amount of powdered CDD that ReSource sent to JRL in 2022 was almost double the entire CDD waste stream they had received from Maine, none of which was governed by LD 1639. Those tons from ReSource made up the vast majority of CDD fines that JRL received in 2022, which alone accounted for about 8% of their entire waste stream.⁴⁴ **Any approval of the Application must include a condition rectifying this lack of accountability and continued use of Maine’s state-owned landfill for out-of-state waste.**

- ii. *Casella Has Substantially Increased Their Disposal Rate of Oversized Bulky Waste (“OBW”) Without Regard for Waste Reduction, Toxicity Reduction, or Preserving Landfill Capacity.*

The pretense for the increase in OBW is the same—Casella needs the OBW to balance out the increased disposal of municipal sludge. In 2022, Casella requested to increase their OBW limit from 76,648 tons to 82,203 tons.⁴⁵ In 2023, they requested to increase their OBW limit from 82,203 tons to 85,000 tons.⁴⁶ **Both years they based this request on the increase in sludge they were landfilling, and the need for OBW to stabilize the sludge.**⁴⁷ This practice runs contrary to the Solid Waste Management Hierarchy and its implementing regulations. 06-096 C.M.R. Ch. 400 § 6(B) requires that the volume of waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal, as is also required under 38 M.R.S.A. § 1310-N(5-A). **These regulations signify that Casella is obligated to reduce the volume of the sludge being**

⁴² See 06-096 CMR 409(2)(C), available at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2F06%2F096%2F096c409.doc&wdOrigin=BROWSELINK> (clarifying that CDD fines used for shaping, grading, or as alternative daily cover counts as recycling).

⁴³ Maine Materials Management Plan 2024 at 16.

⁴⁴ See 2022 Annual Report: Juniper Ridge Landfill Old Town, Maine, JUNIPER RIDGE LANDFILL 8 (April 2023), available at https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/2022%20Annual%20Report_Part1_0.pdf.

⁴⁵ 2022 Annual Oversized Bulky Waste (OBW) Request Form for Juniper Ridge Landfill, STATE OF ME. DEP’T OF ENV’T PROT. (2022), available at https://www.maine.gov/dep/waste/juniperridge/documents/2022_01_28%20JRL%20OBW%20Annual%20Request%20Form%202022.pdf.

⁴⁶ 2023 Annual Oversized Bulky Waste (OBW) Request Form for Juniper Ridge Landfill, STATE OF ME. DEP’T OF ENV’T PROT. (2023), available at https://www.maine.gov/dep/waste/juniperridge/documents/2023_01_26%20JRL%20OBW%20Annual%20Request%20Form%202023%20Final.pdf.

⁴⁷ *Id.*

landfilled to preserve capacity, not simply fill up their landfill with extra bulky waste to “balance” out the increase sludge volume.

Based on JRL’s past and existing practices, the proposed expansion thus totally undermines the requirements of Maine’s Solid Waste Management Hierarchy, State Recycling Goals, and their implementing regulations. Casella’s operation of JRL shows minimal efforts to reduce waste, increased efforts to obtain more waste, and increased efforts to obtain particularly toxic waste. Casella profits from waste disposal and has no financial incentive to preserve Maine’s landfill capacity, allowing the law to take a backseat to profits. **Accordingly, the Commissioner must find that the Application does not satisfy the PBD criteria. However, if the Application is approved, the following conditions must be added to begin to rectify Casella’s perverse incentives and squandering of Maine’s resources.**

- C. If Approved, the Commissioner Must Require at a Minimum: (i) a Dewatering System for Sludge at JRL; (ii) the Setting of a Maximum Fill Limit; and (iii) the Placing of a Cap on CDD Fines.

Firstly, MEDEP must require Casella to install and implement a sludge drier to vastly reduce the volume of sludge, CDD, and OBW at JRL. Casella must dry out their sludge and thus obviate the purported need for extra out-of-state waste, preserving landfill capacity, as intended by law, for Maine-generated waste. Otherwise, when the 2-year extension granted by LD 718 ends and Casella can no longer legally fill up JRL with out-of-state waste, it will leave the State in the exact same position as last year—with no choice but to accede to Casella’s demands to import more CDD and bulky waste from out-of-state to “stabilize” JRL from the influx of sludge.

MEDEP has been clear that the long-term solution to more sludge disposal is a sludge drier like the one planned for at Crossroads Landfill. Crossroads Landfill has determined that the “best path forward” to minimizing their fill-rate from increased sludge disposal is to invest in sludge drying. With the sludge drier, the volume of municipal wastewater treatment plant sludge can be reduced by 75%.⁴⁸ This much smaller and drier volume of sludge can then be landfilled “without the need for significant bulking materials.”⁴⁹ The proposed new facility at Crossroads will run on heat pump technology using biogas generated onsite, reducing the energy demand needed for processing sludge. MEDEP has flagged that this solution “may be a far more sustainable option in the long run than continuing to landfill larger amounts of CDD in order to accommodate landfilling of sludge” and that “the current trajectory of sludge and CDD disposal encourages the expansion and use of landfilling, and without alternative options, Maine’s landfills will likely fill up more quickly than originally planned for.”⁵⁰ In other words, without investing in sludge drying, Casella’s current proposal to expand JRL runs both contrary to the spirit of the “capacity” criterion of the PBD and is entirely inconsistent with the State’s Solid

⁴⁸ Maine Materials Management Plan 2024 at 38.

⁴⁹ *Id.* at 38.

⁵⁰ *Id.* at 39.

Waste Management Hierarchy, which places landfilling at the very bottom of waste management options. **Requiring Casella to dehydrate the sludge at JRL is a necessary condition to make Casella's proposed expansion conform more closely to the solid waste hierarchy, as required by the PBD Standards.**

Similarly, given the rate at which waste is filling up JRL, if the expansion is approved, it should be conditioned on a maximum fill rate for waste each year, which would preserve the life of the landfill. Without a maximum fill rate, Casella could fill the entire projected 11.9 million cubic yards of capacity as quickly as possible, encouraging continued reliance on the least desirable waste management method, landfilling.

In addition, the Commissioner should, at a minimum, place a specific, yearly cap on how many CDD fines may be imported into JRL. This cap should be based on Casella's proven need for alternative daily cover, shaping and grading, on average. There is currently no check on the amount of CDD fines entering JRL, as opposed to CDD waste more generally which is limited by LD 1639. This condition should also require that any attempt at exceeding the set annual limit be made through a formal request to MEDEP with a detailed justification for the excess need. This is nothing new: a similar process is currently required for OBW at JRL. Currently, Casella appears to have unfettered ability to fill their landfill with as much pulverized CDD as they wish, with no accountability metric for how much is *actually needed* in shaping, grading, and alternative daily cover. As their operation stands, CDD fines appear to be a remaining loophole through which Casella is filling up Maine's landfill capacity with toxic, out-of-state waste.

In sum, the Application does not comply with the criteria for a Positive PBD and must be denied under the governing statute. However, if the Commissioner approves the application, she should do so *only with the inclusion of the above three conditions.*

III. The Application Does Not Fulfill the Environmental Justice Criterion of the PBD Standards.

The other major obstacle to a positive PBD is that this expansion is entirely inconsistent with ensuring environmental justice ("EJ") for the community in which the expansion is proposed. **Importantly, the administrative process for this proposed expansion will be the first time that MEDEP is required by law to assess the potential EJ impacts on the communities in which the expansion is proposed in making its PBD.** This is not just "business as usual;" MEDEP has a new criterion it must affirmatively consider in rendering its PBD.

In 2022, legislation was passed that requires MEDEP to consider EJ impacts in its PBD.⁵¹ The law requires that “[f]or a proposed facility or the expansion of a facility, [it] is not inconsistent with ensuring [EJ] for the community in which the facility or expansion is proposed.” EJ “means the right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment regardless of ancestry, class, disability, ethnicity, income, national origin or religion” and “includes the equal protection and meaningful involvement of all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions.”⁵²

When applying the law here, the Department must assess the expansion’s impacts on the surrounding communities, ensuring that no such community will be overly burdened by the expansion, and find that the expansion of JRL is not inconsistent with ensuring EJ for those communities.⁵³ There are two important components to the EJ analysis: (1) equal protection from environmental pollution; and (2) meaningful involvement.

Casella’s Application does not meet either of these components and does not show how the expansion will ensure EJ for the surrounding communities. Moreover, a factual analysis of the existing web of environmental injustices perpetuated on the Penobscot Nation shows that this expansion would run entirely contrary to ensuring EJ for the Penobscot people. As it stands, the proposed expansion would only perpetuate environmental *in*justice on the Penobscot Nation.

A. The Discussion of EJ in the PBD Application is Minimal and Inadequate in Explaining How the Expansion is Not Inconsistent with Ensuring EJ.

The Expansion is inconsistent with ensuring EJ for the surrounding communities and Casella’s rudimentary analysis in their PBD Application cannot fulfill the legal EJ requirement of the PBD inquiry.⁵⁴

The first component of the legal definition of EJ for a PBD analysis focuses on “the right to be **protected** from **environmental pollution** and to live in and enjoy a **clean and healthful environment**,”⁵⁵ however, in their EJ analysis, Casella puts forth initiatives that have nothing to do with protecting the community from the environmental pollution of JRL. What’s more, some of the initiatives Casella points to as ways it satisfies the EJ component of the PBD are programs that currently exist because *they are already required by existing law*.

⁵¹ 38 M.R.S. § 1310-AA(3)(E); An Act To Protect the Health and Welfare of Maine Communities and Reduce Harmful Solid Waste, S.P. 523 - L.D. 1639 (April 18, 2022), *available at* <https://legislature.maine.gov/bills/getPDF.asp?paper=SP0523&item=7&snum=130>.

⁵² 38 M.R.S. § 1310-AA(3)(E).

⁵³ *Id.*

⁵⁴ JRL Expansion PBD Application at 5-1–5-2.

⁵⁵ 38 M.R.S. § 1310-AA(3)(E) (emphasis added).

First, Casella asserts it will expand the already required monitoring program to detect changes in groundwater, surface water, and air quality.⁵⁶ Casella affirmatively admits these programs are required, so it is disingenuous for Casella to assert that this is a way in which Casella is going beyond the bare minimum to ensure EJ. Additionally, these monitoring programs do nothing to actually *protect* the surrounding communities from the environmental pollution from JRL's operations.

Second, Casella asserts that “[t]he City of Old Town and Town of Alton receive financial benefits through host community agreements, as do neighbors living in immediate proximity of JRL, who receive benefits such as property tax reimbursement and a property value guarantee. These benefits will continue as a part of the Expansion.”⁵⁷ Property tax reimbursement and property value guarantees have nothing to do with *protecting* communities from environmental pollution. Casella's focus on what amounts to monetary reimbursements rather than protection of community health and the environment runs counter to the purpose of the EJ provision.

Third, Casella asserts that they “will establish a program to support area youth” by funding “a scholarship program designed to reduce barriers to education through financial assistance” and program(s) “to improve outcomes for and provide access to opportunities for youth.”⁵⁸ Though this is a good initiative, once again, it has nothing to do with *protecting* communities from environmental pollution from the expansion; moreover, there is no reason Casella cannot be moving forward with this initiative now.

The remaining information in the Application's EJ section focuses on the second component of the EJ definition: “**meaningful involvement** of all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions.”⁵⁹

Casella asserts: “The Department's Rules are intended to alert the public to advise people of their opportunities to provide comment or become an intervenor. The Rules require the Commissioner to accept written public comment during the course of processing an application and also requires that a public meeting be held in the vicinity of the proposed facility to hear public comments. The Commissioner must consider and address these comments when making the PBD determination. This is consistent with 38 M.R.S. § 1310- AA(3)(E) requirements to provide meaningful public involvement.”⁶⁰ In making this point, Casella is asserting that the current basic legal requirements of public notice fulfill what “meaningful involvement” means, essentially rendering the EJ component of “meaningful involvement” an empty promise. This is a very misguided understanding of what “meaningful involvement” requires. The intention of the “meaningful involvement” provision can only be interpreted as requiring project proponents to

⁵⁶ JRL Expansion PBD Application at 5-1.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 38 M.R.S. § 1310-AA(3)(E) (emphasis added).

⁶⁰ JRL Expansion PBD Application at 5-1.

do more than just the basic legal requirements and to be intentional with their community engagement efforts. If “meaningful involvement” equated to “business as usual” by a project proponent fulfilling the basic notice requirements, then the EJ provision would not have been necessary to pass into law: what is meaningful about following the basic requirements?

Casella goes on to note, “To ensure the public is informed about the proceedings and opportunities to participate,” Casella “will provide additional notice and opportunity to provide comment in the permit proceeding,” which includes:

- “Facility abutters and the offices of municipalities in which the facility is located (or proposed to be located) will be notified via a public notice approximately five days before the PBD is submitted;
- The public notice will also be published once in a newspaper circulated in the area where the project is located; and
- The MEDEP will post this information on their public website.”⁶¹

Casella then makes the effort to point out that “[i]n addition to what is required in the Department’s Rules, BGS and NEWSME will provide more public notice and opportunities to provide comment than is required by law. This will include publishing the public notice in the Penobscot Times and the Bangor Daily News and mailing the notice to the Landfill Advisory Committee and the Penobscot Nation.”⁶² Notably, creating several additional public notices in different venues cannot be seen as fulfilling the spirit of “meaningful involvement,” simply providing additional notice does not translate into additional opportunities for meaningful participation. For example, how can Casella be sure that posting in these venues will actually bring more community members to these meetings? How does this help build relationships between them and the community? Casella provides no information about how it plans to actually involve the public in these processes and makes no attempt to. Rather, it attempts to argue that these minimal efforts of going beyond their basic legal public notice requirements will fulfill “meaningful involvement.”

Casella also adds, “In addition to the public meeting that will be held with MEDEP to satisfy 38 M.R.S. § 1310 AA(3)(E), NEWSME will also conduct four public milestone meetings to update the MEDEP and the public on the investigation and design portions of the project during the design process and prior to submitting the application.”⁶³ Simply informing the community about milestones and decisions being made cannot be seen as “meaningful involvement.” For example, does the public get input during these meetings? If so, how will they know whether and to what extent Casella takes into account public input? How will Casella make sure it has many community voices heard during these meetings?

⁶¹ JRL Expansion PBD Application at 5-1–5-2.

⁶² *Id.* at 5-2.

⁶³ *Id.*

As stated above, this is the first time that Maine is interpreting the EJ provision in the PBD law. To fulfill this part of the PBD analysis, Casella has asserted practices that have nothing to do with EJ. Furthermore, Casella putting forth “business-as-usual” practices as enough to fulfill the EJ provision does not make any logical nor legal sense. **The standard that MEDEP chooses to set for this first interpretation of what fulfills the EJ criterion must be more than what Casella puts forth.** Accordingly, the Department must conclude that Casella has not fulfilled the EJ criterion of the PBD Standards.

B. The Application Cannot Fulfill the EJ Criterion of the PBD Because it Would Perpetuate Environmental Injustice on the Surrounding Communities.

The City of Old Town, The Town of Alton, and the Penobscot Nation are some of the communities “in which the expansion is proposed.”⁶⁴

The Penobscot Nation is centered on Indian Island, a large island that sits in the Penobscot River about four miles from JRL. Moreover, JRL is situated between two tributaries to the Penobscot River, a sacred source of fish and sustenance for the Penobscot Nation. One such tributary, Birch Stream, is a traditional hunting territory that the tribe has used for thousands of years. The Penobscot aquifer underlies the whole area and provides the drinking water for Old Town and Indian Island. Moreover, as described in detail below, JRL sends its toxic leachate to be discharged from the Nine Dragons Wastewater Treatment Plant (“WWTP”) at the Nine Dragons Paper Mill, sitting just one mile downriver from Indian Island.

Reflecting the landfill’s intimate relationship with the environmental health of the Penobscot Nation, there has been a Penobscot member sitting on the Juniper Ridge Landfill Advisory Committee for over ten years. The Penobscot Nation has actively opposed JRL for decades—most ardently for sending PFAS-laden leachate to the Nine Dragons WWTP in Old Town, where it is discharged into the Penobscot River without being treated for PFAS.⁶⁵ This cycle of poisoning the Penobscot River is discussed in detail below.

i. JRL, Like All Landfills, Pollutes Nearby Communities and the Environment, Posing Serious Health and Safety Hazards.

Upholding a community’s right to be protected from *environmental* pollution requires looking at a community’s exposure to pollution *as a whole*, not merely the pollution emanating from a singular source. As shown below, the Penobscot Nation is

⁶⁴ 38 M.R.S. § 1310-AA(3)(E).

⁶⁵ See Dawn Neptune Adams, Testimony of Dawn Neptune Adams Submitted in Response to Chapter 400 Rule Petition for Comments, available at [https://www.maine.gov/dep/ftp/projects/ch400/comments2020-09-28/Neptune%20Adams,%20Dawn%20\(2\).pdf](https://www.maine.gov/dep/ftp/projects/ch400/comments2020-09-28/Neptune%20Adams,%20Dawn%20(2).pdf); see also generally, Crawford Engineers & Sevee & Maher Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME. (Jan. 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>.

unjustly burdened by landfill pollution, and the expansion will only worsen the cumulative impacts of this harm. The plain language of 38 M.R.S. § 1310-AA(3)(E) makes it clear that the Commissioner must assess whether expanding JRL is consistent with *ensuring* the surrounding community's right to be protected from environmental pollution—a look at the history of the State's degradation of this right for the Penobscot Nation and the Nation's current environmental burdens necessitates a negative PBD of this expansion.

A landfill expansion goes through numerous stages of scrutiny due to a landfill's propensity to harm local communities, natural resources, and EJ interests. Landfills are the third greatest source of human-created methane emissions.⁶⁶ The air pollutants from landfills cause respiratory and other health issues for nearby residents, and if there is ever a leak, landfill leachate poisons nearby groundwater. Even when landfills do not leak, PFAS-contaminated landfill leachate is pumped to wastewater treatment plants that lack the capacity to remove PFAS, and then dump this PFAS-filled effluent into local waters. Landfill odors diminish the quality of life of neighboring residents—who are disproportionately low-income and communities of color—and lower property values.

These harms from JRL are not theoretical. Those living closest to the landfill suffer the odors from potentially toxic gases. The landfill's leachate has long poisoned the Penobscot River, harming wildlife and unjustly burdening the Penobscot Nation. Incidents like landfill fires have affected the residents of Old Town, Alton, and Penobscot members alike.

Common landfill hazards, like last year's fire at JRL, further burden the populations living around JRL. On May 17, 2023, JRL caught on fire. Landfill fires are fairly common, with hundreds occurring across the country each year.⁶⁷ During the May 2023 fire, Penobscot Nation Chief Kirk Francis reported that tribal members suffered burning eyes and sore throats from the fire's smoke and ash.⁶⁸ Other residents shared that their bodies and cars were coated in ash, and that no warnings were issued to the public about the health hazards of the landfill fire.⁶⁹ Casella's most recent annual report for JRL shows that in 2022 there was at least one leachate spill, where the toxic chemicals flowed across the landfill road before being contained.⁷⁰ This leachate spill was never announced to the public. The annual reports for JRL

⁶⁶ *Basic Information about Landfill Gas*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/lmop/basic-information-about-landfill-gas> (last updated April 25, 2024).

⁶⁷ Tami Abdollah & Dian Zhang, *Landfills Catch Fire, Briefly, All Over America. Why did one in Alabama burn for months?*, USA TODAY, (April 14, 2023, 11:29 AM), <https://www.usatoday.com/story/news/2023/04/09/landfill-fires-arent-rare-alabama-one-burned-months/11532080002/>.

⁶⁸ Caitlin Andrews, *DEP Unlikely to Find Cause of Juniper Ridge Fire*, ME. PUBLIC RADIO (May 17, 2023), <https://www.mainepublic.org/environment-and-outdoors/2023-05-17/dep-unlikely-to-find-cause-of-juniper-ridge-fire>.

⁶⁹ See Transcript of Bureau of General Services Public Meeting regarding OSA Extension, held on February 15, 2024, available at [Public Hearing Transcription 02-15-2024 \(edited\) 0.docx \(live.com\)](#).

⁷⁰ See 2022 Annual Report: Juniper Ridge Landfill Old Town, Maine, JUNIPER RIDGE LANDFILL 10 (April 2023), available at https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/2022%20Annual%20Report_Part1_0.pdf.

show a pattern of sporadic landfill fires and toxic spills, and a propensity to keep such information from the public.⁷¹ Over the last couple years, an undefined number of “waste-related fires” and leachate and petroleum spills were reported to MEDEP, though never announced to the surrounding communities. Landfill leaks, fires, and other disasters are all part of the reality communities burdened with landfills endure.

Moreover, JRL’s next-door neighbors suffer air quality impacts that degrade their quality of life, and quite possibly, their health. **In the last several months, BGS received dozens of complaints from local residents about JRL odors impacting their quality of life.**⁷² Complaint notes show that odors came from a myriad of landfill-related activities, including daily sludge deliveries and ongoing landfill construction which releases smelly gases. In recent calls, the on-call Environmental Analyst explained that neighbors were likely smelling heightened hydrogen sulfide odors from the work at the landfill. Hydrogen sulfide is a toxic gas; it affects the nervous system and respiratory tract, and in low doses can irritate the eyes, nose or throat, cause breathing difficulties, headaches, tiredness, memory loss, and balance problems.⁷³ Callers from Old Town and the City of Alton complained of stinging eyes and headaches but were told that the levels they could smell were not “significant” health risks.

While no one *wants* to live near a landfill, one Maine community in particular—the Penobscot Nation—has now been saddled with **72 landfills** along their river, as discussed below.

ii. *JRL’s Poisoning of the Penobscot River Has Disproportionately Burdened the Penobscot Nation for Years.*

JRL’s highly toxic leachate is sent to the Nine Dragons WWTP and then discharged into the Penobscot River. **Nine Dragons WWTP is just one mile downriver from the Penobscot Nation.** The leachate at JRL is collected from 122 acres, flowing at an average rate of 42,000 gpd, which is expected to increase by about 65% this year due to the opening of another waste cell.⁷⁴ Sampling of the leachate at JRL shows it has PFAS concentrations that far exceed the 20 parts-per-trillion interim drinking water standard (“IDWS”) for the six PFAS (“the PFAS(6)”) currently regulated by the State of Maine.⁷⁵ **Specifically, the PFAS(6) in JRL leachate were**

⁷¹ *Id.* at 10; see also 2021 Annual Report: Juniper Ridge Landfill Old Town, Maine, JUNIPER RIDGE LANDFILL 9 (April 2022), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/JRL%20-%202021%20Annual%20Report%20Complete%20Final%20%2804-29-22%29.pdf>.

⁷² See Complaint Reports for Juniper Ridge Landfill from 2024 and 2023, available at <https://www.maine.gov/dafs/bgs/maines-state-owned-landfills/juniper-ridge-landfill>.

⁷³ Appendix E: Agency for Toxic Substances and Disease Registry (ATSDR) Hydrogen Sulfide Fact Sheet, ENV’T PROT. AGENCY (Dec. 2016), available at https://www.epa.gov/sites/default/files/2017-12/documents/appendix_e-atstdr_h2s_factsheet.pdf; Fact Sheet: Hydrogen Sulfide from Landfills, N.J. DEP’T OF HEALTH, available at https://www.nj.gov/health/ceohs/documents/Hydrogen_sulfide_fact_sheet.pdf.

⁷⁴ Crawford Engineers & Sevee & Maher Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME. (Jan. 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>.

⁷⁵ *Id.* at ES-3.

found at levels 20 times greater than allowed in drinking water.⁷⁶ This sampling of course does not reflect the levels in the leachate of the hundreds of other PFAS for which no tests are done.⁷⁷

PFAS are a group of nearly 15,000 synthetic chemicals that all share a carbon-fluorine bond.⁷⁸ They are called “forever chemicals” because they are practically indestructible in nature. A growing body of science has documented that there are significant adverse health effects associated with PFAS exposure, including liver damage, thyroid disease, decreased fertility, high cholesterol, obesity, endocrine system disruption, hormone suppression, and cancer.⁷⁹ The United States Environmental Protection Agency (“USEPA”) has identified landfill leachate as a potential significant source of PFAS in the environment. Just last year, USEPA announced plans to develop new effluent limitations guidelines and pretreatment standards for landfill leachate after a determination that new effluent guidelines for landfills are needed to address the widespread presence of PFAS in leachate.⁸⁰

JRL’s leachate is trucked to the Nine Dragons WWTP in Old Town, where it is treated for various contaminants, and discharged into the Penobscot River. Casella does not treat the leachate to remove PFAS before sending it to Nine Dragons WWTP, nor does Nine Dragons WWTP treat the leachate for PFAS once it is received. Not only is the water not treated for PFAS at any stage prior to discharge into the Penobscot River, but recent studies have shown that the leachate treatment at typical wastewater treatment plants, like Nine Dragons WWTP, can actually *create more PFAS in the treated effluent*.⁸¹ In other words, the effluent leaving Nine Dragons WWTP and entering the Penobscot River may contain even more PFAS than the leachate going into it.

The PFAS in the effluent discharged from Nine Dragons WWTP bioaccumulates and disperses into the wider environment. Once released into the environment, PFAS are extremely difficult to contain and remediate because of the strength of the carbon-fluorine bond

⁷⁶ Crawford, Study to Assess Treatment Alternatives for Reducing PFAS in Leachate, ES-3 to ES-4.

⁷⁷ In an EPA evaluation of leachate from over 200 landfills, PFAS detections included 63 different PFAS with average concentrations for an individual compound as high as 14,000 parts-per-trillion (ppt).

⁷⁸ *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, NAT’L INST. OF ENV’T HEALTH SCIS., <https://www.niehs.nih.gov/health/topics/agents/pfc#:~:text=PFAS%20are%20a%20group%20of,the%20U.S.%20Environmental%20Protection%20Agency> (last reviewed May 3, 2024).

⁷⁹ *NTP Monograph on Immunotoxicity Associated with Exposure to Perfluorooctanoic Acid or Perfluorooctane Sulfonate*, U.S. DEP’T OF HEALTH & HUMAN SERVS. 16 (Sept. 2016), available at https://ntp.niehs.nih.gov/sites/default/files/ntp/ohat/pfoa_pfos/pfoa_pfosmonograph_508.pdf.

⁸⁰ See, e.g., *Landfill Effluent Guidelines*, U.S ENV’T PROT. AGENCY, <https://www.epa.gov/eg/landfills-effluent-guidelines> (last updated Jan. 5, 2024); *Current Effluent Guidelines Program Plan*, U.S ENV’T PROT. AGENCY, <https://www.epa.gov/eg/current-effluent-guidelines-program-plan> (last updated May 22, 2024).

⁸¹ Nanthi Bolan, et al., *Remediation of poly- and perfluoroalkyl substances (PFAS) contaminated soils – To mobilize or to immobilize or to degrade?*, 401 JOURNAL OF HAZARDOUS MATERIALS 123892 (2021), <https://doi.org/10.1016/j.jhazmat.2020.123892>; Yalan Liu, et al., *From Waste Collection Vehicles to Landfills: Indication of Per- and Polyfluoroalkyl Substance (PFAS) Transformation*, 8 ENV’T SCI. & TECH. LETTERS 66–72 (2020), <https://doi.org/10.1021/acs.estlett.0c00819>.

that comprises each PFAS molecule.⁸² The findings from the study commissioned by BGS, “Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills,” suggest that JRL’s leachate has been contaminating the Penobscot River—and hence the Penobscot Nation—with PFAS for years.⁸³

The Penobscot River holds significant value for the members of the Nation, whose way of life, economic activities, and ancestral wisdom are intricately connected to the Penobscot River basin. Their traditional customs, including fishing, hunting, and gathering plants for sustenance and healing, are deeply rooted in this ecosystem. However, pollutants in local fish populations have significantly impeded the Nation’s capacity to maintain its customary practices and meaningfully enjoy its fishing rights over time.⁸⁴

In a study of fish in the Penobscot River, USEPA found that dioxin, furan, polychlorinated biphenyls (“PCBs”) and PFAS were at levels in the fish that could pose health threats—including to the nervous system and immune system—to children and adults who consume them.⁸⁵ The researchers also concluded that these chemicals could put the animals who eat this fish at risk, including mink, otters, and eagles.⁸⁶ Further research is needed to fully understand to what extent JRL’s leachate and run-off, which can also contain dioxins, furan, and PCBs, are contributing to these forms of contamination of the Penobscot River.⁸⁷

This contamination of traditional water and food sources of the Penobscot Nation is part of a larger web of disproportionate harm that the State’s landfilling has exacted on the Penobscot people for decades. Since Maine banned new commercial landfills in 1989, all three state-owned landfills were built along a 50-mile stretch of land “at the heart of the Penobscot

⁸² *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, NAT’L INST. OF ENV’T HEALTH SCIS., <https://www.niehs.nih.gov/health/topics/agents/pfc#:~:text=PFAS%20are%20a%20group%20of,the%20U.S.%20Environmental%20Protection%20Agency> (last reviewed May 3, 2024); *PFAS Explained*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/pfas/pfas-explained> (last updated Oct. 25, 2023); *PFAS Explained*, U.S. ENV’T PROT. AGENCY (Oct. 2023), available at <https://www.epa.gov/system/files/documents/2023-10/final-virtual-pfas-explainer-508.pdf>.

⁸³ Sevee & Maher Engineers, Inc. & Crawford Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME DEP’T OF ADMIN. & FIN. SERVS., BUREAU OF GENERAL SERVS. (Jan 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>.

⁸⁴ *One Health Assessment: Fish Returning to the Penobscot River*, U.S. ENV’T PROT. AGENCY (Nov. 29, 2022), <https://www.epa.gov/sciencematters/one-health-assessment-fish-returning-penobscot-river>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Sang-Yee Ham et al., *Leaching characteristics of PCDDs/DFs and dioxin-like PCBs from landfills containing municipal solid waste and incineration residues*, 70 CHEMOSPHERE (2008), [10.1016/j.chemosphere.2007.07.050](https://doi.org/10.1016/j.chemosphere.2007.07.050); Mehmet Sukru Ozcoba et al., *Effect of solid waste landfill leachate contaminants on hydraulic conductivity of landfill liners*, 85 WATER SCI. & TECH. (2022), <https://doi.org/10.2166/wst.2022.033>.

Reservation.”⁸⁸ **In addition, there are 72 closed landfills in the Penobscot River watershed; many of them are unlined landfills that easily leak toxics into groundwater.**⁸⁹

The Maine Legislature has also found and declared as law “that the Penobscot River is a unique and valuable natural resource. The Penobscot River serves as an example to the Nation that good public policy carefully implemented can restore and preserve our natural resources. The river has supported, and is again beginning to support, the greatest run of Atlantic salmon and 11 other species of anadromous fish in North America, providing a unique fishing opportunity for Maine residents and members of the Penobscot Indian Nation.”⁹⁰ And, “the **preservation** and restoration of the Penobscot River is of **the highest priority**.”⁹¹

For the reasons stated above, expanding JRL would be a clear violation of 38 M.R.S. § 1310-AA(3)(E). The disparate harm this Indigenous Nation has suffered, and continues to suffer, is a violation of their right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. If the Application is approved, certain conditions must be placed in the permit to help mitigate the environmental injustice that would continue to be perpetuated on the Penobscot people.

iii. *Casella Must Be Required to Treat JRL Leachate for PFAS On-Site.*

The proposed expansion is entirely inconsistent with ensuring EJ for the Penobscot Nation, as the increased leachate from the expansion will only further poison the Penobscot people. It would be a complete degradation of the Penobscot Nation’s right to live free from environmental pollution to expand JRL without conditions to mitigate the harm the Nation will suffer from said expansion. The Commissioner must require **Casella to treat JRL’s leachate for PFAS, on-site, as a condition of any approval of the current Application.**

Requiring Casella to treat their leachate for PFAS before sending it to Nine Dragons WWTP is not novel; it would align the State of Maine with the Vermont Department of Environmental Conservation (“VTDEC”). VTDEC required, as a term of Casella’s renewed pretreatment discharge permit at the Coventry Landfill, that Casella pilot a leachate treatment system on-site before sending the leachate to Vermont’s WWTP in Montpelier, Vermont.⁹² This

⁸⁸ Marina Schaufler, *Compound Injustice: PFAS May Concentrate Over Time in Landfills Near the Penobscot Indian Reservation*, THE ME. MONITOR (Sept. 10, 2022), <https://themainemonitor.org/compound-injustice-pfas-may-concentrate-over-time-in-landfills-near-the-penobscot-indian-reservation/>.

⁸⁹ *Id.*

⁹⁰ 38 M.R.S. § 418-A(1).

⁹¹ *Id.* (emphasis added).

⁹² See Brown and Caldwell, Leachate Treatment Study Plan for New England Waste Services (NEWSVT) Landfill As Required by Condition I.A.5 of the State of Vermont Agency of Natural Resources, Department of Environmental Conservation, Pretreatment Discharge Permit 3-1406 (Revised Oct. 5, 2023), *available at* <https://anrweb.vt.gov/Pubdocs/DEC/ENB/WWINV/21339-3-1406%20Fact%20Sheet%20Attachment%20A%20->

system is now operational and currently under VTDEC review. MEDEP has stated that there are “ongoing conversations” with Casella about exploring such treatment options at JRL.⁹³ **Ongoing conversations are not enough. Any approval of the Application must come with a condition that holds Casella to a set timeline for implementing a treatment system to remove PFAS from the leachate** before sending it to Nine Dragons WWTP, and ultimately into the Penobscot River.

Commissioner Loyzim has stated, “PFAS [is] a contaminant that at the time [we] signed that agreement [with Casella] we didn’t know about . . . and now they, [Casella], also have liability for.”⁹⁴ In 2022, the leachate that had long been poisoning the Penobscot River spurred the Maine legislature to mandate a study recommending treatment options for the leachate. This law required the BGS to conduct a study of methods to treat PFAS in leachate collected from JRL in Old Town and the Dolby Landfill in East Millinocket.⁹⁵ Specifically, the study was to identify readily available methods to reduce the concentration of Maine’s PFAS(6) to no more than 20 ng/l, which is the Maine IDWS for PFAS in drinking water as per Resolve 2021, Chapter 82.⁹⁶ **The engineers that the BGS hired to study JRL’s leachate and treatment options for PFAS underscored that the only practical treatment for PFAS of JRL leachate would be on-site.** These engineers found that treatment at the Nine Dragons WWTP plant would be technically infeasible.⁹⁷

The condition requiring PFAS treatment at JRL must outline certain parameters for the leachate treatment system, including clear success metrics. In line with the Maine-commissioned study, the treatment system at JRL should reduce PFAS levels to Maine’s IDWS, unless and until the State adopts separate PFAS treatment standards or surface water standards for PFAS that can replace the drinking water standards. Furthermore, the treatment system must aim to remove as broad a spectrum of PFAS as feasible, including both short-chain and long-

[%20NEWSVT%20PFAS%20Pilot%20Study%20Plan_10052023.pdf](#); see also Permit 3-1406, available at https://anrweb.vt.gov/Pubdocs/DEC/ENB/ENB_V2/13854-3-1406_DraftPermit.20210920.pdf.

⁹³ See Work Session for LD 2135, ME. LEGISLATURE (Feb. 8, 2024, 2:28:00PM), available at <https://legislature.maine.gov/audio/#216?event=90594&startDate=2024-02-08T13:00:00-05:00>.

⁹⁴ *Id.* at 2:27:40.

⁹⁵ Chapter 172 Resolves, *Resolve, To Address Perfluoroalkyl and Polyfluoroalkyl Substances Pollution at State-owned Solid Waste Landfills*, STATE OF ME (May 2, 2022), available at https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolve%202022%20Chapter%20172%20Resolve%2C%20To%20Address%20Perfluoroalkyl%20and%20Polyfluoroalkyl%20Substance%20Pollution%20at%20State-owned%20Solid%20Waste%20Landfills_0.pdf.

⁹⁶ Crawford Engineers & Sevee & Maher Engineers, *Study to Assess Treatment Alternatives for Reducing PFAS in Leachate from State-Owned Landfills*, STATE OF ME. (Jan. 2023), available at <https://www.maine.gov/dafs/bgs/sites/maine.gov.dafs.bgs/files/inline-files/Resolves%202021%2C%20ch.%20172%20Study.pdf>; Chapter 82 Resolves, *Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants*, STATE OF ME (June 21, 2021), available at <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0064&item=3&snum=130>.

⁹⁷ “It should also be understood that it is not practical to remove PFAS from the NDWWTP effluent due to the large flows from that facility [...]; rather, any PFAS treatment of the JRL leachate will need to be conducted at the JRL site.” See Crawford, *Study to Assess Treatment Options to Reduce PFAS in Leachate*, at 6-4.

chain PFAS, and PFAS precursors. Only targeting the PFAS(6) would be entirely inconsistent with ensuring the Penobscot people's right to live free from environmental pollution, as there are accessible technologies that can capture a far broader array of these toxic forever chemicals—such as reverse osmosis. Ensuring that an adequate system is implemented will require transparency, public participation, and agency oversight.

The requirement to treat JRL's leachate for PFAS must include the opportunity for public input and strict agency oversight of the proposed treatment plan. The condition should require that the initial treatment plan for PFAS in leachate should be submitted as an application to amend Casella's landfill permit, with a Pilot Plan included in the application, as in Vermont.⁹⁸ The Pilot Plan should outline in detail what the proposed treatment system contains.⁹⁹ **The Pilot Plan must be subject to all public notice, hearing, and comment provisions in place at the time the plan is submitted that are applicable to permit amendments.** Once approved, **and only once approved**, Casella must be held to a strict timeline for making the pilot treatment system operational. As a caveat, in Vermont, Casella began operating their PFAS treatment system before it underwent public comment and agency approval. On February 24, 2024, Vermonters learned that this unapproved operation was occurring under a makeshift tent and that a previously unknown massive leachate spill had resulted, endangering the local environment and communities.¹⁰⁰ **To avoid such an outcome in Maine, the condition requiring leachate treatment at JRL must stipulate very clearly that the system cannot become operational unless and until the Pilot Plan is fully vetted and approved, per administrative rules and regulations.**

IV. Conclusion

In sum, the Application must be denied because it violates the criteria of the PBD Standards listed in 38 M.R.S. § 1310-AA(3). Specifically, expanding JRL: (1) runs counter to the Solid Waste Hierarchy; and (2) is entirely inconsistent with ensuring environmental justice for the affected local communities. If the Department decides to approve the Application, the aforementioned conditions must be added to mitigate the harms to the affected communities.

Thank you for the opportunity to comment on the Application. Please direct any questions to Alexandra St. Pierre (aestpierre@clf.org) and/or Suhasini Ghosh (sghosh@clf.org).

Respectfully submitted,

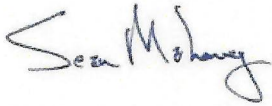
⁹⁸ See Condition I.A.5 of Vermont Agency of Natural Resources, Pretreatment Discharge Permit for New England Waste Services, Inc., Jan. 1, 2023, at 8 (“The Plan shall be treated as an application to amend the permit, and therefore, shall be subject to all public notice, hearing, and comment provisions in place at the time the plan is submitted that are applicable to permit amendments.”); Permit No. 3-1406 (on file with author).

⁹⁹ See *id.*, Condition I.A.5.a, “Leachate Treatment Pilot Study,” outlining what the Pilot Plan must contain, as a model.

¹⁰⁰ *Thousands of Gallons of Toxic Garbage Juice Leak at Coventry Landfill*, CONSERVATION LAW FOUND. (March 5, 2024), <https://www.clf.org/newsroom/leachate-leak-coventry-landfill/>.

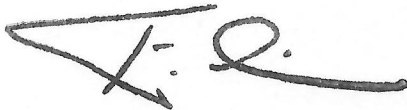


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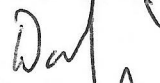
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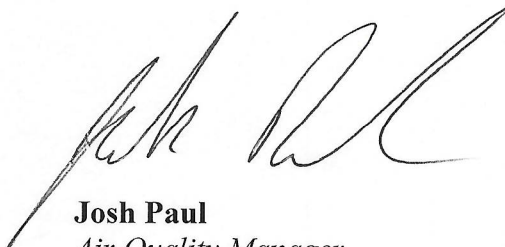
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