IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

ONEIDA TRIBE OF INDIANS OF WISCONSIN, Plaintiff, v. VILLAGE OF HOBART, WISCONSIN, Defendant/Third-Party Plaintiff, v. UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, and KENNETH SALAZAR, Secretary of the Interior, Third-Party Defendants.	Case No. 1:10-cv-00137-WCG Hon. William C. Griesbach

MEMORANDUM OF LAW IN SUPPORT OF
THIRD-PARTY DEFENDANTS' MOTION TO DISMISS

IGNACIA S. MORENO
Assistant Attorney General

AMY S. TRYON
Trial Attorney
Environment and Natural Resources Division
Indian Resources Section
P.O. Box 7611
Washington, DC 20044
(202) 353-8596
amy.tryon@usdoj.gov

JOSHUA M. LEVIN
Environment and Natural Resources Division
Environmental Defense Section

U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-4198
joshua.levin@usdoj.gov

TABLE OF CONTENTS

I. INTRODUCTION

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Third-Party Defendants United States of America; United States Department of the Interior; and Kenneth Salazar, Secretary of the Interior (collectively, "the United States") submit this Memorandum of Law in support of their Motion to Dismiss the Amended Third-Party Complaint. As set forth below, third-party plaintiff Village of Hobart, Wisconsin ("Village") has failed to state a claim reviewable by this Court. This Court also lacks jurisdiction to hear the Village's claim for money damages. The United States therefore respectfully requests that the Court dismiss the Amended Third-Party Complaint.

This case began with an action filed by the Oneida Tribe of Indians of Wisconsin ("Tribe") against the Village, seeking a declaration that the Village lacks authority to impose certain stormwater charges on lands held by the United States in trust for the Tribe.[1] Dkt. No. 1. In July 2010, the Village filed a third-party complaint against the United States, alleging that the United States, as holder of the bare title to the tribal trust lands, must pay the stormwater fees if the Tribe is not responsible for doing so. Dkt. No. 15. This Court dismissed the third-party complaint, holding that the Village had failed to state a claim under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, because there had been no final agency action. Dkt. No. 34. The Village then presented the Department of the Interior with a request for payment of $237,862.06 in stormwater fees, which the Department denied by letter dated October 20, 2011. Dkt. No. 40-1.

Having thus obtained the final agency action required for a suit under the APA, the Village now renews its third-party claims against the United States. Am. Third-Party Compl.,

[1] The only land at issue in this case is land held in trust for the Tribe by the United States.

Dkt. No. 43. The Village seeks a declaratory judgment that the United States must pay "all past and future storm water related fees" and a monetary judgment "for all fees currently due and owing." Dkt. No. 43, at 16. The Village also seeks various declaratory and injunctive relief affirming the Village's jurisdiction to enforce its stormwater ordinances on Indian trust land and preventing the United States from invoking a federal regulation, 25 C.F.R. § 1.4, which exempts trust land from state and local property laws. Id.

The Amended Third-Party Complaint fails to state a claim upon which relief can be granted because the Village has no jurisdiction or authority to enforce its stormwater ordinances, including its monetary fee, on Indian trust land. A long history of case law holds that states and local governments cannot impose their own laws on land held in trust for Indians by the United States, unless Congress has expressly consented to the particular exercise of state jurisdiction. Principles of federal supremacy in the area of Indian law as well as respect for tribal rights of self-determination support this longstanding rule. The Village contends that Section 313 of the Clean Water Act, 33 U.S.C. § 1323 ("CWA"), constitutes the required express consent, but in fact Section 313 – which requires the United States's compliance with certain state and local water pollution control laws at certain federal facilities and properties – does not mention Indians or Indian lands at all, and therefore cannot provide the clear, unequivocal consent required. At most, the statute is ambiguous, requiring the conclusion under the Indian canons of construction that the Village lacks authority to impose its stormwater laws on the Tribe's trust land. As a waiver of federal sovereign immunity, Section 313 must also be strictly construed in favor of the sovereign.

Because federal case law controls the outcome of this case, this Court can rule as a matter of law without addressing the validity of 25 C.F.R. § 1.4, which merely codifies the pre-existing and independent judicial doctrine that trust land is exempt from state and local regulation without Congressional consent. This memorandum nonetheless explains why the Village's APA-based and constitutional challenges to the regulation lack merit.

Finally, this Court lacks subject matter jurisdiction over the Village's claim for a monetary judgment because the "Little Tucker Act," 28 U.S.C. § 1346, grants the federal district courts jurisdiction over monetary claims against the United States only up to the amount of $10,000. Claims for more than $10,000, including the Village's, must be brought in the Court of Federal Claims. See 28 U.S.C. § 1491.

Accordingly, and for the reasons given below, the entire Third-Party Complaint should be dismissed for lack of jurisdiction and failure to state a claim.

II. FACTS AND PROCEDURAL HISTORY

The Oneida Tribe of Indians of Wisconsin is a federally recognized Indian tribe. 74 Fed. Reg. 40,218, 40,220 (Aug. 11, 2009); Oneida Tribe of Indians of Wisc. v. Village of Hobart, 542 F. Supp. 2d 908, 910 (E.D. Wis. 2008). The Tribe is a successor in interest to the Oneida Nation, which was recognized by the United States in a series of treaties beginning in 1784. Compl., Dkt. No. 1 ¶ 4. The Tribe occupies the Oneida Reservation in Wisconsin, which was established by the 1838 Treaty with the Oneida. The Reservation once encompassed 64,000 acres of tribal land; a large percentage of that land fell out of Indian ownership between 1889 and 1934. Oneida Tribe, 542 F. Supp. 2d at 910-12. Today, the United States holds in trust for the Tribe approximately 1420 acres of land that are located within the boundaries of the Village. Compl.,

Dkt. No. 1 ¶ 8. Some of these lands were designated as tribal land pursuant to treaty; others were acquired in trust pursuant to authority granted to the Secretary in Section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465.[2] The Tribe also owns land in fee within the Reservation. The Tribe has promulgated its own water control ordinances and environmental laws. Compl., Dkt. No. 1 ¶¶ 19-21.

The Town of Hobart (now the Village) was created by the state legislature in 1903 and lay wholly within the exterior boundaries of the reservation. Oneida Tribe, 542 F. Supp. 2d at 912. In 2002, the Village incorporated under Wisconsin law, granting it additional authority under State law. Id. at 913. In July 2007, the Village began enforcement of an ordinance that imposes a monetary charge on all property located within the Village for the purpose of managing stormwater run-off. Compl., Dkt. No. 1 ¶ 9.[3] The ordinance purports to authorize the Village to impose a lien upon land if the stormwater fee is not paid. Id. ¶ 10. The Village levied this charge on both the Tribe's trust and fee land. Id. ¶ 12. The Tribe paid the charges for its fee

[2]Section 5 of the IRA "authorizes the Secretary of the Interior to acquire land in trust for Indians." City of Sherrill v. Oneida Indian Nation, 544 U.S. 197, 220 (2005) (citing 25 U.S.C. § 465). The IRA was enacted in 1934 as part of the federal government's return to a policy supporting "principles of tribal self-determination and self-governance." Connecticut ex rel. Blumenthal v. U.S. Dep't of Interior, 228 F.3d 82, 85 (2d Cir. 2000) (quoting County of Yakima v. Confed. Tribes & Bands of Yakima Indian Nation, 502 U.S. 251, 255 (1992)). The "overriding purpose" of the IRA was to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." Morton v. Mancari, 417 U.S. 535, 542 (1974). The IRA also "end[ed] the alienation of tribal land and facilitat[ed] tribes' acquisition of additional acreage and repurchase of former tribal domains." Felix Cohen, Handbook of Federal Indian Law § 1.05 (2005 ed.).

[3]The Environmental Protection Agency ("EPA") has never granted the State or the Village authority to administer Clean Water Act programs on Indian trust land. In February 1974, EPA authorized Wisconsin to administer its own water pollution control program. 39 Fed. Reg. 26,061 (July 16, 1974). From the beginning, Wisconsin's program authority specifically excluded Indian lands from its scope, as demonstrated by a number of documents surrounding the approval. See Dkt. No. 25 at 9-11 and Exh. 3-6.

land under protest and declined to pay the charges assessed on its trust land. Id. ¶¶ 12-13. In March 2009, the Tribe and Village entered into an agreement, pursuant to which (among other things) the Tribe deposited the disputed trust-land charges into an escrow account. Id. ¶¶ 14-15.

The Tribe filed a complaint against the Village on February 19, 2010, seeking declaratory and injunctive relief from the Village's attempts to assess its stormwater charge on tribal trust land. Id. On July 12, 2010, the Village filed a third-party complaint against the United States, seeking a declaratory judgment that the United States is responsible for paying the charges as well as the issuance of "a monetary judgment for all fees currently due and owing." Dkt. No. 15 at 15. On April 18, 2011, this Court granted the United States's motion to dismiss the Third-Party Complaint, holding that APA jurisdiction was lacking because the Village had not presented its claim to any federal agency and received a "final agency action." Dkt. No. 34 at 6-7.

On May 18, 2011, the Village submitted a letter to the Interior Department, requesting payment of the stormwater charges assessed against the tribal trust lands: a total of $237,862.06. By letter dated October 20, 2011, Interior denied the Village's request for payment. Dkt. No. 40-1. The Interior letter, signed by Assistant Secretary for Indian Affairs Larry Echo-Hawk, noted that 25 C.F.R. § 1.4(a) "specifically prohibit[s] state and local regulation of trust property," and therefore prohibited the Village's assessment. Id. at 1. The letter also stated that it constitutes the final decision of the Department and is subject to review under the APA. Id. at 3.

On November 23, 2011, the Village filed an Amended Third-Party Complaint against the United States, seeking judicial review under the APA of Interior's decision not to pay the Village's stormwater charges on Indian trust land. Dkt. No 43.

The United States now moves to dismiss the Amended Third-Party Complaint for lack of subject matter jurisdiction and failure to state a claim upon which this Court may grant relief.

III. STANDARDS OF REVIEW

A. Standard for Dismissal under Rule 12(b)(1)

Under Federal Rule of Civil Procedure 12(b)(1), a court may dismiss an action for lack of subject matter jurisdiction. "[T]he district court must accept the complaint's well-pleaded factual allegations as true and draw reasonable inferences from those allegations in the plaintiff's favor." Transit Express, Inc. v. Ettinger, 246 F.3d 1018, 1023 (7th Cir. 2001) (citing Rueth v. EPA, 13 F.3d 227, 229 (7th Cir. 1993)). However, the plaintiff bears the burden of establishing jurisdictional requirements. Apex Digital, Inc. v. Sears, Roebuck & Co., 572 F.3d 440, 443 (7th Cir. 2009). Moreover, when considering a motion to dismiss for lack of jurisdiction, "the district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." Johnson v. Apna Ghar, Inc., 330 F.3d 999, 1001 (7th Cir. 2003) (quoting Long v. Shorebank Dev. Corp., 182 F.3d 548, 554 (7th Cir. 1999)).

B. Standard for Dismissal under Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint when it fails "to state a claim upon which relief can be granted." "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks, alteration, and

citations omitted). Generally, under this standard, the court accepts the factual allegations within the complaint as true, drawing reasonable inferences and resolving ambiguities in favor of the pleader. See Christensen v. County of Boone, 483 F.3d 454, 457 (7th Cir. 2007); Curtis v. Bembenek, 48 F.3d 281, 283 (7th Cir. 1995).

C. The Indian Canons of Construction

The so-called "Indian canons of construction" hold that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." Montana v. Blackfeet Tribe of Indians, 471 U.S. 759, 766 (1985) (citing McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 174 (1973)); see also County of Yakima v. Confed. Tribes & Bands of the Yakima Indian Nation, 502 U.S. 251, 269 (1992). In addition, "tribal property rights and sovereignty are preserved unless Congress's intent to the contrary is clear and unambiguous." Cohen, Fed. Indian Law, § 2.02[1]. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 59-60 (1978) (declining to read statute in a way that would cause "interference with tribal autonomy and self-government . . . in the absence of clear indications of legislative intent"); Fisher v. Dist.Ct., 424 U.S. 382, 388-89 (1976) (declining to recognize state court jurisdiction over Indian adoptions because "[n]o federal statute sanctions this interference with tribal self-government").

IV. ARGUMENT

The Village seeks to affirm its authority over the Tribe's trust land, asking this Court to declare that the United States must pay the stormwater fees the Village has assessed, and will assess in the future, upon the land. A long, well-established line of cases, however, holds that states and local governments cannot regulate on Indian trust land without the express,

unequivocal consent of Congress. In this case, such consent is lacking. Section 313 of the Clean Water Act cannot provide the requisite express consent because it does not mention Indians or Indian lands; at most, the statute is ambiguous, meaning it must be interpreted in favor of Indian sovereignty. The statute also must be strictly construed because it waives federal sovereign immunity and such waivers must be read narrowly. The Village's challenges to the validity of 25 C.F.R. § 1.4 lack merit, and in any event this Court need not resolve those challenges in order to rule as a matter of law in favor of the United States. Finally, the Court has no jurisdiction to hear the Village's claim for a monetary judgment against the United States because the claim exceeds the statutory limit of $10,000.

A. The Village lacks jurisdiction to enforce its stormwater regulations on the Tribe's trust land because Congress has not expressly granted the Village regulatory authority over Indian lands.

The Supreme Court has long held that states and localities cannot regulate on Indian trust land without the express consent of Congress. Such consent has not been given to the Village to enforce its stormwater ordinances on the Tribe's trust land. Although the Village points to Section 313 of the Clean Water Act for the required consent, that provision does not mention Indians or Indian land, and therefore cannot provide the requisite express authorization. At best, Section 313 is ambiguous, and as such cannot serve to divest the Tribe of its sovereignty, leading to the conclusion that the Village lacks regulatory authority over the Tribe's trust land. Section 313 must also be read narrowly because it is a waiver of federal sovereign immunity. For this reason, the First and Second Claims for Relief in the Village's Amended Third-Party Complaint must be dismissed.

1. Absent the express consent of Congress, states and local governments cannot regulate on Indian trust lands.

The Supreme Court recognizes that "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." United States v. Wheeler, 435 U.S. 313, 323 (1978) (quoting United States v. Mazurie, 419 U.S. 544, 557 (1975)). In conjunction with the sovereignty of tribes, there is "a 'deeply rooted' policy in our Nation's history of 'leaving Indians free from state jurisdiction and control.'" Okla. Tax Comm'n v. Sac & Fox Nation, 508 U.S. 114, 123 (1993) (quoting McClanahan, 411 U.S. at 168). The Court has recognized this principle since the days of Chief Justice Marshall. See Worcester v. Georgia, 31 U.S. 515, 557 (1832) (Marshall, C.J.) (Indian nations are "distinct political communities, having territorial boundaries, within which their authority is exclusive"). "Absent explicit congressional direction to the contrary, we presume against a State's having the jurisdiction to tax within Indian country, whether the particular territory consists of a formal or informal reservation, allotted lands, or dependent Indian communities." Okla. Tax. Comm'n, 508 U.S. at 128. "Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." Williams v. Lee, 358 U.S. 217, 220 (1959).[4]

[4] The law is more complex where non-Indians are involved. Compare Moe v. Confed. Salish & Kootenai Tribes of the Flathead Reservation, 425 U.S. 463, 483 (1976) (upholding state requirement that Indian cigarette sellers collect a tax on cigarette sales to non-Indians) with New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 344 (1983) (finding state hunting and fishing laws pre-empted on reservation, even as applied to non-members of the tribe). However, the present case involves only Indian activity on tribal trust land. "When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 144 (1980) (citing Moe, 425 U.S. at 480-81). In this context, Congress has established a mechanism that accounts for both the need to control water pollution in Indian country and protection of tribal sovereignty on reservations. See 33 U.S.C. § 1377 (providing for eligible tribes to be treated in the same manner as states for the purposes of administering certain CWA programs, including the

Two important principles underlie the doctrine that states cannot regulate on Indian land without Congressional consent. First is the role of the federal government, dating to the founding of this nation, as the entity responsible for Indian affairs.[5] This authority derives from the Indian Commerce Clause of the U.S. Constitution, art. I, § 8, cl. 3, which addressed the confusion over whether states had authority over Indian affairs pursuant to the Articles of Confederation by expressly giving Congress the power to "regulate commerce . . . with the Indian tribes." From the early days, the Supreme Court has recognized the exclusive authority of the United States over Indian affairs. See Worcester, 31 U.S. at 561 (regulation of relationship between the United States and Indian tribes, "according to the settled principles of our constitution, [is] committed exclusively to the government of the union."); South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998) ("Congress possesses plenary power over Indian affairs"); Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 192 (1989) ("[T]he central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs."); Wheeler, 435 U.S. at 319 ("Congress has plenary authority to legislate for the Indian tribes in all matters."). Second, the doctrine serves to uphold the well-acknowledged federal goal

---

National Pollutant Discharge Elimination System ("NPDES") program). However, nothing in the CWA explicitly subjects Indian lands to regulation under the CWA or under state and local water pollution control laws.

[5]This factor sometimes leads courts to view the issue of state versus federal jurisdiction over Indian lands through the lens of preemption. See McClanahan, 411 U.S. at 172 (noting "trend . . . away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption"); Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 658 (9th Cir. 1975) ("any concurrent jurisdiction the states might inherently have possessed to regulate Indian use of reservation lands has long ago been preempted by extensive Federal policy and legislation").

of encouraging and assisting tribal sovereignty and self-determination. As the Supreme Court stated in Williams,

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of [tribes] over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. . . . The cases in this Court have consistently guarded the authority of Indian governments over their reservations.

Williams, 358 U.S. at 223. See also Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 663 (9th Cir. 1975) ("[E]xtension of local jurisdiction is inconsistent with tribal self-determination and autonomy.").

There are several types of land over which tribes have jurisdiction, but this case concerns only land that the United States holds in trust for the Tribe. With regard to such land, the United States holds the bare title, and the Tribe owns the beneficial interest. By acknowledging or acquiring land in trust for a tribe, whether by treaty or pursuant to statute, the federal government removes the land from certain state and local jurisdiction.

> When Congress provided in [the IRA] for the legal condition in which land acquired for Indians would be held, it doubtless intended and understood that the Indians for whom the land was acquired would be able to use the land free from state or local regulation or interference as well as free from taxation.

Chase v. McMasters, 573 F.2d 1011, 1018 (8th Cir. 1978) (citing Santa Rosa Band, 532 F.2d at 666). "Land held in trust is generally not subject to (1) state or local taxation [or] (2) local zoning and regulatory requirements . . . ." Connecticut ex rel. Blumenthal v. U.S. Dep't of Interior, 228 F.3d 82, 85-86 (2d. Cir. 2000). "Within Indian country the federal and tribal governments have exclusive jurisdiction over the conduct of Indians and interests in Indian property." Buzzard v. Okla. Tax Comm'n, 992 F.2d 1073, 1077 (10th Cir. 1993). Therefore,

when a state or local government seeks to enforce its laws on Indian trust land, a court generally must determine whether Congress has expressly consented to give the state such power. See, e.g., Gobin v. Snohomish County, 304 F.3d 909, 912 (9th Cir. 2002) (the "dispositive question" is "[w]hether Congress expressly authorized the County to regulate reservation fee lands owned by tribal members"); Indian Country, U.S.A. Inc. v. Oklahoma ex rel. Okla. Tax Comm'n, 829 F.2d 967, 976 (10th Cir. 1987) ("There is a presumption against state jurisdiction in Indian country. . . . Nevertheless the Court also has recognized that state laws may reach into Indian country 'if Congress has expressly so provided.'" (quoting California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207 (1987)).

Where there has been no specific Congressional authorization, courts have consistently held that states and local governments lack authority to enforce laws, regulations, and ordinances of various types on Indian trust land or other Indian lands. See Gobin, 304 F.3d at 911 (county lacks jurisdiction to enforce land use laws on Indian fee land); Indian Country, U.S.A., 829 F.2d at 976 (state cannot regulate bingo on Creek Nation lands that constitute "Indian country"); Shakopee Mdewakanton Sioux Cmty. v. City of Prior Lake, 771 F.2d 1153, 1159 (8th Cir. 1985) (city is not entitled to exercise municipal jurisdiction over reservation trust lands); United States v. County of Humboldt, 615 F.2d 1260, 1261 (9th Cir. 1980) (county cannot enforce zoning ordinance or building codes on Indian trust land); Santa Rosa Band, 532 F.2d at 659 (holding that county lacks authority to enforce zoning laws on Indian trust land); Colorado River Indian Tribes v. Town of Parker, 705 F. Supp. 473, 480 (D. Ariz. 1989) (town has no authority to enforce building codes on tribe's trust land); City of Sault Ste. Marie v. Andrus, 532 F. Supp. 157, 167 (D.D.C. 1980) (city cannot enforce land use regulations on trust land); Snohomish County v.

Seattle Disposal Co., 425 P.2d 22, 26 (Wash. 1967) (county cannot enforce its garbage dumping permit requirement on Indian trust or fee lands); see also Buzzard, 992 F.2d at 1077 (holding that the state can tax certain Indian smoke shops because the shops are not located in Indian country). Therefore, unless Congress has provided express authorization for it to do so, the Village cannot enforce its stormwater ordinances, including monetary assessments, on the Tribe's trust land.

2. Congressional authorization of state or local jurisdiction over Indian lands must be express and unmistakable.

Courts have found express consent only in very limited circumstances, keeping in mind the "backdrop" of Indian sovereignty "against which the applicable . . . federal statutes must be read," McClanahan, 411 U.S. at 172, as well as the requirement that Congressional consent be "unmistakably clear." County of Yakima, 502 U.S. at 258 (quoting Montana, 471 U.S. at 765). In addition, the Indian canons of construction require that, "[i]f faced with two reasonable constructions of Congress's intent, this Court resolve[] the matter in favor of the Indians." Gobin, 304 F.3d at 914.

For example, in Maine v. Johnson, the state sought authority to regulate pollutant discharges on Indian reservation land. 498 F.3d 37, 41 (1st Cir. 2007). To determine whether Congress had granted such authority, the court examined the Maine Settlement Acts, enacted by the State and Congress to resolve long-standing disputes between the State of Maine and two Indian tribes located in the State. Id. The Acts stated specifically that the tribes "would be 'subject to' Maine law; 'and any lands or natural resources owned by them [or] held in trust for them . . . shall be subject to the laws of the State . . . to the same extent as any other person . . . or natural resources therein.'" Id. at 42 (quoting Me. Rev. State. tit. 30, § 6204). The court noted

that, by so providing, the Settlement Acts "extended state authority well beyond what is customary for Indian tribes elsewhere in the United States" and "greatly narrow[ed] ordinary tribal sovereignty vis-a-vis state law." Id. Because of this unusual and explicit grant of power to the state, the court held that Maine could regulate pollutant discharges on the tribal land. Id. at 45-46.

Similarly, in County of Yakima, the county sought to impose both an ad valorem property tax and an excise sales tax on land owned in fee by individual Indians. The land had been acquired pursuant to a 1906 federal statute that authorized the President to patent formerly restricted Indian land to individual Indians in fee simple; the statute provided that, upon the issuance of the patent, "all restrictions as to sale, incumbrance, or taxation of said land shall be removed." 502 U.S. at 255 (citing Burke Act of 1906, 34 Stat. at 183). The Court held that "by specifically mentioning immunity from land taxation as one of the restrictions that would be removed upon conveyance in fee, Congress . . . manifested a clear intention to permit the state to tax such Indian lands." Id. at 259 (internal quotation marks omitted). However, the Court found that while the statutory language "taxation of . . . land" clearly included the state's ad valorem property tax, it was ambiguous as to whether it also encompassed the state's excise sales tax. Applying the canon of construction requiring ambiguous provisions to be interpreted in favor of Indians, the Court found the excise tax unauthorized. "Because it is eminently reasonable to interpret [the statutory] language as not including a tax upon the sale of real estate, our cases require us to apply that interpretation for the benefit of the Tribe." Id. at 269.

The statutes at issue in both Maine v. Johnson and County of Yakima dealt specifically and exclusively with Indians, and clearly addressed laws that the states sought to enforce on

Indian land. When this type of specificity is absent, states and local governments lack jurisdiction over Indian land.

One case where the requisite specific intent was found lacking is Washington Department of Ecology v. EPA, where the Ninth Circuit upheld EPA's determination that the State of Washington could not implement its hazardous waste management program on Indian lands. 752 F.2d 1465, 1466 (9th Cir. 1985). The statute in question in that case was the Resource Conservation and Recovery Act ("RCRA"), which requires EPA to implement a federal program for hazardous waste management but allows states to apply to EPA for approval to run their own state programs in lieu of the federal program. Id. (citing 42 U.S.C. § 6926). Washington had applied for approval to implement its own program on all lands within the state, including Indian lands. Id. However, EPA denied approval as to Indian lands because "the state had not adequately demonstrated its legal authority to exercise jurisdiction" over such lands. Id. at 1467. The state claimed that RCRA authorized its program, but "EPA found that RCRA does not give the state jurisdiction over Indian lands, and . . . states could possess such jurisdiction only through an express act of Congress or by treaty." Id. In reviewing EPA's decision, the court noted that RCRA

> sets forth the state's general regulatory powers, but does not specify its authority over Indian tribes or lands. . . . The statute does not say whether the states have authority to enforce hazardous waste regulations against tribes or individual Indians on Indian lands. The legislative history of RCRA is totally silent on the issue of state regulatory jurisdiction on the reservations.

Id. at 1469. Of particular significance here, the court so held notwithstanding RCRA's substantially identical federal facilities compliance provision in section 6001(e), 42 U.S.C. § 7601(a). Compare 33 U.S.C. § 1323(a). Deferring to the agency's reasonable interpretation and

applying "well-settled principles of federal Indian law," including the rule that ambiguities be interpreted in the Indians' favor, id. at 1469-70, the court upheld EPA's determination.

3. Section 313 of the CWA does not provide the required "unmistakably clear" Congressional intent to authorize the Village to enforce local regulations on Indian trust lands.

The Village points to Section 313 of the Clean Water Act as providing authorization for it to impose its stormwater regulations on the Tribe's trust land. However, even the most careful reading of the statute reveals that Section 313 does not mention Indian lands, and fails to provide the required "unmistakably clear" Congressional intent to allow the Village authority over Indian land. County of Yakima, 502 U.S. at 258. This Court must also evaluate Section 313 against the "backdrop" of Indian sovereignty, McClanahan, 411 U.S. at 172, and interpret any ambiguities in favor of the Tribe. County of Yakima, 502 U.S. at 269.

Section 313 establishes water quality control obligations for the federal government. The statute requires federal agencies to comply with certain federal, state, interstate, and local water pollution requirements. Specifically, CWA Section 313(a) provides that:

> Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges.

33 U.S.C. § 1323(a). Thus, Section 313(a) specifically delineates the obligation of the federal government to comply with otherwise applicable local requirements respecting the abatement and control of water pollution where the government either "has jurisdiction" over property or is

engaged in an activity, resulting (or potentially resulting) in the discharge of pollutants. In other words, Section 313 is a federal facilities compliance provision that "contains a limited waiver of sovereign immunity." In re Operation of the Mo. River Sys., 418 F.3d 915, 917 (8th Cir. 2005). It "govern[s] the extent to which federally operated facilities . . . are subject to the requirements . . . of both [the CWA] and EPA-approved, state-law regulation and enforcement programs." U.S. Dep't of Energy v. Ohio, 503 U.S. 607, 613 n.4 (1992), superseded in part on other grounds by statute, Federal Facilities Compliance Act of 1992, Pub. L. No. 102-386, 106 Stat. 1505. Section 313 does not grant any new regulatory authority to state or local governments and does not mention Indian lands.

On January 4, 2011, Congress enacted an amendment to Section 313. See 124 Stat. 4128. The new Section 313(c) elaborates that "reasonable service charges" include certain stormwater management fees. 33 U.S.C. § 1323(c)(1). Like the original statute, the new amendment does not mention Indian lands. Apart from an acknowledgment that tribes, like states and territories, have reported problems with poor water quality, nothing in the legislative history of the amendment mentions Indians or Indian lands. See 156 Cong. Rec. E2245 (daily ed. Dec. 22, 2010) (statement of Rep. Holmes Norton); 156 Cong. Rec. H8978 (daily ed. Dec. 22, 2010) (statements of Reps. Periello and Holmes Norton). There is no discussion of whether state and local governments may impose "reasonable service charges" on Indian lands.

Had Congress intended Section 313 to authorize states and local governments, for the first time, to regulate and to impose fees on tribal trust land, it would have said so.[6] Congress

[6] "Such a bold departure from traditional practice would have surely drawn more explicit statutory language and legislative comment." Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 (1994) (citing Isbrandtsen Co. v. Johnson, 343 U.S. 779, 783 (1952) ("Statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and

also could have used the 2011 amendment process as an opportunity to clarify that the section would apply to Indian lands. But neither the original Section 313 nor the 2011 amendment contains any authority-granting language at all, much less a specific reference to tribal trust land. This Congressional silence contrasts sharply with CWA Section 518, part of the 1987 amendments to the CWA, in which Congress specified particular assistance for sewage needs of Indian tribes and also provided for federally recognized Indian tribes to be treated in the same manner as states for specified programs, including administering the NPDES regulatory permitting program on Indian reservations. 33 U.S.C. § 1377(a)-(f).[7] "The federal government has a policy of encouraging tribal self-government in environmental matters." Wash. Dep't of Ecology, 752 F.2d at 1471. Section 518 of the CWA is clear and unambiguous evidence that when Congress intends to legislate regarding Indian tribes, it knows how to do so in explicit statutory language. Such language is missing in Section 313 of the CWA.

Moreover, Section 313 is a limited waiver of federal sovereign immunity, and such waivers "must be unequivocally expressed in statutory text." Lane v. Pena, 518 U.S. 187, 192 (1996). A waiver of sovereign immunity is to be strictly construed in favor of the sovereign, and "not enlarged beyond what the language of the statute requires." United States v. Idaho ex rel.

---

familiar principles, except when a statutory purpose to the contrary is evident.")); see also United States v. Dion, 476 U.S. 734, 738-39 (1986) (quoting Menominee Tribe v. United States, 391 U.S. 404, 412 (1968) ("We have required that Congress' intention to abrogate Indian treaty rights be clear and plain. . . . We do not construe statutes as abrogating treaty rights in 'a backhanded way.'").

[7]See Wisconsin v. EPA, 266 F.3d 741, 744 (7th Cir. 2001) ("In 1987, Congress amended the Act to authorize the EPA to treat Indian tribes as states under § 518 of the Act. Once a tribe has treatment-as-state (TAS) status, the statute permits it to establish water quality standards for bodies of water within its reservation and to require permits for any action that may create a discharge into those waters.").

Dir., Idaho Dep't of Water Res., 508 U.S. 1, 7 (1993) (citing Ruckelshaus v. Sierra Club, 463 U.S. 680, 685-686 (1983)). For example, the McCarran Amendment waives sovereign immunity for the United States's participation in comprehensive water rights adjudications in state court, but specifies that no judgment for costs shall be entered against the United States. 43 U.S.C. § 666(a). The Supreme Court held that although the statute uses only the word "costs," states could not impose filing fees on the United States, because there was no specific statutory language indicating that the United States had agreed to pay fees. Idaho, 508 U.S. at 8; see United States v. Oregon, 44 F.3d 758, 770 (9th Cir. 1994). Indeed, the Supreme Court has affirmed that its cases "dealing with waivers of sovereign immunity as to monetary exactions from the United States in litigation show that we have been particularly alert to require a specific waiver of sovereign immunity before the United States may be held liable for them." Idaho, 508 U.S. 1 at 8-9; see also Library of Congress v. Shaw, 478 U.S. 310, 319 (1986), superseded on other grounds by statute, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (provision in Title VII making the United States "liable 'the same as a private person'" does not waive sovereign immunity from interest on fees because statute "contains no reference to interest"). The lack of specific language authorizing monetary stormwater charges to be assessed on Indian lands, then, prohibits a finding that the United States has explicitly and unambiguously waived its sovereign immunity for such charges.[8]

[8]The Village's interpretation of Section 313 presents the issue of who Congress envisioned would pay stormwater fees, if Congress had authorized States and localities to impose them on Indian lands. Section 313 does not waive tribal immunity, so the Tribe is not liable for such fees. It is counterintuitive, however, to interpret the Act as requiring the United States to pay such fees for land to which the United States holds only bare title and over which it has relatively little control over stormwater or activities related to it. If Congress intended such an anomalous arrangement, it would have included a clear statement to that effect.

If Congress had intended such an unprecedented role for States on tribal trust lands as the Village seeks, it could have clearly provided so in Section 313 or elsewhere in the CWA. Congress did not do so. Therefore, the statute, like the almost identical provision in Section 6001 of RCRA, does not provide the requisite express consent for the Village to enforce its laws on Indian trust land.

4. The Indian canons of construction support the conclusion that, absent an unambiguous grant of authority to the Village, Section 313 cannot justify the Village's fee.

If this Court finds Section 313 ambiguous as to whether it grants the Village the authority to impose stormwater charges on tribal trust lands, the Indian canons of construction require the Court to construe the ambiguity in favor of the Tribe, as the Supreme Court did in County of Yakima. "Ambiguities in federal law have been construed generously in order to comport with traditional notions of sovereignty and with the federal policy of encouraging tribal independence." White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143-44 (1980) (citing McClanahan, 411 U.S. at 174-75). "Courts are consistently guided by the 'purpose of making federal law bear as lightly on Indian tribal prerogatives as the leeways of statutory interpretation allow.' We therefore do not lightly construe federal laws as working a divestment of tribal sovereignty and will do so only where Congress has made its intent clear that we do so." NLRB v. Pueblo of San Juan, 276 F.3d 1186, 1195 (10th Cir. 2002) (quoting Reich v. Great Lakes Indian Fish & Wildlife Comm'n, 4 F.3d 490, 496 (7th Cir. 1993)). "[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit. . . ." Montana, 471 U.S. at 766 (citations omitted) (applying Indian canons and invalidating state tax on Indian oil and gas royalties). Construing Section 313 of the CWA in favor of Indian

sovereignty requires the conclusion that it does not authorize the Village to enforce stormwater regulations on tribal trust land.

B. The Village's constitutional challenges to 25 C.F.R. § 1.4 are either untimely or fail because the regulation lawfully exercises power delegated by Congress to the Secretary.

The Village argues that the longstanding federal regulation published at 25 C.F.R. § 1.4 violates a number of constitutional provisions and that the regulation was beyond the Secretary of the Interior's authority to promulgate. Dkt. No. 43 at Third–Seventh Claims for Relief. The regulation provides in pertinent part:

> Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property . . . belonging to any Indian or Indian tribe . . . that is held in trust by the United States . . . .

25 C.F.R. § 1.4(a).[9]

However, the United States does not rely on 25 C.F.R. § 1.4 for its position in this case. The regulation merely codifies existing common law governing the relationships among the federal government, the states, and Indians. "[T]he immunity of Indian use of trust property from state regulation . . . is a product of judicial decision." Santa Rosa, 532 F.2d at 666. "The regulation simply expresses the Secretary's understanding of the prior law defining the conditions under which he holds the land acquired . . . ; it is undoubtedly an accurate expression of the congressional understanding of the conditions under which it authorized acquisition of

[9]Paragraph (b) allows the Secretary to "adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations . . . as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of the property." 25 C.F.R. § 1.4(b).

lands for Indian use." Id.[10] Therefore, this Court can grant judgment as a matter of law in favor of the United States without opining on the constitutionality of 25 C.F.R. § 1.4. In any event, each of the Village's challenges to the regulation must fail as a matter of law.

The Village makes five separate challenges to 25 C.F.R. § 1.4. Two of these claims attack the promulgation of the regulation itself. First, the Village argues that promulgating 25 C.F.R. § 1.4 exceeded the Secretary's authority because it allowed for the removal of land from state and local jurisdiction. Dkt. No. 43 ¶¶ 66-67 (Third Claim for Relief). Second, the Village contends that the Secretary failed to "supply a reasoned analysis and justification for" the adoption of 25 C.F.R. § 1.4. Id. ¶ 69 (Fourth Claim for Relief). However, the Secretary promulgated the regulation 46 years ago, on June 9, 1965. 30 Fed. Reg. 7520. Therefore, the six-year statute of limitations for challenging the regulation under the APA expired in 1971, and the Village's Third and Fourth Claims for Relief are time-barred. "The right disposition of a time-barred suit against the United States is dismissal with prejudice." Wis. Valley Improvement Co. v. United States, 569 F.3d 331, 334 (7th Cir. 2009); see, e.g., Harris v. FAA, 353 F.3d 1006, 1008 (D.C. Cir. 2004) (dismissing as untimely an APA claim brought in 2001 by air traffic controllers challenging recruitment notice published in 1993).

Even if the claims were timely, they have been rejected by other courts for reasons that this Court, too, should adopt. See Santa Rosa Band, 532 F.2d at 666 (holding that 25 C.F.R. §

[10]Two decades before the regulation was promulgated, the Interior Department issued an opinion, 58 Interior Dec. 32 (1942), which was reaffirmed in 1969 after the enactment of Pub. L. No. 83-280 ("P.L. 280"). Opinion of Solicitor of the Dep't of Interior, No. M-36768 (Feb. 7, 1969). The opinion confirmed the view of the Solicitor that P.L. 280 did not affect jurisdiction over the use of trust land and that states and local governments lack authority to impose their zoning, land use, or other regulations on trust property. 25 C.F.R. § 1.4 merely set forth in a regulation what was clear from the case law.

1.4 reasonably implements the IRA because the 1934 Congress intended that trust lands be held "free of state regulation"); Sault Ste. Marie, 532 F. Supp. at 166-67 (following Santa Rosa Band); see also Blumenthal, 228 F.3d at 85 (citing 25 C.F.R. § 1.4(a) for the proposition that land held in trust is not subject to local zoning and regulatory requirements); South Dakota v. U.S. Dep't of Interior, 401 F. Supp. 2d 1000, 1010 (D.S.D. 2005) (same).[11]

Next, the Village puts forth three claims challenging the constitutionality of the regulation as applied to the Village's stormwater charges in this case. See Dkt. No. 43 ¶ 76 (Fifth Claim for Relief) (contending regulation deprives the Village of a republican form of government in violation of the Guarantee Clause); ¶ 79 (Sixth Claim for Relief) (contending regulation violates the Tenth Amendment); ¶¶ 83-85 (Seventh Claim for Relief) (alleging that the United States is "applying" the regulation in violation of the Fourteenth Amendment rights of non-Indian Village citizens). These as-applied claims fail as a matter of law.

First, as to the Village's contention that 25 C.F.R. § 1.4 deprives the Village of a republican form of government, "[t]his claim is not only incorrect, it is absurd. First of all, the Supreme Court has held that challenges to Congressional action under the Guarantee Clause are not justiciable." Deer Park Indep. Sch. Dist. v. Harris Cnty. Appraisal Dist., 132 F.3d 1095,

[11]Oddly, in claiming that 25 C.F.R. § 1.4 is inconsistent with the IRA, the Village cites Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009), which concerned neither the IRA nor Section 1.4 and lends no support to the Village's claims. Office of Hawaiian Affairs involved a decision of the Hawaii Supreme Court that prohibited the State from selling a parcel of former Crown land that had been placed into a trust when Hawaii was admitted to the United States. The Supreme Court ruled that the Apology Resolution, Pub. L. No. 103-150, a joint resolution of Congress that apologizes to Native Hawaiians for the United States's role in the overthrow of the Kingdom of Hawaii, does not confer authority to stop the sale or disposition of ceded lands. The decision had nothing to do with the taking of land into trust for tribes or statutory authority for 25 C.F.R. § 1.4.

1099 (5th Cir. 1998) (per curiam) (citing Baker v. Carr, 369 U.S. 186, 224 (1962)). "Further, at least as of today, [the State] is governed by a freely elected legislature and executive, not a monarchy, military dictatorship, or any other type of government which would offend the Guarantee Clause of the Constitution." Id. at 1099-1100. Moreover, it is far from clear that the Village has standing to invoke a constitutional provision protecting the State's form of government. See Largess v. Supreme Judicial Court, 373 F.3d 219, 224 n.5 (1st Cir. 2004) ("It is of note for purposes of the standing inquiry that the Guarantee Clause makes the guarantee of a republican form of government *to the states*; the bare language of the Clause does not directly confer any rights on individuals vis-a-vis the states."). The claim should be dismissed.

The Village next contends that 25 C.F.R. § 1.4 "deprive[s] the state and the Village of jurisdiction over this land" in violation of the Tenth Amendment. Dkt. No. 43, ¶ 79.[12] This argument is specious. "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." New York v. United States, 505 U.S. 144, 156 (1992). As discussed above, the Constitution's Indian Commerce Clause gives Congress the exclusive and plenary power to "regulate commerce . . . with the Indian tribes." The Indian Commerce Clause thus provides authority for the IRA and, in turn, the regulations implementing it. The Tenth Amendment is not implicated by agency action derived from powers delegated to Congress in Article I.

[12]The Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

Finally, the Village contends that 25 C.F.R. § 1.4 "eliminate[s] the privileges and immunities of non-Indians who are impacted by storm water management throughout the Village." Dkt. No. 43, ¶ 83. It also alleges that the regulation "denies such citizens equal protection, because they cannot participate in the storm water management of the area." Id. ¶ 84. This argument begs the question by assuming that the Village has authority in the first place to "participate in the storm water management" on the Tribe's trust land. The argument also fails because "the unique status of Indian tribes under the Constitution and treaties establishes a legitimate legislative purpose for singling out Indians as a class." Felix Cohen, Handbook of Federal Indian Law § 14.03[2][b][ii] (2005 ed.). The Supreme Court has explained that "federal regulation of Indian affairs is not based upon impermissible classifications. Rather, such regulation is rooted in the unique status of Indians as 'a separate people' with their own political institutions. Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities . . . ." United States v. Antelope, 430 U.S. 641, 646 (1977) (quoting Morton v. Mancari, 417 U.S. 535, 553 n.24 (1974)). As a result, this claim, too, should be dismissed.

C. This Court lacks jurisdiction over the Village's claim for a monetary judgment against the United States because the claim exceeds $10,000.

Even if this Court concludes that the United States is obligated to pay the Village's stormwater related fees, the Court lacks subject matter jurisdiction over the Village's request that a monetary judgment be issued "for all [stormwater] fees currently due and owing." Dkt. No. 43 at 16, "Relief Sought" at (b). The Village's claim for damages exceeds the waiver of sovereign immunity for such claims in the federal district courts. Congress has not consented to suits

against the United States in district court for claims seeking money damages in excess of $10,000.

Although it is not cited as a basis for jurisdiction, the so-called "Little Tucker Act" stands as the only possible basis for the Village's request for a money judgment against the United States. The Little Tucker Act, 28 U.S.C. § 1346, gives the district courts original jurisdiction, concurrent with the Court of Federal Claims, over any civil action or claim against the United States (other than a tax refund), "not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States . . . ." 28 U.S.C. § 1346(a)(2). Like the "Indian" Tucker Act, 28 U.S.C. § 1505 – which grants the Court of Claims exclusive jurisdiction over specified Indian claims against the United States – and the "Big" Tucker Act, 28 U.S.C. § 1491 – which grants exclusive jurisdiction to the Court of Federal Claims for money claims against the United States exceeding $10,000 – the Little Tucker Act is a limited waiver of sovereign immunity for suits for money damages. United States v. Navajo Nation, 129 S. Ct. 1547, 1551 (2009). If subject matter jurisdiction does not exist under the Little Tucker Act, for a claim for money damages "founded . . . upon . . . an Act of Congress," subject matter jurisdiction does not exist at all. Id.

Although the Village alleges that its stormwater charges are assessed pursuant to both its own local ordinances and federal law (i.e., the CWA, see, e.g., Dkt. No. 43 ¶¶ 1, 18-19, it clearly perceives its dispute with the United States as a controversy arising under federal law. That, after all, is the basis upon which the Village asserts subject matter jurisdiction over its claims against the United States. Id. ¶ 7 (alleging jurisdiction under 28 U.S.C. § 1331). While the Village fails

to identify the amount in controversy on the face of its Amended Third-Party Complaint, Attachment D reveals that the Village seeks as much as $237,862.06 from the United States – "all fees" alleged to be "currently due and owing." Because the Village's claim plainly exceeds $10,000, all counts must be dismissed to the extent they seek money damages. See Smith v. Orr, 855 F.2d 1544, 1553 (Fed. Cir. 1988).

V. CONCLUSION

For the reasons stated above, the Court should dismiss the Amended Third-Party Complaint for lack of subject matter jurisdiction and failure to state a claim.

Respectfully submitted this 23rd day of January, 2012.

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/s/ Amy S. Tryon

AMY S. TRYON
Trial Attorney
Indian Resources Section
P.O. Box 7611
Washington, DC 20044
Tel: (202) 353-8596
Fax: (202) 305-0271
amy.tryon@usdoj.gov

JOSHUA M. LEVIN
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Tel: (202) 514-4198

Fax: (202) 514-8865
joshua.levin@usdoj.gov