

September 6, 2024

Via Electronic Mail: karen.knuuti@maine.gov

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**Re: Conservation Law Foundation and the Penobscot Nation Supplemental
Comment Letter on 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 file this supplemental comment letter on the Application for a Determination of Public Benefit for the Juniper Ridge Landfill Expansion (DEP# S-020700-W5-CV-N) (“Application”).¹

I. Introduction

The Juniper Ridge Landfill (“JRL”) is located on a 780-acre parcel in Old Town and Alton, Maine. It is owned by the Maine Department of Administrative and Financial Services’ Bureau of General Services; operated by NEWSME Landfill Operations, LLC, a wholly-owned subsidiary of Casella Waste Systems (“Casella” or “Project Proponent”), under a 30-year Operating Services Agreement, which was entered into on February 5, 2004; and the engineering firm, Sevee & Maher Engineers, Inc., is a consultant for this expansion.² The Application is to expand JRL by about 61 acres.³ When making the Public Benefit Determination (“PBD”), the Commissioner of the Maine

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 JRL Expansion PBD Application at 1, 1-1.

³ *Id.* at 1.

Department of Environmental Protection (“MEDEP”) may issue a full or partial approval, with or without conditions.⁴

On July 30, 2024, MEDEP sent the Project Proponent a letter (“Request for Additional Information”) stating that upon their initial review of the Application, MEDEP had several comments and questions for which they would like additional information.⁵ On August 9, 2024, the Project Proponent sent a response letter (“Response”) to MEDEP’s Request for Additional Information.⁶ On July 31, 2024, the undersigned organizations submitted our initial comments on the Application.⁷

CLF appreciates that MEDEP has requested Casella to provide additional information on 23 identified topics and recognizes that some of the inquiries in the Request for Additional Information reflect issues that community members have raised. However, Casella’s Response still leaves the community with many questions. We strongly urge MEDEP to refer to our July 31, 2024 letter, as many of the comments we provided directly address many of the topics MEDEP asked about in their Request for Additional Information. Here, we provide additional comment to certain answers Casella provided in their Response.

In sum, Casella continues to show a failure in meeting the required environmental justice standard for a PBD, continues to show a failure in promoting the State’s Solid Waste Hierarchy, does not accurately represent the facts in many of their responses, and their responses only further show that Casella must be required to treat JRL leachate for PFAS on-site.

II. MEDEP Topic 19: MEDEP’s Inquiry and the Project Proponent’s Comments Related to Environmental Justice are Inadequate and Do Not Satisfy the Required Environmental Justice Standard for a PBD.

In the Request for Additional Information, MEDEP asked the Project Proponent if there would be any other enhancements made to the monitoring program and if any neighbors have taken advantage of the property value guarantee program.⁸ Environmental justice has emerged as a key issue among stakeholders. As of September 5, 2024, 66 out of 94 written and verbal public

⁴ 38 M.R.S. § 1310-AA(7)(A).

⁵ Maine Department of Environmental Protection, *Application for Determination of Public Benefit, Juniper Ridge Landfill (JRL)*, MAINE.GOV (July 30, 2024), https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/2024_07_30%20JRL%20PBD%20additional%20information%20request.pdf [hereinafter MEDEP Request for Additional Information].

⁶ Sevee & Maher Engineers, Inc., *Response to Questions and Comments, Application for Determination of Public Benefit, Juniper Ridge Landfill*, MAINE.GOV (Aug. 9, 2024), https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/2024_08_09%20BGS%20response%20to%20comments%20-%20pbd%20application.pdf [hereinafter Project Proponent Response].

⁷ CLF and Penobscot Nation, *Application DEP# S-020700-W5-CV-N: Application for a Determination of Public Benefit Juniper Ridge Landfill Expansion*, MAINE.GOV (July 31, 2024), https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/comments/2024_07_31%20CLF%20and%20Penobscot%20Nation.pdf [hereinafter CLF and Penobscot Nation Letter].

⁸ MEDEP Request for Additional Information at 3.

comments submitted on the JRL PBD address themes and the concept of environmental justice for this issue.⁹ We were disappointed to see that these were the only inquiries that MEDEP asked the Project Proponent to elaborate on related to environmental justice, especially since so many environmental justice concerns have been raised throughout the public comment process thus far.

For a PBD, one of the standards for a positive determination states: “For a proposed facility or the expansion of a facility, [it] is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed.”¹⁰ Environmental justice is defined as “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.”¹¹

As we stated in our previous comment letter, the proposed expansion of JRL is entirely inconsistent with ensuring environmental justice for the surrounding communities, and Casella’s rudimentary analysis in their Application cannot fulfill the legal environmental justice requirement of the PBD inquiry.¹² In our comment letter, we provided in detail the many ways that the Application does not satisfy the environmental justice standard.¹³

In the Request for Additional Information, MEDEP asked the Project Proponent if there would be any enhancements to the monitoring programs if MEDEP approved the expansion.¹⁴ The need for air quality monitoring is indicative of the fact that this community is already disproportionately exposed to potential contaminants. Moreover, while important, monitoring would only detect an issue once the harm is already done; it does nothing to actually *protect* the surrounding communities from the environmental pollution from JRL’s operations.¹⁵

MEDEP also asked the Project Proponent to elaborate on whether any neighbors have taken advantage of the property value guarantee program. Protection must not just include monetary protections, but community health protection and environmental protection. Property value protection does not address harm from pollution.

⁹ See *Juniper Ridge Landfill PBD meeting 07162024*, ME DEP’T OF ENV’T PROT. (July 16, 2024), available at <https://www.youtube.com/watch?v=tLxFwPflshg>; See *Juniper Ridge Landfill PBD meeting 07262024*, ME DEP’T OF ENV’T PROT. (July 26, 2024), available at <https://www.youtube.com/watch?v=nMXTUm2NX-Y>; See *Juniper Ridge Landfill PBD Comments*, ME DEP’T OF ENV’T PROT. (June 20, 2024 – September 4, 2024), available at <https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/comments/>.

¹⁰ 38 M.R.S. § 1310-AA(3)(E).

¹¹ *Id.* (emphasis added).

¹² CLF and Penobscot Nation Letter at 10–14.

¹³ *Id.*

¹⁴ MEDEP Request for Additional Information at 3.

¹⁵ CLF and Penobscot Nation Letter at 12.

We strongly believe this was a missed opportunity for MEDEP to push Casella to provide information on if and how they are focusing on prevention and protection of the surrounding communities, as the environmental justice standard requires. MEDEP inquiring *only* about these programs as it relates to evaluating environmental justice essentially buys into Casella's misguided view of the environmental justice standard in the PBD analysis. MEDEP should be focusing more on how the expansion will *prevent* environmental pollution and *prevent* health harms to the surrounding communities.

We strongly urge MEDEP to refer to our previous comment letter for a more comprehensive list of ways this expansion would perpetuate serious environmental injustices on the Penobscot Nation and surrounding communities.

III. MEDEP Topic 1: The Project Proponent's Response to Topic 1 Operates on Incorrect Assumptions.

Underlying the Project Proponent's response is an assumption that the Construction and Demolition Debris ("CDD") processing fines and wood waste would necessarily be landfilled at JRL; however, the amount of CDD fines that JRL can accept are limited by LD 1639.¹⁶ Moreover, by the Project Proponent's own admission, wood waste is not the type of waste generally accepted by JRL.¹⁷ Accordingly, while the CDD fines and wood waste used as alternate daily cover ("ADC") by JRL would need to be landfilled *somewhere*, as noted by the Project Proponent, the issue here is whether these wastes would otherwise be taking up space in JRL if not used as ADC, and that does not appear to be the case.

While MEDEP's question did not address the toxicity of CDD fines, Casella's flippant response still fails to grapple with why surrounding communities might prefer soil covering or a removable tarp system to CDD fines: CDD fines are filled with contaminants that likely contribute to the toxicity of landfill leachate.¹⁸

¹⁶ *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://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0523&item=7&snum=130>.

¹⁷ See *Juniper Ridge Landfill PBD meeting 07262024: Sevee & Maher Slides*, ME DEPT. ENV'T PROT. 17:20 (July 26, 2024), available at <https://www.youtube.com/watch?v=nMXTUm2NX-Y> (showing that waste accepted at JRL does not include wood waste).

¹⁸ See 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. 9 (2021), <https://doi.org/10.1016/j.jenvman.2021.113654>, ("It is also clear that the destination for fine [construction and demolition waste ("C&DW")] residues arguably is landfill be it in an attempt to dispose or to be used as an alternative daily cover for the landfill. Nevertheless, target studies have pointed out that fine fractions of C&DW are the worst when it comes to the release of contaminants and its composition.").

IV. MEDEP Topic 2: The Numbers Put Forth by the Project Proponent in Response to Topic 2 Do Not Add Up.

The Project Proponent's response is confusing and requires further clarification. Using the Project Proponent's numbers, with a 90% reduction of toxic sludge, JRL would still receive approximately 8,300 tons of sludge, or 9,500 CY of sludge. In such a scenario, at a 4 to 1 ratio, JRL would then only need approximately 33,200 tons, or 38,000 CY of bulky waste, meaning overall, the sludge combined with the solidifying waste would take up (41,500 tons) 47,500 CY in JRL.

The Project Proponent then notes that ReSource sent 78,352 tons (not cubic yards) of CDD residual to JRL, of which 53,270 tons (not cubic yards) was in-state waste. The Project Proponent then applies a 30 percent reduction (taken from the fact that 30 percent of ReSource's overall waste is in-state waste) to the 78,352 tons of waste sent to JRL, concluding that JRL would then only receive 23,562 tons of in-state waste. It is unclear why the 30 percent reduction ratio would be applied to the total amount of waste sent to JRL, as there is no indication that the amount of in-state waste sent to ReSource would change and in-state CDD fines is something that JRL normally accepts. It would seem that, as noted above, JRL would still need 33,200 tons of bulky waste to account for the sludge still received, and presumably that would be covered by the 53,270 tons of in-state waste going to JRL.

Yet even if the reduction of the waste sent to JRL from ReSource is accurate, meaning an overall reduction of 152,000 CY of waste annually when combined with the 90 percent reduction in sludge, the Project Proponent contends that it is only a 14.5 percent reduction in the overall waste received at JRL, and therefore, would only extend the landfill capacity by about 2 years. The Project Proponent should explain how it came up with such a number.

V. MEDEP Topic 18: The Project Proponent's Listed Efforts to Promote the Solid Waste Hierarchy in Their Application are Disingenuous and MEDEP Rightfully Asked for More Information about This in Their Request for Additional Information.

As discussed at length in our July 31, 2024 comment letter, approving the Application would run counter to the State's Solid Waste Hierarchy that mandates promoting waste reduction, diversion, and recycling, and would further exacerbate the States's failure to achieve the statutory waste reduction and recycling goals laid out in 38 M.R.S.A. § 2132.¹⁹

In their Application, Casella attempts to paint the picture that they do their best to follow and promote the State's Solid Waste Hierarchy, but only provides surface level efforts as examples that have nothing to do with true promotion of the Hierarchy (e.g., maintaining updated websites, creating reports on solid waste programs).²⁰ If Casella actually tried to

¹⁹ CLF and Penobscot Nation Letter at 2–5.

²⁰ JRL Expansion PBD Application at 3-11–3-13.

promote the Solid Waste Hierarchy through JRL, they would not be attempting to expand the landfill. As explained in our previous comment letter, expanding landfill capacity is the very last priority in the Hierarchy and completely subverts the State’s recycling and composting goals.²¹

MEDEP correctly asked for more information about what the Project Proponent meant when stating that “BGS furnishes municipal decision-makers with information, direction and technical and financial assistance to aid them in managing their solid waste in an environmentally beneficial and cost-effective manner” without providing examples.²² In response, the Project Proponent completely walked back on this assertion in their Response, provided no examples, and did not answer MEDEP’s inquiry.²³ Essentially, what they asserted in their Application was completely inaccurate. This is just another example of how Casella is not operating with the State’s Solid Waste Hierarchy in mind and raises potential concerns about the accuracy of other claims in the Application. The Project Proponent’s response further proves the point that Casella’s operation of JRL includes only minimal efforts to reduce waste. Instead, for JRL, Casella is focused on increased efforts to obtain more waste, and in particular, toxic waste.

VI. MEDEP Topic 22: Casella Must Be Required to Treat JRL Leachate for PFAS On-Site.

As acknowledged by MEDEP, many of the public comments submitted exhibited grave concerns about the PFAS contained within JRL’s leachate and Casella’s failure to address this problem in any way. MEDEP specifically asked “whether [the Project Proponent] is considering installing PFAS leachate treatment at JRL.”²⁴ Despite acknowledging that the Maine Legislature required a study be conducted “of methods to treat PFAS in leachate generated at JRL,”—which was published over a year ago in January 2023—the Project Proponent’s response was equivocal: the Project Proponent is “in the process of scoping and evaluating multiple technologies for treatment or pretreatment of the JRL leachate,”²⁵ essentially conceding that while they have been working, if not perfectly, on treating PFAS at their Coventry Landfill in Vermont, they are not interested in investing the same resources in Maine. This is not environmental justice for the communities surrounding JRL, as required by the PBD laws.

MEDEP should require Casella to do more than simply ponder what *might* be possible while the neighboring communities bear the brunt of the PFAS pollution; environmental justice *requires* Casella to start working on this issue *now*.

²¹ CLF and Penobscot Nation Letter at 2–5.

²² MEDEP Request for Additional Information at 3.

²³ Project Proponent Response at 12.

²⁴ MEDEP Request for Additional Information at 4.

²⁵ Project Proponent Response at 14.

VII. MEDEP Topic 23: Casella Does Not Accurately Paint the Picture of its Use of Maine Landfill Space for Massachusetts.

Casella conveniently relies on the argument that they are simply following the statutory definition of “waste generated within the State” when addressing this issue, and completely ignores the greater context of the history with this issue.²⁶ However, that does not change the fact that there is currently no accountability mechanism to track how much of this pulverized CDD is *genuinely needed*, and how much is just extra profit for both the landfill operator and ReSource. It is critical that any type of approval of this Application must include a condition that addresses this lack of accountability and continued use of Maine’s state-owned landfill for out-of-state waste.

VIII. Conclusion

MEDEP should be concerned with Casella’s continued inadequacy and failure in meeting the required environmental justice standard for a PBD, and that Casella does not accurately represent the facts in many of their responses. Moreover, Casella continues to show a complete failure and no desire to promote the State’s Solid Waste Hierarchy. Lastly, Casella’s responses only further show that Casella must be required to treat JRL leachate for PFAS on-site.

The Application must be denied because it violates the criteria of the PBD standards listed at 38 M.R.S. § 1310-AA(3). Expanding JRL runs counter to the Solid Waste Hierarchy and is entirely inconsistent with ensuring environmental justice for the affected local communities. The Application must be denied for these reasons and all the reasons we have previously outlined to MEDEP in our July 31, 2024 comment letter.

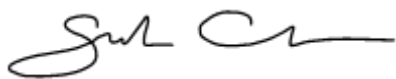
Thank you for the opportunity to comment on the Application. Please direct any questions to Alexandra St. Pierre (aestpierre@clf.org) and/or Suhasini Ghosh (sghosh@clf.org).

²⁶ Project Proponent Response at 14–15; *See* CLF and Penobscot Nation Letter at 5–8.

Respectfully submitted,



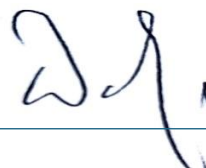
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