



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

STATE OF MAINE,)	PUBLIC BENEFIT
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL)	DETERMINATION
SERVICES, BUREAU OF GENERAL SERVICES)	
OLD TOWN, PENOBSCOT COUNTY, MAINE)	
JUNIPER RIDGE LANDFILL EXPANSION)	
S-020700-W5-CV-N)	
(APPROVAL WITH CONDITIONS))	

Pursuant to the provisions of the *Maine Hazardous Waste, Septage, and Solid Waste Management Act*, 38 M.R.S. §§ 1301 through 1319-Y; *Solid Waste Management and Recycling*, 38 M.R.S. §§ 2101 through 2236; the *Maine Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended February 9, 2021); and the *Maine Solid Waste Management Rules: Landfill Siting, Design, and Operation*, 06-096 C.M.R. ch. 401 (last amended April 12, 2015), the Department of Environmental Protection (“Department”) has considered the application of the STATE OF MAINE, acting through the Department of Administrative and Financial Services, Bureau of General Services (“BGS” or “the applicant”) with its supportive data, staff summary, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: BGS has applied for a determination of public benefit for a proposed expansion of the Juniper Ridge Landfill in Old Town.
- B. History: The following history is a summary and does not include all licensing actions:
- (1) On July 28, 1993, James River Paper Company, Inc. was issued a license to construct and operate a 68-acre secure landfill, known as the West Old Town Landfill, to dispose of the James River Paper Company’s pulp and papermaking residuals (Department Order S-020700-7A-A-N).
 - (2) On August 25, 1997, James River Paper Company, Inc. changed its legal name to Fort James Operating Company; this name change did not necessitate a license transfer. On October 21, 2003, the Department issued conditional approval for the transfer of licenses for the West Old Town Landfill, from the Fort James Operating Company to the State of Maine, State Planning Office (“SPO”) (Department Orders S-020700-WR-M-T

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and L-019015-TH-C-T), with the transfer effective on the sale date of February 5, 2004.

- (3) On February 5, 2004, the State of Maine, acting by and through the SPO, and Casella Waste Systems, Inc. (“Casella”) entered into an Operating Services Agreement (“OSA”) for the operation of the West Old Town Landfill.
- (4) On April 9, 2004, the Department approved an amendment application (Department Order S-020700-WD-N-A) for a vertical increase in the final elevation of the landfill and the disposal of additional waste streams. The license was subsequently affirmed by the Board of Environmental Protection (“Board”) on October 21, 2004.
- (5) In 2006, the West Old Town Landfill became known as the Juniper Ridge Landfill (“JRL”).
- (6) On January 31, 2012, the Department issued a partial approval of SPO’s application for determination of public benefit for an expansion. The Department approved a 9.35-million-cubic-yard expansion finding that the entire proposed 21.9-million-cubic-yard expansion was not needed to meet the immediate or short-term solid waste disposal capacity needs of the State.
- (7) Pursuant to P.L. 2011, ch. 655, § GG-69, on July 1, 2012, BGS, within the Department of Administrative and Financial Services (“DAFS”) became the state agency acting as the owner and licensee of JRL. The Department of Economic and Community Development was the manager of JRL, although BGS assumed the manager role in 2020. NEWSME Landfill Operations, LLC (“NEWSME”), a wholly owned subsidiary of Casella, operated the landfill for the State of Maine, acting through BGS.
- (8) On June 1, 2017, the Board approved the construction and operation of a 9.35-million-cubic-yard expansion at JRL (Board Order S-020700-WD-BI-N, hereafter “expansion license”) in a phased manner, designated as Cells 11 through 16.
- (9) Cells 11, 12, 13, 14, and 15 of the expansion have been constructed and are operational. Department approval for the specific design of Cell 11

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was incorporated in the expansion license. The approval of the design specifics of Cell 12 was issued April 30, 2020 (Department Order S-020700-WD-CB-C). During the design of Cell 12, the expansion cell layout was changed; initially, the expansion was to be constructed in 6 cells, 11-16, but it was revised to be constructed in 7 cells, 11-17, with no change to the overall expansion footprint or fill height. Approval of the subsequent cell design specifics occurred as follows: Cell 13 was approved May 25, 2021 (Department Order S-020700-WD-CL-C), Cell 14 was approved April 15, 2022 (Department Order S-020700-WD-CP-C), Cell 15 was approved April 27, 2023 (Department Order S-020700-WD-CR-C); and Cell 16 (Department Order S-020700-WD-CU-C) was approved June 26, 2024. Cell 16 is currently under construction.

- C. Summary of Proposal: BGS proposes to expand JRL by approximately 61 acres, to provide 11.9 million cubic yards of additional capacity. At the most recent 5-year fill rate average of 860,771 tons or 1,049,721 cubic yards, this would provide approximately 11.3 additional years of use. The expansion would continue to accept construction and demolition debris (“CDD”), oversized bulky waste (“OBW”), residue from CDD processing facilities located in Maine, bypass municipal solid waste (“MSW”) from Maine incinerators and the Municipal Waste Solutions (“MWS”) waste processing facility in Hampden, wastewater treatment plant sludge, ash, and a variety of other in-state non-hazardous solid wastes.

The application for a determination of public benefit (“Application”) was submitted to the Department on June 10, 2024 and was accepted for processing on June 24, 2024. Pursuant to 38 M.R.S. § 1310-AA(2) and 06-096 C.M.R. ch. 400, § 5(G), the Department shall issue a decision within 60 days of receipt of the Application. In an August 13, 2024 letter, the Department requested a 30-day extension to this timeframe. The Department’s request was granted in an August 13, 2024 letter from the applicant. The Department requested additional information on the Application in a July 30, 2024 letter. In an August 8, 2024 letter, the applicant provided a response to the Department’s request.

2. APPLICABLE LAW

38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5 establish the process and standards to be used in determining whether a proposed new or expanded solid waste

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disposal facility provides a substantial public benefit. The process and relevant standards follow.

- A. Process: The law requires the Commissioner to consider the state waste management and recycling plan required under 38 M.R.S. § 2122 (“State Plan”), written information submitted in support of the Application and any other written information the Commissioner considers relevant. The most recent version of the State Plan is the *Maine Materials Management Plan: 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report*, dated January 2024. The law also requires the Commissioner to hold a public meeting in the vicinity of the proposed facility to take public comments, to consider those comments in making the determination, and to accept written public comment during the course of processing the Application.
- B. Standards: In order for the Commissioner to find that the proposed landfill expansion provides a substantial public benefit, the applicant must demonstrate to the Commissioner that the proposed facility:
- Meets the immediate, short-term, or long-term capacity needs of the state. “Immediate” is defined as within the next 3 years; “short-term” is within the next 5 years; and “long-term” is within the next 10 years. The Commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors;
 - Is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy (“waste hierarchy”);
 - Is not inconsistent with local, regional, or state waste collection, storage, transportation, processing, or disposal; and
 - Is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed.

3. TITLE, RIGHT OR INTEREST

06-096 C.M.R. ch. 400, § 4(A) requires an applicant to demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property which is proposed for development or use. The Application includes a copy of the deed for the property, which is recorded in Book 9188, Page 152 of the Penobscot County Registry of Deeds. Casella Waste Systems’ subsidiary, NEWSME Landfill Operations, operates the landfill under

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the terms of the OSA with the State of Maine. The Department finds that BGS has demonstrated sufficient evidence of title, right or interest in the property, as required by 06-096 C.M.R. ch. 400, § 4(A).

4. PUBLIC PARTICIPATION

- A. Notice of Intent to File: 06-096 C.M.R. ch. 400, § 5(F)(1) requires public notification prior to filing an application for determination of public benefit. A notice of Intent to File the Application was published in the Bangor Daily News on June 7, 2024. A copy of the notice was sent by certified mail to abutters, the Town of Alton, the City of Old Town, the Penobscot Indian Nation, and the Juniper Ridge Landfill Advisory Committee members. The Department finds that the public notifications complied with the requirements in 06-096 C.M.R. ch. 400, § 5(F)(1).

- B. Public Meetings: 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(F)(1) require that the Commissioner hold a public meeting in the vicinity of the proposed expansion to receive public comments regarding the Application. The Commissioner held an in-person public meeting in Orono, Maine on July 16, 2024, from 1:00 pm to 3:00 pm and 5:30 pm to 7:30 pm with the option to attend, but not give comment, virtually. Notice of the meeting was published in the Bangor Daily News on July 3, 2024, and posted on the Department’s website, with interested parties notified by electronic mail. Comments were received orally and in writing at the meeting. The meeting was recorded, and a video and transcript posted on the Department’s website. Based on a request from a commenter, a virtual-only public meeting was held on July 26, 2024, at 9:00 am, to accept remote public comments. Notice of the virtual meeting was published in the Bangor Daily News on July 12, 2024, posted on the Department’s website, and sent to interested parties by electronic mail. The virtual meeting was also recorded, and the video and transcript posted on the Department’s website. The Department finds that a public meeting was held as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(F)(1).

- C. Public Comment: 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(F)(1) require that the Department accept public comments during the course of processing the Application. Public comments have been received throughout the course of processing the Application. In addition to comments received at the public meetings, comments were submitted to the Department by electronic mail. The comments received in writing and by electronic mail have been posted on the

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Department’s website. Those commenting include people living near the project site, people living elsewhere in Maine, members of the Penobscot Indian Nation, local legislators, the City of Old Town, and people representing or associated with the following organizations: Conservation Law Foundation, Slingshot, Maine Climate Action Now, Maine Water Environment Association, Community Water Justice, Don’t Waste ME, Defend Our Health, Friends of the Harriet L. Hartley Conservation Area, Upstream Watch, the Sierra Club, First Light, ecomaine, and the Houlton Water Company.

Issues raised by commenters included, but were not limited to, the following concerns: the Department’s review may not be objective, considering statements in the State Plan, dated January 2024; landfill expansion does not support the waste hierarchy and encourages disposal; landfill space has been consumed by out-of-state waste; it is premature to expand landfill capacity with the future of the Orrington waste-to-energy incinerator, Hampden waste processing facility, and treatment plant sludge management options being unclear; the State has failed to provide non-landfill options for waste management; there is insufficient incentive for people to reduce, reuse, or recycle waste and a financial incentive to landfill it; landfill leachate receives insufficient treatment prior to discharge; exposure of the public to odors, pollutants released during landfill fires, and leachate constituents discharged to the Penobscot River are inconsistent with environmental justice; the facility has changed from a landfill supporting residual disposal from a local pulp and paper mill to a facility accepting a wide variety of wastes from the entire State and other New England states with limited input from the host community and others; the application process does not provide for meaningful public involvement; duration and quantity of MSW bypass should be limited; it makes sense to expand an existing landfill rather than to place one in an unspoiled location elsewhere; and, the landfill expansion is needed to provide time for development and funding of infrastructure to support policies developed by the State.

The Department finds that public comments have been accepted and considered as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(F)(1).

D. Draft License Decision Comment Period: In accordance with 06-096 C.M.R. ch. 2, § 18,¹ a draft Public Benefit Determination was made available for a five-

¹ 06-096 C.M.R. ch. 2, § 2(B) does not apply to this public benefit determination. To the extent the Department consulted the rule, it did so for guidance only.

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working-day comment period on September 13, 2024, through notification to the applicant, the Town of Alton, the City of Old Town, the Penobscot Indian Nation, Juniper Ridge Landfill Advisory Committee members, and interested persons. The draft Public Benefit Determination was also posted on the Department’s website. In response to a request from the public, the Department sought concurrence from the applicant, on September 17, 2024, to provide an additional week for public comment and an additional 3 business days for Department review. The applicant agreed to this request on September 19, 2024. In addition to the topics described in Finding of Fact 4.C above, issues raised included, but were not limited to, the following: Casella should be required to install a sludge dryer at the landfill; there should be a limit on annual capacity used; there should be a limit on the quantity of CDD processing fines accepted; MSW bypass that has been continuing for a lengthy period of time should no longer be considered bypass; JRL should use tarps, biologically active soil, or soil from agronomic sludge utilization sites as daily cover material instead of alternative daily cover (“ADC”) or virgin soil; additional continuous air monitors should be installed in the vicinity of JRL and Indian Island; a public alert warning system or siren should be established; and landfill capacity for sludge is needed because the few solutions that might marginally lower municipal sludge volumes would require financial investments out of reach of small utility districts.

5. CAPACITY NEEDS

38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(1) require the applicant to demonstrate that the proposed facility meets immediate, short-term, or long-term capacity needs of the State. 38 M.R.S. § 2124-A requires the Department to report to the Legislature regarding statewide generation of solid waste, statewide recycling rates, and available disposal capacity for solid waste. The State’s capacity needs are projected in the most recent update of the State Plan.

A. Requested Capacity: JRL is expected to exhaust its permitted capacity in 2028, if disposal continues at current rates. BGS requests an expansion providing additional capacity of 11.9 million cubic yards, which would add 11.3 years of landfill life, using JRL’s annual waste acceptance average over the most recent 5-year period, and assuming a compaction rate of 0.82 tons of waste per cubic yard. JRL currently accepts waste from all areas of the State of Maine, and disposes of approximately 52% of the waste landfilled in Maine. JRL also accepts nearly 90% of the wastewater treatment plant sludge disposed in Maine. The landfill provides a disposal location for residues from the Orrington waste-to-energy

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incinerator, bypass MSW from all three Maine waste-to-energy incinerators, and bypass MSW from some of the municipalities under contract with the Municipal Waste Solutions (MWS) waste processing facility under a waste swap agreement with the Crossroads Landfill in Norridgewock. The landfill is located between an active commercial landfill in Norridgewock and an active landfill in Fort Fairfield licensed to accept MSW, CDD, and some special wastes.

The proposed expansion would provide for acceptance of the same types of wastes that are currently accepted, which include in-state CDD, OBW, residues from processing CDD, front end processing residue from waste-to-energy incinerators, bypass MSW, wastewater treatment plant sludge, and various non-hazardous special wastes. Based on waste volume information in the JRL annual reports, the average quantities of the major categories of waste received at JRL from 2020 through 2023 were: 38% CDD, 25% bypass MSW, 10% wastewater treatment plant sludge (both municipal and industrial), 9% OBW, 9% CDD processing fines, 4% miscellaneous waste, and 3% ash. In response to a question from the Department, the applicant calculated that if the Maine Regional Conversion Facility, LLC sludge dryer and the anticipated Brunswick AD, LLC anaerobic digester expansion projects are successful, sludge deliveries to the landfill may be reduced by 90%, in which case the proposed expansion would provide approximately 13 years of capacity.

Because the landfill accepts nearly 90% of the municipal wastewater treatment plant sludge disposed in Maine, and the licensed capacity is expected to be filled in 2028, the Application references a conclusion in the *Analysis of Sludge and State-Owned Landfills as Public Utilities Report*, dated January 2024 (“Biosolids Report”) that additional disposal capacity will be needed for wastewater treatment plant sludge as soon as 2028, and thus the expansion would meet Maine’s short-term need for capacity for wastewater treatment plant sludge.

The Application further concludes that an expansion of JRL is necessary to prevent a shortfall of disposal capacity for all wastes in less than 10 years based on a set of assumptions: the State’s recycling rate is consistent; waste generation continues to increase at approximately 5.6% per year; the quantity of waste exported from Maine remains consistent; the Maine Waste to Energy and ecomaine waste-to-energy incinerators continue operation at the current rates; the MWS waste processing facility in Hampden sends 30% of its contracted waste to landfills; the Orrington facility incinerates 50% of its contracted waste in 2025 and 60% thereafter; municipally operated landfills do not change significantly;

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and the Crossroads Landfill in Norridgewock could not handle all of the State’s landfill needs. With these assumptions and based on calculations presented by the applicant a shortfall of landfill disposal capacity for all wastes will occur in less than 10 years, and therefore the expansion is needed to meet Maine’s long-term capacity needs for all wastes.

- B. Department Review: The Department considered the State Plan, the *Maine Solid Waste Generation and Disposal Capacity Report for Calendar Years 2020 & 2021*, dated January 2023 (“Biennial Report”), the Biosolids Report, the Application and other supporting information, recent facility annual reporting information, and public comments during review of the Application.

As noted in the Application, there are currently eight licensed landfills in Maine, in addition to JRL, that accept MSW, bypassed MSW, CDD and special waste. Four of these landfills (Bath, Hatch Hill in Augusta, Tri-Community in Fort Fairfield, and Presque Isle²) are municipally owned and primarily accept waste from the area municipalities. As stated in the Biennial Report, these landfills had 2,303,572 cubic yards of capacity remaining as of December 31, 2021, about two-thirds of which is capacity in Aroostook County. Two landfills, ecomaine (in Scarborough and South Portland) and Lewiston, accept primarily ash from associated or nearby waste-to-energy incinerators. These landfills had 1,328,969 cubic yards of capacity as of December 31, 2021. The Crossroads Landfill in Norridgewock is a commercial landfill accepting waste from a wide service area, and had 8,533,231 cubic yards of capacity available as of December 31, 2021. The remaining licensed landfill is the State-owned Carpenter Ridge Landfill, which has not yet been developed. Carpenter Ridge Landfill has a licensed capacity of 1,800,000 cubic yards and is licensed to accept only special waste. Nineteen additional municipally owned small landfills accept wood wastes and CDD, and seven generator-owned landfills accept wastes only from the generators. As stated in the JRL annual report, the landfill had 6,332,172 cubic yards of capacity remaining as of December 31, 2021. By the end of 2022, available capacity of the nine landfills combined was approximately 17,792,907 cubic yards. Based on 2023 annual reports, available capacity of the nine landfills combined at the end of 2023 was 15,951,479 cubic yards.

² The Presque Isle Landfill is currently inactive as its owner, Aroostook Waste Solutions, has transitioned operations to its landfill in Fort Fairfield; however, available capacity remains in Presque Isle and will be used once operations in Fort Fairfield have ceased.

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The State Plan reported that 1,547,594 tons of MSW and CDD (including CDD used as ADC) was placed in landfills in 2022, including the 8 currently licensed and operating landfills described above and 19 smaller municipally owned landfills. Review of annual report information for 2023 for only the 8 currently licensed and operating landfills described above showed 1,507,497 tons of waste received (assuming ecomaine’s ash landfill received waste at its 5-year average rate). Over the time period from 2018 to 2022, JRL accepted approximately 52% of the landfilled waste; Crossroads Landfill accepted approximately 27%, Hatch Hill Landfill in Augusta accepted approximately 5%, two Aroostook County landfills (in Presque Isle and Fort Fairfield) accepted approximately 5%, and municipally owned landfills accepted the remaining 11%. The 2024 State Plan analyzed licensed disposal capacity at the three waste-to-energy incinerators and licensed landfill capacity for the larger landfills in the State. The waste-to-energy incinerators accepted approximately 44% of the MSW disposed in Maine; the remaining 56% was landfilled. A minor percentage of CDD generated in Maine is disposed at small municipally owned facilities, but the majority must be managed at a processing facility or landfilled.

In addition to receiving bypass MSW, waste-to-energy incinerator residue, processing facility residue, and wastewater treatment plant sludge, JRL accepts CDD and special waste from sources that include: municipal transfer stations; municipal bulky waste collection events; commercial waste haulers providing disposal services; construction debris from new developments; remediation projects; disaster cleanups; and individuals who generate waste such as debris from home renovations. JRL’s location meets local and regional needs for a disposal location for these wastes. With the exception of Crossroads Landfill, the other existing landfills are either not available for use by the generators currently using JRL or, in the case of the Aroostook County landfills, not a viable option due to transportation distances. JRL has been used as the location for disposal of some of the bypass MSW from the MWS processing facility in Hampden because of transportation distances, efficiency, and logistical challenges. MWS contracted with Crossroads Landfill for disposal of waste generated by its members from the effective date of contracts until facility startup (“bridge waste”), bypass, and residue, but the location of Crossroads Landfill made it difficult for some municipalities utilizing curbside collection to complete a collection route and still have time to travel to Crossroads Landfill for disposal before it closed for the day. Other municipalities would have travelled past JRL to go to Crossroads Landfill.

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Regarding available licensed capacity, the information in the Application is consistent with the State Plan. As noted in the Application, the State Plan concluded that expansion of JRL would be needed to ensure adequate disposal capacity for the entire State for the next 10 years. The Department determined, after review of the State Plan and landfill annual reports, that the State Plan’s conclusion is still valid.

Uncertainties regarding the quantity of bypass MSW needing landfill disposal (depending on future status of the Orrington waste-to-energy incinerator and MWS processing facility), quantity of municipal wastewater treatment plant sludge needing disposal (depending on startup of and sources of sludge for the new Maine Regional Conversion Facility, LLC sludge dryer, possible restart of the Brunswick AD, LLC anaerobic digester in Brunswick, and availability of bulking material for sludge at JRL) and possibility of legislative initiatives make prediction of future disposal capacity needs challenging. Many of the public comments received stated that too much landfill space has been consumed by waste originating in other states. Others commented that the amount of CDD should be reduced or more should be recycled. Current statute allows placement of a certain amount of waste from a processing facility located in Maine that accepts waste from out-of-state. Unless the statute is revised, JRL may legally accept a certain amount of residues from in-state CDD processing facilities. The Application states that JRL needs OBW from CDD processing facilities to bulk the increased quantity of wastewater treatment plant sludge being landfilled, and needs the processing fines in order to avoid using virgin soil material for daily cover. Casella has used more virgin soil in 2022 and 2023, when the quantity of processing fines decreased. The Department notes that JRL’s daily cover, as a percentage of the total waste received, appears reasonable in comparison to similar landfills in Maine. Discounting the space consumed by CDD processing fines used as ADC, since the space would otherwise be consumed mostly by virgin soil (the other materials approved as ADC are a small percentage of the total waste received, and are not always available), approximately 6% of landfill space (average from 2020 through 2023) has been used by OBW that originated out-of-state. In contrast, approximately 38% of landfill space (average from 2020-2023) has been used for disposal of CDD originating in Maine. Data from the two CDD processing facilities operating in Maine are an indication that the recyclable content of the mixed CDD they receive is very low. Reducing the amount of CDD generated in Maine and requiring generators to separate CDD components at the site of generation is beyond the ability of the operator of JRL to control. Commenters expressed the concern that, if the landfill capacity is

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increased, the incentive to find ways to reduce the volume of waste being disposed will disappear until the next capacity shortfall. Licensing and construction of landfill capacity can take three years or more to complete, so planning must begin well in advance of when capacity is needed. During this time, changes in waste management methods, pricing, and availability of alternatives to landfills can change, but it would be irresponsible to ignore the current projected capacity need. Moreover, the Department has already begun working toward alternative methods for diverting waste from landfills through its numerous product stewardship programs including the new extended producer responsibility for packaging program anticipated to be in full implementation in 2027. The State Plan acknowledges that, even with an expansion of JRL, waste disposal capacity will be limited in 15 years.

- C. Findings: The Department finds that in consideration of the State Plan, expansion of JRL meets short-term and long-term capacity needs of the State, as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(1). The Department further finds that adding 11.9 million cubic yards of capacity is reasonable, considering the amount of time it takes to license new or expanded disposal capacity or waste processing facilities, uncertainty surrounding waste management options in the Eastern Maine region, uncertainty surrounding the future municipal wastewater treatment plant sludge management options, the fact that waste generation rates fluctuate but as noted in the State Plan, per capita waste generation appears to be increasing, the need to support waste-to-energy incinerators and disposal needs of the Eastern Maine region, and the lack of existing infrastructure to increase waste diversion.

6. CONSISTENCY WITH STATE WASTE MANAGEMENT PLAN AND HIERARCHY

38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(2) require the applicant to demonstrate that the proposed expansion is consistent with the State Waste Management and Recycling Plan and to promote the Solid Waste Management Hierarchy. The State Plan is based on the waste hierarchy established in 38 M.R.S. § 2101 and the State’s goals for recycling, composting, and waste reduction established in 38 M.R.S. § 2132. The waste management hierarchy establishes priorities for the State to use when making solid waste management decisions. The hierarchy, from highest to lowest priority is as follows: reduction of waste (in amount and toxicity) at the source; reuse of waste; recycling of waste; composting of biodegradable waste; processing of waste to reduce the volume needing land disposal, including incineration; and land disposal of waste. The State’s goals are to recycle or compost at least 50% of the MSW tonnage by January 1,

2021; to reduce the per capita disposal rate to 0.55 tons per person per year by January 1, 2019, with further reduction of 5% every 5 years thereafter; and for municipalities to demonstrate reasonable progress toward these goals. The State Plan described several studies that have been or are being undertaken to understand and characterize waste streams; the results will be used for future solid waste management planning. In the meantime, the State Plan includes some strategies for consideration, including but not limited to the following: use of subsidies, tax incentives, low-interest loans, and “pay as you throw” programs to increase waste diversion; increasing participation in product stewardship programs; encouraging municipal efforts through education, cooperative work, and publicizing waste diversion grant opportunities and future extended producer responsibility reimbursement; and encouraging regionalization.

- A. Application Discussion: The Application and supporting documents describe a number of actions and programs to demonstrate that expansion of the landfill is consistent with the State Plan and promotes the waste management hierarchy.
- (1) Landfill gas at JRL has been flared, but Casella, with an energy partner, developed a renewable natural gas facility that converts landfill gas to biogas. The biogas will eventually be directed to a natural gas pipeline; currently the gas is compressed and trucked, while awaiting extension of the gas line.
 - (2) Casella operates a single sort recycling facility in Lewiston and a commercial recycling facility in Scarborough, and provides brokerage operations; over 93,000 tons per year of recyclables are managed through these programs. JRL’s 2023 annual report states that 101 tons of residue from the Casella operated single sort recycling facility was delivered to the Maine Waste to Energy waste-to-energy incinerator. Additional residue and trash from the Casella operated single sort recycling facility disposed at JRL totaled 8,239 tons. Casella provides recycling capability for traditional recyclable materials (paper, plastics, glass, cans) at 11 out of 15 Casella-owned or operated transfer stations and provides curbside collection of or drop-off locations for recyclables in 39 municipalities. Casella states that 3,251 businesses in Maine participate in its single sort recycling program.
 - (3) Casella also collects and manages universal waste, electronic waste, and tires at most of its owned or managed transfer stations. Metals are accepted for recycling at all of its owned or operated transfer stations.

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Four of its transfer stations collect wood separately; wood waste processed from two of them is used for alternative daily cover or other landfill use, and the other two send wood waste to other processors.

- (4) Casella manages 15,000 to 30,000 tons per year of residuals for agronomic utilization, including seaweed residual, wood-fired boiler ash, and paper mill lime wastes.
- (5) Casella provides education and outreach for recycling customers through its website, at schools, businesses, and community events; with student internships focused on recycling education; and with a mobile recycling application (“app”) that it has deployed to six communities so far, with plans to deploy to additional municipalities. Casella worked with one large municipality to perform recycling audits and bin tagging to reduce contamination in recycling, and is willing to work with other interested towns.
- (6) Casella’s August 9, 2024 response to the Department states that it intends to initiate a mattress recycling program in Maine in 2025.

B. Department Review: A solid waste disposal facility must show that waste has been reduced, reused, recycled, composted, and/or processed to the maximum extent practicable prior to landfilling. The greatest amount of waste must be handled through means as high on the hierarchy as possible without causing unreasonable increases in facility operating costs or unreasonable impacts on other aspects of facility operation.

The Application demonstrates that Casella has existing programs in place to reduce and reuse waste and to encourage recycling at the facilities it owns and, to a lesser extent, facilities it operates for municipalities, including single sort recycling, commercial recycling, universal waste and electronic waste recycling, metal recycling, tire recycling, agronomic utilization of residuals, wood waste recycling, and converting landfill gas to renewable natural gas. The categories of waste accepted by the landfill in the greatest volumes in recent years have been bypass MSW, CDD, residue from CDD processing facilities, and wastewater treatment plant sludge. Casella cannot control the amount of MSW that is bypassed from waste-to-energy incinerators or the Hampden waste processing facility. The volumes of CDD delivered to the landfill from non-Casella haulers or transfer stations not owned or operated by Casella similarly are beyond

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Casella’s control to sort or reduce. The Department anticipates that the volume of CDD processing residue from Maine’s largest CDD processing facility delivered to JRL for disposal will be reduced in accordance with 38 M.R.S. § 1310-N(5-A) which requires this processing facility to reuse or recycle at least 50% of its processing debris through methods other than placement in a solid waste landfill by July 1, 2028. The quantities of wastewater treatment plant sludge delivered to the landfill are generated by municipalities and industries after passing through the treatment plants’ dewatering processes. If Casella were to refuse to accept the treatment plant sludge due to its moisture content, or to require the generators to dry it further, this would increase the burden on municipalities and require time to develop and implement a solution. As noted in the Application, landfill space will still be required for sludge when drying or anaerobic digestion facilities are not operating due to planned maintenance or malfunction events. However, the Department recognizes that new facilities may become operational in the future to reduce the volume of wastewater treatment plant sludge either by drying or anaerobic digestion. For example, Maine Regional Conversion Facility, LLC expects to have their proposed sludge dryer operational in late 2025. This facility is expected to reduce sludge volumes by approximately 75%. Reduction in volume of waste is one of the priorities in Maine’s solid waste management hierarchy.

The Department finds that expansion of the JRL as proposed by BGS is consistent with the State Plan and promotes the solid waste management hierarchy as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(2), provided:

- Casella submits a report to the Department detailing its plans and schedule for implementing the mattress recycling program within six months of the date of this Order;
- Casella continues to expand deployment of its mobile recycling app, and includes information in each landfill annual report regarding where the app has been deployed;
- Casella includes a discussion in each landfill annual report regarding Casella’s work to encourage and assist towns to engage in all possible recycling and diversion activities; and
- Casella evaluates, and submits the evaluation in each annual report, the availability and capacity of regional facilities in Maine to reduce the volume of municipal wastewater treatment plant sludge prior to landfilling at JRL. The evaluation should include recommendations to further reduce the volume of sludge prior to landfilling.

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7. NOT INCONSISTENT WITH LOCAL, REGIONAL, OR STATE WASTE COLLECTION, STORAGE, TRANSPORTATION, PROCESSING, OR DISPOSAL

38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(3) require the applicant to demonstrate that the proposed expansion is not inconsistent with local, regional, or state waste management.

Casella provides collection and/or recycling services to approximately 60 municipalities, including curbside collection, drop-off locations, transfer stations, and brokerage services for recyclables, consistent with local, regional, and statewide collection practices. JRL is located centrally and is accessible to many municipalities. Vehicles performing curbside collection have time to complete their route and go to the landfill on the same day. A large part of Maine is within 50 miles of the landfill; it is close to Bangor, the second largest city in the state, and nearly the entire state is within 150 miles, so the landfill meets local, regional, and statewide needs. Tipping fees at the landfill are capped in accordance with the OSA, and are subject to annual adjustment in accordance with the consumer price index. The not-to-exceed tipping fees for bypass MSW are slightly above the average and median cost of MSW disposal stated in the State Plan. The CDD tipping fees are a little lower than the average and median cost stated in the State Plan. The landfill provides a disposal location for special wastes that require disposal in a secure landfill. The landfill supports existing processing facilities and waste-to-energy incinerators in the state by providing a disposal location for bypassed waste and residues that require landfilling.

The landfill has existed as a State-owned landfill for 20 years, and was purchased by the State to provide for disposal capacity for nonhazardous waste generated within the state. The landfill continues to accept wastes similar to those it has accepted over the past 20 years, although the 2017 expansion limited acceptance of MSW to bypass from Maine waste-to-energy incinerators and the MWS processing facility, and the quantity of sludge accepted as a percentage of the waste stream has increased in recent years. Continued operation of the landfill in a manner similar to which it has been operated is consistent with past waste management practices in the state.

The Department finds that the proposed expansion is not inconsistent with local, regional, or state waste collection, storage, transportation, processing, or disposal, as required by 38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(3).

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8. NOT INCONSISTENT WITH ENSURING ENVIRONMENTAL JUSTICE

38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(5) require the applicant to demonstrate that the proposed project is not inconsistent with ensuring environmental justice for the community in which the facility is proposed. 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. Environmental justice includes the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of waste management laws, regulations, and licensing decisions.

Based on EPA's Environmental Justice Screening and Mapping Tool (Version 2.3), Indian Island and the Penobscot River to just above the Mattaseunk Dam is part of a block group identified as a Designated Disadvantaged Community according to EPA Justice40 criteria (designated for energy, health, and American Indian Reservation Lands) and EPA Inflation Reduction Act (“IRA”) Data 2.0 criteria. The tract of land where JRL is located is identified as disadvantaged according to EPA IRA Data 1.0. There are 20 disadvantaged tracts in Penobscot County and 127 disadvantaged tracts in Maine according to EPA Justice40 criteria.

Based on environmental justice indicators, the block group that includes Indian Island is above the 95th percentile when compared to state data for several indexes including wastewater discharge,³ hazardous waste proximity,⁴ underground storage tanks,⁵ and toxic releases to air.⁶ Within the 19.36-square-mile block, 7 regulated sites (1 water discharger and 6 brownfields) report data to EPA. For the block group that includes JRL, there are 2 environmental justice indexes (toxic releases to air and wastewater discharge)

³ The environmental burden indicator for wastewater discharge measures how much relative risk there is of being exposed to pollutants from wastewater that flows into rivers or other bodies of water downstream.

⁴ The environmental burden indicator for hazardous waste proximity measures how close people might live to a facility that handles hazardous waste.

⁵ The environmental burden indicator for underground storage tanks measures how many underground storage tanks and release sites are near where people live. This indicator is based on the sum of tanks and releases within a 1,500-foot buffered block group.

⁶ The environmental burden indicator for toxic releases to air measures the average annual chemical concentrations in air weighted by the toxicity of each chemical. This indicator includes chemicals covered by [EPA's Toxics Release Inventory \(TRI\) Program](#).

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that are in the 50th to 80th percentile range when compared to state data. There are no environmental justice indicators at higher percentiles. As part of this block group, there is one regulated water discharger and two regulated air polluters that are required to report data to EPA.

The Penobscot River Basin is the longest river system located entirely within Maine and is New England’s second largest river basin located entirely within the region. The Penobscot Indian Nation, a federally recognized tribe, which is based on Indian Island near Old Town, has deep connections to the land and waterways of the Penobscot River. The Penobscot River is considered the heart of the Penobscot culture and is relied on for food, drinking water, transportation, and other cultural facets. The West Branch and mainstem receive wastewater discharges from five pulp and paper mill outfalls, one of which is ND OTM, LLC in Old Town. ND OTM, LLC is licensed under Maine Pollutant Discharge Elimination System permit #ME0002020 and Maine Discharge License #W002226-5N-S-M. In 2023, 26,531,525 gallons of landfill leachate from JRL were generated and hauled off-site for treatment at the ND OTM, LLC wastewater treatment facility.

Based on the Department’s draft *2024 Integrated Water Quality Report*, a total of seven segments on the mainstem of the Penobscot River from the confluence of the East and West Branches to Reeds Brook in Hampden and the West Branch Penobscot River between Millinocket Stream and East Branch Penobscot River are listed as impaired for aquatic life. Maine has established safe eating guidelines for fish from the Penobscot River below Lincoln of no more than one to two meals per month of any fish species based on testing for PCBs, dioxins, and DDT.

A. Per- and Polyfluoroalkyl Substances: Per- and Polyfluoroalkyl Substances (“PFAS”) are a group of manufactured chemicals that have been used in industry and consumer products since the 1940s. There are thousands of different PFAS, some of which have been more widely used and studied than others. Many PFAS are known to break down very slowly and can bioaccumulate in people, animals, and the environment over time. Several commenters expressed concern over PFAS in JRL’s landfill leachate and in the discharge from ND OTM, LLC’s wastewater treatment facility, where JRL leachate is treated, to the Penobscot River.

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Based on data reported to the Department pursuant to P.L. 2021, ch. 641, the Sum of 6 PFAS⁷ (PFOA, PFOS, PFHxS, PFNA, PFHpA, and PFDA) from samples taken at Outfall 001-A at ND OTM, LLC ranged from a low of 11 parts per trillion (“ppt”) in March 2023 to a high of 311 ppt in September 2023. The Sum of 6 PFAS from an October 2023 landfill leachate sample from JRL was approximately 2,920 ppt. The lowest Sum of 6 PFAS concentration was 410 ppt from a December 2021 sample. ND OTM, LLC’s wastewater treatment facility does not specifically include treatment for PFAS.

- B. Environmental Monitoring at JRL: As part of the facility’s environmental monitoring plan, the applicant monitors 50 groundwater monitoring wells, 5 surface water monitoring locations, 5 pore-water monitoring locations, 2 stormwater monitoring locations, 13 underdrain monitoring locations, 7 leak detection monitoring locations, and 1 leachate monitoring location. The applicant also conducts monitoring for landfill gas within manholes and groundwater monitoring wells, and at underdrain, leak detection, and leachate collection locations. Four locations just beyond the property boundary are also monitored for hydrogen sulfide. The facility operates a sulfur removal system to remove total reduced sulfur compounds, primarily hydrogen sulfide, from the landfill gas prior to flaring.

Based on the Department’s most recent review of JRL’s annual monitoring report, the Department concluded that “[g]roundwater, surface water, porewater, underdrain and leak detection monitoring results continue to show minimal evidence of impact from landfill leachate.” Further, the Department noted that groundwater monitoring locations that exhibit low concentrations of certain landfill indicator parameters (i.e., chloride) appear to be affected by site-related maintenance and construction activities rather than leachate from the landfill.

- C. Air Quality and Landfill Odor: As part of landfill operations, the applicant conducts daily odor surveys around the active waste areas, continuous hydrogen sulfide monitoring with stationary monitors, and quarterly methane emission surface scans on the landfill intermediate cover. Through surface scan monitoring, improvements are made to ensure the effectiveness of the intermediate cover and active gas collection and control system. If a hydrogen

⁷ The Department reported the Sum of 6 PFAS in its November 2023 wastewater effluent monitoring summary report which includes the compounds used in Maine’s current interim drinking water standards. However, Maine does not have any standards or screening levels for wastewater effluent or landfill leachate. The use of the Sum of 6 PFAS in this paragraph is for ease of reference only.

sulfide monitor detects hydrogen sulfide over 15 parts per billion (“ppb”), the scale house is automatically alerted, and scale house staff report the detection to landfill supervisory staff. If there is a detection over 30 ppb, the Old Town code enforcement officer is to be notified. These action levels were established during licensing of the landfill expansion in 2017, based on the recommendation of Old Town’s consultant. For comparison purposes, the Department’s acute ambient air guidelines include a level of 30 ppb (30-minute rolling average) for hydrogen sulfide. Based on JRL’s 2023 Annual Report, JRL received a total of 49 odor complaints; 44 were confirmed as likely coming from the landfill. During 2023, there were 20 hydrogen sulfide readings from the monitors that were above 15 ppb. Of these, none were above 30 ppb. While the odor threshold for hydrogen sulfide is variable, hydrogen sulfide can become noticeable at approximately 10 ppb. Several comments were received about odor from JRL and impacts to the enjoyment of property.

JRL’s Operations Manual includes an Odor Control Plan and Odor Complaint Management and Response Plan. The Odor Control Plan outlines specific provisions to control and mitigate the off-site migration of odors associated with landfill operations including the placement of daily cover, minimizing the active waste area, use of an odor neutralizer spray at the working face and on waste within incoming waste loads, and the use of a perimeter odor misting system during warmer months. As each landfill cell is filled and cover is placed, a series of lateral gas collection pipes is installed to control fugitive landfill gas emissions which could result in landfill odors. Vertical landfill gas extraction wells are installed once certain waste grades are reached. Once extracted, landfill gas is either compressed and trucked off-site while awaiting extension of a natural gas pipeline or combusted with on-site flares.

Based on air quality complaints received pertaining to the landfill, the Department’s Bureau of Air Quality installed a dedicated hazardous air pollutant sampler in November 2023 to collect 24-hour samples and a particulate matter sensor at a residence near the entrance to JRL in Old Town. Data evaluated to date do not show any exceedances of the Department’s acute ambient air guidelines. The Department will be installing a dedicated continuous hydrogen sulfide monitor in the near future. It is the Department’s understanding that the Penobscot Indian Nation received funding from the U.S. Environmental Protection Agency to purchase a hazardous air pollutant sampler to operate on Indian Island.

- D. Community Notification: The Department received several comments relating to the lack of real-time information available to the public during events such as the May 2023 landfill fire. The applicant maintains a dedicated website devoted to State-owned landfills and JRL which includes notices of public meetings, information about PFAS, various monthly reports, annual reports, and operating services agreements. Monthly reports include information about significant construction and operational activities; licenses applied for, received, or renewed; volume of leachate transported for disposal; volume of landfill gas flared; and quantity and origin of wastes received. A summary of complaints received including the nature and location of the complaint, wind direction and speed at the time of the complaint, hydrogen sulfide monitoring data, and information about whether the complaint was confirmed to be landfill related and its resolution is also provided on a monthly basis and posted on the applicant’s website. Reports for the current month are posted in the following month.
- E. Department Finding: The Department finds that expansion of JRL is not inconsistent with ensuring environmental justice for the community in which the facility is proposed, as required by 38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(5), provided that if a license is issued for the construction and operation of the expansion:
- (1) Casella designs and installs a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations and submits an implementation schedule with tasks to the Department for review and approval to meet this timeframe. The schedule should be submitted to the Department within 90 days of issuance of this public benefit determination;
 - (2) Casella pays for all applicable costs associated with a third-party odor consultant, working on behalf of the Department, to complete an odor analysis of the landfill and surrounding area, including evaluation of historical air quality sampling results, odor complaint history, field investigation, and recommended actions, to be submitted to the Department for review;
 - (3) Casella conducts two additional surface scans per year, during periods of low barometric pressure, if possible, of the landfill intermediate cover using a Department-approved method, to determine if there are fugitive

landfill gas emissions and conducts repairs of the cover material accordingly; and

- (4) The applicant establishes a system to inform the public about significant landfill events in near real time such as through a website or other means as approved by the Department.

BASED on the above Findings of Fact and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. BGS has demonstrated sufficient evidence of title, right or interest in the property, as required by 06-096 C.M.R. ch. 400, § 4(A).
2. A public meeting was held and public comments were accepted and considered as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(F)(1).
3. Expansion of JRL as proposed by BGS meets short-term and long-term capacity needs of the State, as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(1).
4. Expansion of JRL as proposed by BGS is consistent with the State Plan and promotes the solid waste management hierarchy as required by 38 M.R.S § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(2), provided that Casella submits a report to the Department detailing its plans and schedule for implementing the mattress recycling program within 6 months of the date of this Order and, if a license is issued for the construction and operation of the expansion:
 - Casella continues to expand deployment of its mobile recycling app, and includes information in each landfill annual report regarding where the app has been deployed;
 - Each landfill annual report includes a discussion regarding Casella’s work to encourage and assist towns to engage in all possible recycling and diversion activities; and
 - Casella evaluates, and submits the evaluation in each annual report, the availability and capacity of regional facilities in Maine to reduce the volume of municipal wastewater treatment plant sludge prior to landfilling at JRL. The evaluation should include recommendations to further reduce the volume of sludge prior to landfilling.

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5. The proposed expansion is not inconsistent with local, regional, or state waste collection, storage, transportation, processing, or disposal, as required by 38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(3).

6. The proposed expansion is not inconsistent with ensuring environmental justice for the community in which the expansion is proposed, as required by 38 M.R.S. § 1310-AA and 06-096 C.M.R. ch. 400, § 5(E)(5), provided that if a license is issued for the construction and operation of the expansion:
 - Casella designs and installs a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations and submits an implementation schedule with tasks to the Department for review and approval to meet this timeframe. The schedule should be submitted to the Department within 90 days of issuance of this public benefit determination;
 - Casella pays for all applicable costs associated with a third-party odor consultant, working on behalf of the Department, to complete an odor analysis of the landfill and surrounding area, including evaluation of historical air quality sampling results, odor complaint history, field investigation, and recommended actions, to be submitted to the Department for review;
 - Casella conducts two additional surface scans per year during periods of low barometric pressure, if possible, of the landfill intermediate cover, using a Department-approved method to determine if there are fugitive landfill gas emissions and conducts repairs of the cover material accordingly; and
 - The applicant establishes a system to inform the public about significant landfill events in near real time such as through a website or other means as approved by the Department.

THEREFORE, the Department APPROVES the above noted application of the STATE OF MAINE, acting through the Department of Administrative and Financial Services, Bureau of General Services, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations.

1. The Standard Conditions of Approval, a copy attached as Appendix A.

2. The invalidity or unenforceability of any provision, or part thereof, of this Order shall not affect the remainder of the provisions or any other provisions. This Order shall be

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construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

3. Within 6 months of the date of this Order, Casella shall submit a report to the Department detailing its plans and a schedule for implementing the mattress recycling program.
4. If a license is issued for the construction and operation of the expansion:
 - A. Casella shall continue to expand deployment of its mobile recycling app, and include information in each landfill annual report regarding where the app has been deployed;
 - B. Casella shall include in each landfill annual report a discussion regarding their work to encourage and assist towns to engage in all possible recycling and diversion activities; and
 - C. Casella evaluates, and submits the evaluation in each annual report, the availability and capacity of regional facilities in Maine to reduce the volume of municipal wastewater treatment plant sludge prior to landfilling at JRL and, include recommendations to further reduce the volume of sludge prior to landfilling;
 - D. Casella designs and installs a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations;
 - E. Casella pays for all applicable costs associated with a third-party odor consultant, working on behalf of the Department, to complete an odor analysis of the landfill and surrounding area, including evaluation of historical air quality sampling results, odor complaint history, field investigation, and recommended actions, to be submitted to the Department for review and approval;
 - F. Casella conducts two additional surface scans per year during periods of low barometric pressure, if possible, of the landfill intermediate cover, using a Department-approved method to determine if there are fugitive landfill gas emissions and conduct repairs of the cover material accordingly; and
 - G. The applicant establishes a system to inform the public about significant landfill events in near real time such as through a website or other means as approved by the Department.


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5. Within 90 days of the issuance of this public benefit determination, Casella shall submit an implementation schedule with tasks to detail how they intend to design and install a Department-approved system for the treatment of landfill leachate for PFAS prior to expansion operations, if a license approval is issued for the expansion.

DONE AND DATED AT AUGUSTA, MAINE, THIS 2nd DAY
OF October, 2024.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:  *for*
Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURE

Date of initial receipt of application: June 10, 2024
Date of application acceptance: June 24, 2024

Date filed with the Board of Environmental Protection:

XKK92656

FILED
OCT 2, 2024
State of Maine
Board of Environmental
Protection

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the license. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, statutes, regulations, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.

ADDITIONAL STANDARD CONDITIONS FOR SOLID WASTE DISPOSAL FACILITIES

10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by State law.

11. **Deed Requirements for Solid Waste Disposal Facilities.** Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following information must be recorded in the Registry of Deeds:
- A. The type of facility located on the lot and the dates of its establishment and closure.
 - B. A description of the location and the composition, extent, and depth of the waste deposited.
 - C. The disposal location coordinates of asbestos wastes must be identified.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021

Contact: (207) 314-1458

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
