

FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
<p>“Tribes generally retain exclusive rights to the use of land and resources within their territories, unless those rights have been abrogated by treaty or statute.” <i>Cohen’s Handbook of Federal Indian Law</i>, § 17.01, at 1106 (Neil Jessup Newton ed., 2012).</p> <p>Many federal environmental laws provide for delegation of regulatory authority to individual states, subject to minimum federal standards and to the oversight and veto authority of EPA. <i>See, e.g.</i>, 33 U.S.C. § 1342(b) (EPA may delegate to States the authority to issue discharge permits pursuant to the Clean Water Act).</p> <p>States generally do not have authority to implement federal environmental statutes within Indian territories. <i>Cohen’s Handbook of Federal Indian Law</i>, § 10.02[1], at 790 (Neil Jessup Newton ed., 2012).</p> <p>“In the environmental context, Congress has authorized Indian tribes to assume primary regulatory authority, or primacy, for administering most of the federal environmental programs in Indian country.” <i>Cohen’s Handbook of Federal Indian Law</i>, § 10.01[1], at 784-85 (Neil Jessup Newton ed., 2012).</p> <p>Various federal laws have provisions authorizing the EPA to treat Indian tribes as States for purpose of implementing federal environmental programs. <i>See, e.g.</i>, 42 U.S.C. § 7601(d)(1)(A) (under the Clean Air Act, EPA “authorized to treat Indian tribes as States”); 33 U.S.C. § 1377(e) (under the Clean Water Act, EPA “authorized to treat an Indian tribe as a State”); 42 U.S.C. § 9626(a) (under the Comprehensive Environmental Response, Compensation and Liability Act, the “governing body of an Indian tribe</p>	<p>“[T]he background rule is that Maine law on natural resources governs the tribes and their territories.” <i>Maine v. Johnson</i>, 498 F.3d 37 (1st Cir. 2007) (holding that Maine has authority to regulate discharge sources draining into tribal waters, as well as sources on tribal lands owned by tribal entities).</p> <p>“Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.” 30 M.R.S. § 6204; <i>see also</i> MICSA, § 6(a) and (b) (Passamaquoddy Tribe and Penobscot Nation subject to the jurisdiction of the State to the extent provided in the MIA, and, with certain exceptions, other tribes and bands of Indians “shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein”).</p> <p>Section 6(h) of MICSA states: “Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United</p>	<p><i>Recommendation #1</i></p> <p>Restore and affirm the Tribes’ rights to exercise regulation of natural resources and land use on tribal land to the fullest extent under federal Indian law.</p> <p>Note: This includes “treatment as a state” (TAS) status.</p> <p>(Vote: 9-0)</p>

<p>shall be afforded substantially the same treatment as a State”).</p> <p>Tribal water quality standards may be enforceable in non-tribal areas. <i>See, e.g., City of Albuquerque v. Browner</i>, 97 F.3d 415 (9th Cir. 1996) (holding that EPA had authority to require upstream dischargers to comply with downstream tribal standards); <i>Wisconsin v. E.P.A.</i>, 266 F.3d 741, 750 (7th Cir. 2001) (same).</p>	<p>States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.”</p> <p>Section 16(b) of MICSA states: “The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.” MICSA, § 16(b).</p>	
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