

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
Docket No. PENSC-APP-2024-00014

The Penobscot Nation)
and)
Conservation Law Foundation,)
Petitioners,)
)
)
v.)
)
)
Maine Department of)
Environmental Protection,)
Respondent,)
)
and)
)
)
NEWSME Landfill Operations, LLC)
Party-in-Interest.)

Order on Appeal

Introduction

Party-in-Interest NEWSME Landfill Operations, LLC, operates the Juniper Ridge Landfill (JRL) in Old Town, Maine. NEWSME, its parent company, Casella Waste Systems (Casella), and JRL's owner, the Maine Department of Administrative and Financial Services' Bureau of General Services (BGS), filed an application for Public Benefit Determination (PBD) to expand JRL by 61 acres, or half of its existing size. After Respondent Maine Department of Environmental Protection (the Department) issued its affirmative PBD, Petitioners The Penobscot Nation and Conservation Law Foundation (CLF) filed an appeal, seeking judicial review of government action pursuant to Rule 80C, M.R. Civ. P. In their appeal, the Penobscot Nation and CLF challenged the PBD on two grounds: that the Department had erred in finding the application complied with the "Waste"

¹ The "Waste Hierarchy" refers to the solid waste management policy set forth by the Legislature at 38 M.R.S. § 2101(1) (2025). The statute provides the following:

1. Priorities. It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, 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;

Hierarchy” established by statute and erred further in finding the expansion did not violate the statutory requirement of environmental justice.

The parties filed a record comprising 2,381 pages, submitted briefs, and appeared for oral argument. In its order dated January 7, 2026, this court found the Department had not conducted adequate factfinding with respect to the two challenged subjects and remanded for that purpose. Order on 80C Appeal, *The Penobscot Nation v. Me. Dep’t of Env’t Prot.*, PENS-APP-2025-00014, *16 (Jan. 7, 2026). In its remand order, the court retained jurisdiction for further review. *Id.*

The Department issued a second PBD on March 23, 2026. R. 3132-3171. Petitioners now challenge the second PBD and advance the same contentions, that the PDB does not comply with the Waste Hierarchy or fulfill the requirements of environmental justice. The parties submitted a further record, R. 2382-3174, and further briefs, after which the court conducted oral argument on July 23, 2026. At the argument, the Penobscot Nation and CLF were represented by Alexandra St. Pierre, Esq., and Nora Bosworth, Esq.; the Department by AAG Jack Dafoe; and NEWSME by Brian Rayback, Esq. The court renews its thanks to all counsel for their unusually well-written briefs and informative arguments. The matter is once again in order for decision.

Discussion

Preliminary Issue: Judicial Notice

Before considering the merits of the appeal, the court must decide on the Petitioners’ motions for the court to take judicial notice. In the first motion, dated May 11, 2026, Petitioners ask the court to take notice of a document dated June 26, 2025, and entitled “Maine CDC Scientific Brief: 2025 PFOS Fish Consumption Advisory.” This document bears on Petitioners’ argument concerning environmental justice, in which they note the extent to which Penobscot Nation members

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- B. Reuse of waste;
 - C. Recycling of waste;
 - D. Composting of biodegradable waste;
 - E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and
 - F. Land disposal of waste.

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

Id.

are medically inhibited from exercising their historic practice of eating fish taken from the Penobscot River. The Department and NEWSME oppose the motion and argue it impermissibly supplements the record.

In the court's view, the Scientific Brief, which Petitioners assert "is embedded in the Maine CDC's formula for deriving the PFOS fish tissue action level, [and] which the Department relied on in its Second [PBD]," Pet'rs' Reply 2, illuminates and helps explain the existing record without adding to it. Indeed, Petitioners submit the Scientific Brief solely for the assumed rate of fish consumption upon which the Department's PBD is based. The first motion to take judicial notice, dated May 11, will therefore be GRANTED.

Second, by motion dated September 11, Petitioners request the court take judicial notice of (1) opposition by BGS and NEWSME to intervenors' request for modification of hearing schedule and licensing application, (2) a memo from Vera Maheu, DEP, to Lane Gould, BGS, and (3) DEP's fourth procedural order for the JRL expansion license application. Respondents do not contest the authenticity of the documents, but they dispute the documents' relevance to the court's review of the current administrative record.

The court may take judicial notice of the "existence and content of the filings made in . . . regulatory proceedings." *Off. of the Pub. Advoc. v. Pub. Util. Comm'n*, 2024 ME 11, ¶ 2 n.1, 314 A.3d 116; *see also Wells Fargo Bank, Nat'l Assoc. v. Bump*, 2021 ME 2, ¶ 21, 244 A.3d 232 (courts may take judicial notice of "pleadings, dockets, and other court records where the existence or content of such records is germane to an issue in the same or separate proceedings"). The court understands the documents to be submissions made in the JRL expansion licensing process, which would subject them to judicial notice. Resp'ts Opp'n to Pet'rs' Mot. Judicial Notice 1-2. The second motion to take judicial notice, dated September 11, will therefore be GRANTED.

That being so, the court agrees with Respondent that these filings do not alter the substance of the decision to be made. The Department issued its second PBD and filed a supplement to the record of the additional materials the Department considered in issuing the second PBD. Although Respondents admit, and the court agrees, that they represented PFAS treatment would take place at JRL, *see, e.g.*, R. 3165, the detail of where PFAS treatment will take place does not affect the court's analysis of the proposed expansion's compliance with environmental justice requirements. As

Respondents make clear, the “revised PBD includes the important condition requiring approval and implementation of a leachate treatment system before JRL could operate any expansion, and that requirement remains unchanged.” Resp’ts Opp’n to Pet’rs’ Mot. Judicial Notice at 5. That Petitioners may now need to involve themselves in a separate licensing process to weigh in on the scientific and technical sufficiency of the PFAS treatment is beyond the scope of the court’s review in this case.

Compliance with the Waste Hierarchy

In its order of January 7, this court required the Department to consider more fully the availability of sludge drying. This technology is used to diminish the volume of material produced by wastewater treatment facilities that must then be deposited in JRL because it is contaminated with PFAS (“forever chemicals”) and can no longer be disposed of otherwise. R. 136, 1382. The additional record filed following the remand order shows that the Department will impose two notable license conditions. First, the Department will require Casella to submit in each annual report an evaluation of the availability and capacity of infrastructure at anticipated drying facilities, including the Maine Regional Conversion Facility, LLC sludge dryer that is scheduled to open in Norridgewock. R. 3148-50.² Second, the Department will establish annual limits on sludge, construction and demolition debris (CDD), and “oversized bulky waste” (OBW), which limits will be determined during the application process. R. 3149-50. This presents a substantial and indeed dramatic departure from the sludge-disposal element of the first PDB.

Reflecting these changed circumstances, Petitioners have not abandoned their argument but no longer emphasize it. The court finds on the record presented that the new PBD does not minimize sludge disposal to the degree Petitioners would prefer but does fulfill the requirements of the Waste Hierarchy at this preliminary stage of planning. Ongoing licensing processes (at JRL or elsewhere) will afford Petitioners further opportunities to question the expansion proposal on the basis of sludge treatment and disposal.

² The facility “is designed to process 200 wet tons of [waste-water treatment plant (WWTP)] sludge per day, or 70,000 wet tons of WWTP sludge per year, in a closed-loop system. The . . . facility is scheduled to come online in spring 2026, and has the capacity to manage approximately 80% of Maine’s municipal WWTP sludge when it is fully operational.” R. 3148-49.

Environmental Justice

Whether the proposed expansion of JRL complies with the statutory mandate of environmental justice remains a challenge. The first reason is that the term is not defined in the statute and has not been interpreted by the Law Court. The second is that environmental justice is a statutory criterion for the PBD but not for licensing. As a result, this opaque and difficult subject is granted no further attention in the process of approval; if environmental justice is violated by the expansion of JRL, that violation must be identified now, on a limited record, and without the opportunity for more refined input as the plan advances in detail and sophistication, and scientific knowledge and technical capacity increase. A third complication is that interpretation of this undefined term on a limited record requires immersion in a non-legal and non-scientific subject of great and subtle complexity.

The Department would resolve these challenges by invoking the customary standard that the court must accept an agency's interpretation of a statute it administers, so long as that interpretation is reasonable. *See E. Me. Conservation Initiative v. Bd. of Env't Prot.*, 2025 ME 35, ¶ 22, 334 A.3d 706. In its order of January 7, the court entertained this argument but declined to adopt it on the basis that the subject matter under review is not within the Department's expertise. *Id.* (requiring a statute to be both administered by the agency and within the agency's expertise). The Department respectfully persists in its position. The court declines to follow.

The Department of Environmental Protection is established in 38 M.R.S. § 341-A. The Department's mission is broad:

The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

38 M.R.S. § 341-A(1) (2026). Although this language is expansive, it offers no clue to the specific meaning of environmental justice. The membership of the board is weighted toward those with scientific or technical knowledge. *See id.* § 341-C ("The board consists of 7 members . . . At least 3 members must have technical or scientific backgrounds in environmental issues . . .").

The DEP's duties include rulemaking and permit and license applications. *Id.* § 341-D (providing the procedure for the board's rulemaking and review of license applications and appeals). The subject matter on which these decisions are based is by its very nature scientific and technical, and demandingly so: to prevent, abate, and control pollution requires, at baseline, knowledge of chemistry, physics, hydrology, wind patterns, water-quality science, ecology, geology, toxicology, and the characteristics of wildlife. It does not require knowledge of the many and subtle human interactions—psychological, physical, social, familial, or spiritual—that might combine over centuries to produce a culture. It does not require knowledge of what might prove corrosive to a culture once that culture has been established. The court acknowledges the Department's good faith in applying the expertise it has to the subject of environmental justice. The PBD, however, shows the limits of that expertise. *See* R. 3153 (including the Penobscot Nation in the environmental justice analysis of “host communities” despite the Nation not falling within that statutory definition, acknowledging the Penobscot Nation's interests in summary terms)³; R. 3153-3162 (analyzing the environmental and biological effects of the project without meaningful analysis of its effects on the Penobscot Nation's culture); R. 3165 (finding that treating leachate for PFAS will “support a finding that the proposed expansion of JRL will not unduly burden the project community” but failing to correlate this chemical treatment with the threat to the Penobscot Nation's cultural practices).

Having found the Department's assessment of environmental justice unpersuasive, the court begins its own evaluation with the language of the statute:

The commissioner shall find that the proposed facility under subsection 1 . . . provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility . . . is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed.

As used in this paragraph, “environmental justice” 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. “Environmental justice” includes the equal protection and meaningful

³ Specifically, the PBD states:

Although the Penobscot Nation is not a “host community” as defined in 38 M.R.S. § 1303-C(15-B), the Department recognizes that the Penobscot Nation has an interest in the proposed project due to the project's potential impact on, and the Penobscot Nation's special relationship with, the Penobscot River.

R. 3153.

involvement of all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions.

38 M.R.S. § 1310-AA (2026).

The terms of the statute are even handed. They do not favor or disfavor any people but instead affirm the right of all to live in a clean environment. To apply those terms to a concrete situation, the court must consider how a given population might find itself deprived of protection from pollution due to its status as articulated in the statute. What, exactly, does the statute seek in practical terms to prevent?

A partial answer is found in the last sentence of § 1310-AA(3)(E), which confirms a group's right to be involved in decision making affecting it. But if the opportunity to be heard exhausted the scope of the statute, the preceding sentence, invoking "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," would not have been needed. That preceding sentence appears to implicate two types of decisions: those that might target a community and those indifferent to its particular characteristics and needs.⁴

⁴ The definition of "environmental justice" is complex and diverse. To aid in the court's understanding of the term, the court reconciles Maine's definitions with the definitions in other jurisdictions. For example, Maine's definition most closely tracks the Environmental Protection Agency's (EPA) most recent definition, which has since been revoked. *See* Exec. Order No. 14,096, 88 Fed. Reg. 25251 (Apr. 21, 2023). Nonetheless, the similarity between the EPA definition and Maine's definition is illuminating. The EPA definition provides in full:

"Environmental justice" means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (2) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

Id. § 2(b).

Massachusetts similarly defines "environmental justice principles" as principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes: (i) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and (ii) the equitable distribution of energy and environmental benefits and environmental burdens.

Mass. Gen. Laws Ann. ch. 30, § 62 (West 2026).

Vermont, by contrast, has a more detailed definition of "environmental justice":

The court addressed both possibilities in its order of January 7. The existence of dozens of landfills near Indian Island suggested its immediate vicinity might have been used as a dumping ground because the Penobscot Nation was unable to resist. The Department explored this concern in the supplemental record by comparing the Penobscot River with the Kennebec River and showing that both have many landfills produced by historic practices of industrialization. *See* R. 3168-62. There is no evidence in the record that placement of landfills targeted any minority population. To the contrary, JRL was originally established to serve a paper mill. R. 3138. Its establishment does not appear on this record to result from any motivation other than convenience.

Although the record does not show the Penobscot Nation has been targeted as a site for waste disposal, it does show concrete, specific losses the Penobscot Nation will be vulnerable to suffering if JRL continues to operate, let alone if it is expanded. In particular, the parties focus on the Penobscots' cultural foodways—their practice of sustaining on fish and turtles taken from the river. This its members cannot now do. Whatever variances may exist among different designations of actual consumption, *see* Pet'rs' Br. 11-12 (describing how Maine originally applied a 32 grams-per-day fish consumption rate, which the Legislature amended by statute in 2019 to be 200 grams-per day); R. 2556 (EPA identifying 286-grams-per-day fish consumption rate for the Penobscot Naion “because it appeared to be the diet most closely aligned with the[ir] . . . cultural lifestyles”), the record demonstrates that any *safe consumption* is prohibited by the levels of toxins in the river.

“Environmental justice” means all individuals are afforded equitable access to and distribution of environmental benefits; equitable distribution of environmental burdens; and fair and equitable treatment and meaningful participation in decision-making processes, including the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes the particular needs of individuals of every race, color, income, class, ability status, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief, or English language proficiency level. Environmental justice redresses structural and institutional racism, colonialism, and other systems of oppression that result in the marginalization, degradation, disinvestment, and neglect of Black, Indigenous, and Persons of Color. Environmental justice requires providing a proportional amount of resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most affected by environmental burdens and natural disasters.

3 V.S.A. § 6002 (2026).

A common thread in the EPA, Massachusetts, and Vermont definitions is the emphasis on disproportionate environmental effects or equitable distribution of environmental burdens. Further, the EPA definition specifically mentions “the cumulative impacts of environmental and other burdens.” Although the Maine definition does not explicitly address disproportionate impact or equitable distribution of burdens, the court finds that the nature of the definition implicitly requires consideration of the cumulative environmental burdens. *See* Order on 80C Appeal 12-16 (Jan. 7, 2026) (recognizing the implicit inclusion of cumulative environmental burdens in § 38 M.R.S. § 1310-AA).

The citizens of the Penobscot Nation cannot eat fish and turtles as their ancestors did without poisoning themselves. R. 2495-96, 3162.

A forced dietary change considered in isolation might be comparable to losses suffered by other minority communities in circumstances addressed by the concept of environmental justice: examples might include the pollution of a specific historic site or the ruin of an ethnic neighborhood bisected by a new highway. Here, however, the Penobscot Nation's forced dietary change occurs in the much larger context of its entire traditional way of life. No analogy known to the court can compare to the loss this record shows the Penobscot Nation has suffered.

As described in eloquent detail in the record, *see* Pet'rs' Ex. A to Petition for Judicial Review of Final Agency, R. 3153, 3162, to the Penobscot Nation the Penobscot River is not only a resource and not only a sacred site, and its adjacent environs are not only an historic home. All these are true, but they are embedded more broadly in a worldview that appears to draw no distinction between the material world and the people living within it, or between the activities of the people's lives and the place where those activities are conducted. This fusion of body, mind, spirit, and physical place defies meaningful comparison. It can only be evaluated on its own terms.

Appellants argue this demonstrated loss is definitive. Their position is that existing degradation to the Penobscot Nation's way of life prohibits imposing any continuing environmental burden on it, or even risking that that burden might be enhanced. Their view of environmental justice suggests the only legal response would be to deny the PBD, deny expansion of JRL, and force the landfill to close. Linguistically, the terms "environmental justice" could accommodate such a reading.

Because the statutory terms are (deeply) ambiguous, and the subject matter is beyond the Department's expertise, the court must interpret those terms in accordance with the Legislature's intention. *See City of Bangor v. Penobscot Cnty.*, 2005 ME 35, ¶ 9, 868 A.2d 177. From this standpoint, the court must conclude the legislature's intent cannot encompass Appellants' reading. The reason was noted in this court's initial remand order, which cites several circumstances in which the legislature has explicitly acknowledged native communities and their interests. *See* Order on 80C Appeal 15 (Jan. 7, 2026) (stating that there are "a number of statutes that recognize the particular interests of the Penobscot Nation and other Wabanaki communities" and citing the Tribal-State

Collaboration Act, the Act to Implement the Maine Indian Claim Settlement, the Maine Indian Child Welfare Act, and the Mi'kmaq Nation Restoration Act). The Legislature could have incorporated a similar reference into 38 M.R.S. § 1310-AA. In the absence of such an explicit reference, this court cannot reasonably read “environmental justice” as expansively as Petitioners urge.

The second PDB is substantially more favorable to the Penobscot Nation than the first was. Limiting the volume of sludge, CDD, and OBW that JRL can accept will decrease the overall volume of waste disposed of in the landfill. More importantly, the commitment to sludge drying and treatment of PFAS will diminish the risk of additional contamination of the Penobscot River by this vexing class of pollutants. Viewing these commitments and limits with reference to the Legislature’s intent, this court concludes the second PDB is not inconsistent with environmental justice.

Conclusion and Order

In evaluating the second PDB, the court does not yield to the Department’s limited evaluation of the loss the Penobscot Nation has suffered through historic degradation of the Penobscot River. It does not accept fully the Penobscot Nation’s evaluation of its environmental and cultural loss. Neither does the court offer its own independent evaluation of the PDB, its terms, or its advisability. Applying as it must the Legislature’s apparent intent, the court finds the PDB does not violate the statutory waste hierarchy or conflict with environmental justice. All parties are expected to continue vigorous participation in the licensing process as it proceeds.

For the reasons stated, Appellants’ appeal must be DENIED.

The entry is:

1. Petitioners’ motion for judicial notice, dated May 11, 2026, is granted.
2. Petitioners’ motion for judicial notice, dated September 11, 2026, is granted.
3. The petition for judicial review under 80C is denied, and the Department’s decision to approve the public benefit determination application for the expansion of the Juniper Ridge Landfill is affirmed.

The clerk is directed to incorporate this order into the docket by reference. M.R. Civ. P. 79(a).

Dated: October 16, 2026



The Hon. Bruce C. Mallonee

Justice, Maine Superior Court

Entered on the docket: 10/16/2026

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