

TITLE 18: OIL AND GAS

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CHAPTER 1: SHORT TITLE, PURPOSES, EFFECTIVE DATE, SOVEREIGN  
AUTHORITY, AND SEVERABILITY

§ 1. SHORT TITLE

This Title may be cited as the Jicarilla Apache Nation's Oil and Gas Ordinance.

§ 2. PURPOSES

This Title establishes procedures to ensure that all oil and gas development activity within the Jicarilla Apache Nation is carried out in a manner that minimizes negative impact on the Nation's other natural resources and maximizes the benefit to the Nation of oil and gas development.

§ 3. EFFECTIVE DATE

The effective date of this Title shall be the date of its approval by the Secretary of the Interior after its enactment by the Legislative Council.

§ 4. SOVEREIGN AUTHORITY

This Title shall be interpreted and applied in a manner wherein the Jicarilla Apache Nation exercises its inherent regulatory authority to the fullest extent permitted by federal law. The Jicarilla Apache Nation's law shall be applied and enforced except to the extent that federal law preempts a specific exercise of the Nation's sovereign authority.

§ 5. SEVERABILITY

If any part of this Title is held to be invalid the remainder of the Title shall not be affected.

## CHAPTER 2: DEFINITIONS

For purposes of this Title, the following definitions shall apply:

(A) *APPLICANT* means the person requesting a permit to conduct oil and gas operations within the Nation.

(B) *APPLICATION FOR PERMIT TO DRILL ("APD")* refers to the application required by the BLM when an oil and gas well is drilled on Jicarilla Apache Nation land.

(C) *AUTHORIZED OFFICIAL* means BLM Compliance Inspectors; OGA Tribal Compliance and Enforcement Inspectors; the OGA Director; Tribal Police Officers; Tribal Game and Fish Officers; or any other duly commissioned law enforcement officers of the Nation. The OGA Director may delegate any enforcement authority of the OGA under Title 18 to any authorized official.

(D) *BIA* means the United States Bureau of Indian Affairs.

(E) *BIA DEMD* means the United States Bureau of Indian Affairs Division of Energy and Mineral Development.

(F) *BLM* means the United States Bureau of Land Management.

(G) *BTU* means British thermal unit

(H) *DESIGNATED OPERATOR* means any entity drilling, maintaining, operating, pumping, or in control of any oil or gas well and/or in charge of any oil and gas lease.

(I) *DIRECTOR* means the Director of the Jicarilla Oil and Gas Administration.

(J) *FEDERAL REGULATIONS* means those regulatory chapters pertaining to oil and gas activity that have been adopted and published as part of the Code of Federal Regulations.

(K) *IMDA LEASE HOLDER* means a person who has contracted with the Nation pursuant to the Indian Mineral Development Act of 1982, supra; or who has entered into a joint

exploration and development contract with the Nation prior to the effective date of said Act; or who has contracted to conduct oil and gas activities for the Nation or a corporation or enterprise of the Nation under authority other than the Indian Mineral Leasing Act of 1938, supra, or the Indian Mineral Development Act of 1982, supra. (“IMDA”).

(L) *JICARILLA OIL AND GAS ORDERS* means the following orders issued by OGA consistent with BLM on-shore orders.

(1) Compliance and Enforcement (“C&E”) Order No. 1: Approval of Operations describing the procedure for filing either an Application for Permit to Drill or Reenter (“APD”), Form 3160-3, or a Notice of Staking (“NOS”) followed by an APD.

(2) Compliance and Enforcement (“C&E”) Order No. 2: Drilling detailing the uniform national standards for the minimum levels of performance expected from Lessee and/or designated operators and Operators when conducting drilling operations on federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling.

(3) Compliance and Enforcement (“C&E”) Order No. 3: Site Security establishing the minimum procedures for site security.

(4) Compliance and Enforcement (“C&E”) Order No. 4: Measurement of Oil establishing the requirements and minimum standards for the measurement of oil.

(5) Compliance and Enforcement (“C&E”) Order No. 5: Measurement of Gas establishing the requirements and minimum standards for the measurement of gas.

(6) Compliance and Enforcement (“C&E”) Order No. 6: Hydrogen Sulfide Operations establishing the national requirements and minimum standards of performance expected from Operators when conducting operations involving oil or gas that is known or could

reasonably be expected to contain hydrogen sulfide or which results in the emission of sulfur dioxide as a result of flaring hydrogen sulfide.

(7) Compliance and Enforcement (“C&E”) Order No. 7: Disposal of Produced Water specifying informational and procedural requirements for submittal of an application for the disposal of produced water, and the design, construction and maintenance requirements for pits, as well as the minimum standards necessary to satisfy the requirements and procedures for seeking a variance from the minimum standards.

(M) *LEGISLATIVE COUNCIL* means the elected governing body of the Jicarilla Apache Nation.

(N) *MINERAL DEVELOPMENT AGREEMENT (“MDA”)* means any joint venture, operating, production sharing, service, managerial, lease (other than a lease entered into pursuant to the Act of May 11, 1938, or the Act of March 3, 1909), contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing, or other development of minerals in which the Nation owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such minerals.

(O) *MCF* means thousand cubic feet.

(P) *MMCF* means million cubic feet.

(Q) *NATION* when referring to *territory* means all lands within the exterior boundaries of the Jicarilla Apache Nation’s Reservation; or when referring to the political entity, means the Jicarilla Apache Nation, a federally-recognized Indian Tribe.

(R) *NONCOMPLIANCE* means a violation of a provision of this Title and/or applied federal regulations.

(S) *NOTICE TO LESSEE AND/OR DESIGNATED OPERATOR* (“NTL”) means any of the following notices issued by OGA consistent with BLM NTLs:

<u>TITLE</u>	<u>OGA Number</u>
Cultural Resources Surveys	OGA 2010-1
Painting of Oil Field Facilities	OGA 2010-2
Standards for Use of Electronic Flow Computers and Electronic Gas Measurement Systems	OGA 2010-3
Requirements to Operate Indian Leases on the Nation; Casing and Cementing Requirements	OGA 2010-4
Waste Disposal	OGA 2010-5
Limits for Accumulation of Oil in Water Disposal Pits and Tanks	OGA 2010-6
Limits for Accumulation of Oil in Water Disposal Pits and Tanks (Albuquerque and Farmington Districts)	OGA 2010-7
Non-Mechanical Temperature/Gravity Compensation on LACT Units	OGA 2010-8

(T) *OGA ADMINISTRATIVE MANUAL or ADMINISTRATIVE MANUAL* refers to the OGA departmental manual proving the guiding policies and standard operating procedures for the administration of Title 18 and oil and gas activity.

(U) *OIL AND GAS ACTIVITY* means any activity of any person within the Nation that constitutes or materially assists:

(1) The exploration for, development, production, treatment, processing, refining, transportation or sale of oil, natural gas or other hydrocarbon minerals;

(2) The manufacture of any product using oil, natural gas, natural gas liquids, hydrocarbon products or other hydrocarbons as a raw material or component; or

(3) Any activity authorized by a lease issued under the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a - 396g or by a contract entered into by the Nation under the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101 – 2108 (“IMDA”).

(V) *OIL AND GAS ADMINISTRATION or OGA* means the Nation’s Oil and Gas Administration or its successor agency.

(W) *OIL AND GAS LESSEE AND/OR DESIGNATED OPERATOR or LESSEE AND/OR DESIGNATED OPERATOR* means a person holding rights to explore, develop, or operate within the Nation for oil and gas under a lease issued pursuant to the Indian Mineral Leasing Act of 1938, or the Indian Mineral Development Act of 1982.

(X) *OPERATING PERMIT* means a permit issued by the OGA allowing the permit holder to cross tribal land for either of the following specified purposes:

(1) *SERVICE VENDOR OPERATING PERMIT* is the permit issued by the OGA pursuant to this Title, which all service vendor operators must possess in order to provide vendor services to oil and gas facilities on the Nation.

(2) *DESIGNATED OPERATING PERMIT* is the permit issued by the OGA to a designated operator as provided in Chapter 8 of this Title.

(Y) *PERSON* means any individual, partnership, firm, company, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal representative, agents or assigns, including the Nation, members of the Nation and any corporation or other enterprise owned by the Nation or by members of the Nation.

(Z) *RECLAMATION* means measures undertaken to recondition or restore land or water that has been impacted by oil and gas development activity and to prevent or control onsite and offsite impacts on the Nation's environment, including without limitation cleaning, contouring, and re-seeding and/or reforestation. .

(AA) *REVENUE AND TAXATION DEPARTMENT* refers to the Jicarilla Apache Nation's Revenue and Taxation Department or its successor agency.

(BB) *SERVICE VENDOR OPERATOR* means any entity providing vendor services to oil and gas facilities on the Nation.



## CHAPTER 3: AUTHORITY AND APPLICATION OF LAWS

### § 1. AUTHORITY

The Jicarilla Oil and Gas Administration is authorized to issue, regulate, and enforce the requirements set forth in this Title and any relevant provisions found in other Titles of the Nation's Code and to impose penalties and fees pertaining to such enforcement. The regulatory jurisdiction conferred on the Oil and Gas Administration by this Title is concurrent with and in addition to the regulatory jurisdiction of the federal government.

### § 2. SCOPE

Title 18 applies to all IMDA Lease Holders, as that term is defined in Chapter 2 of this Title.

### § 3. JOINT POWERS AGREEMENTS

The Jicarilla Oil and Gas Administration is empowered to enter into joint powers agreements that may be necessary to carry out the purposes of this Title.

### § 4. FEDERAL REGULATIONS

The provisions of this Title shall be in addition to the requirements of applicable federal law and shall supersede federal regulations where inconsistent.

### § 5. APPLICATION OF TITLE 23

All oil and gas activity shall be conducted in compliance with the Nation's Indian Preference Ordinance, Title 23.

### § 6. CIVIL JURISDICTION

The Jicarilla Apache Nation and the Nation's Courts retain civil jurisdiction over all persons and businesses conducting oil and gas activity within the Jicarilla Apache Reservation. Persons or businesses violating this Title, or any other civil law of the Jicarilla Apache Nation Code, shall be subject to the sanctions and penalties found therein.

## CHAPTER 4: STRATEGIC ENERGY PLANNING (SEP)

The Nation shall engage in strategic energy planning with the OGA who serves as the process facilitator. As process facilitator, the OGA is responsible for the following:

§ 1. The OGA shall maintain an interagency interdisciplinary technical team for purposes of strategic energy planning, including a Geological and Engineering Support Division.

§ 2. The OGA shall continually review non-oil and gas alternative energy sectors and energy related business sectors in terms of feasibility of incorporating these sectors into strategic energy planning.

§ 3. The OGA shall conduct and document continuing consultations and interviews to gain industry perspectives in developing and implementing a strategic energy plan.

§ 4. The OGA shall conduct working sessions with an energy working committee or as part of an integrated resource management plan team, as well as the Legislative Council on policies, strategies, gaps, and capacity building requirements as well as alternative energy development scenarios.

§ 5. The OGA shall continually update and refine the overall framework for the Nation's comprehensive Strategic Energy Plan including preparing special presentation materials for periodic meetings with the Legislative Council and other affected parties.

§ 6. The OGA shall maintain, with assistance of the federal government, geologic/geophysical/reserve data for the Nation, including analysis conducted by other federal agencies and the private sector with respect to exploration and production opportunities.

§ 7. The OGA shall provide a focus on the realities of energy choices in terms of change in oil and gas trends.

§ 8. The OGA shall work to determine the Nation's level of scientific, technical, administrative, and financial management capacity for current and projected development activities.

§ 9. The OGA shall work to improve the Nation's capacity and decision-making tools for implementing energy planning initiatives including refining the major decision systems required for effectively implementing the Nation's comprehensive Strategic Energy Plan. The Strategic Energy Plan will be updated annually for implementation at the first of every year.

## CHAPTER 5: MINERAL DEVELOPMENT AGREEMENTS

In regards to MDAs, the following shall apply:

§ 1. The OGA is the lead agency in identifying acreage available for lease, with the BIA Environmental Assessment Technical Team providing environmental and cultural impact statements; and the Tribal Historic Preservation Office (“THPO”) providing historic preservation consultation.

§ 2. The OGA, with the BIA Division of Energy and Mineral Development (“DEMD”), shall market available acreage to the oil and gas industry.

§ 3. Within thirty (30) days of receiving applications of interest from oil and gas companies, the OGA, with DEMD technical assistance and Revenue and Taxation Department assessment, shall determine whether a prospective company is qualified to submit a proposal. The OGA shall notify the prospective company in writing of its qualification status.

§ 4. If the OGA determines that a prospective company is qualified to submit a proposal, the company shall have thirty (30) days from the date of the OGA’s notification letter to submit a proposal.

§ 5. The OGA shall be the lead agency to review the prospective company’s proposal. The OGA shall work with the review team as outlined in the OGA Administrative Manual. The OGA and review team shall have thirty (30) days for the inter-agency review.

§ 6. If the prospective company’s proposal meets all requirements, the OGA and the DEMD shall negotiate lease term.

§ 7. Once lease terms have been negotiated, the DEMD, BIA Agency/Region Office, ONRR and BLM shall review the proposed lease.

§ 8. Within 60 days of BIA review, the prospective company shall make MDA revisions, as required.

§ 9. Once MDA revisions have been completed, the Nation's legal counsel shall review the MDA.

§ 10. After the Nation's legal counsel has completed its review of the MDA, the OGA shall present the MDA to the Legislative Council for approval.

§ 11. The BIA shall have 180 days to further evaluate the Council approved MDA for any additional follow-up.

§ 12. Upon OGA and BIA recommendation, the Nation's President shall execute the MDA.

## CHAPTER 6: OIL AND GAS DEVELOPMENT PLANS

### § 1. DEVELOPMENT PLANS.

#### (A) Requirement of Plan.

(1) No IMDA Lease Holder, lessee and/or designated operator or operator shall commence any oil and gas development activity that disturbs the surface of lands within the Nation until a development plan for those activities has been approved in writing by the OGA Director.

#### (B) Contents. A development plan filed pursuant to this Section shall:

(1) Describe in reasonable detail all significant oil and gas development activities planned or contemplated for the geographical area approved by the Director for a period of six (6) months after the date of filing or such other time period as authorized by the Director;

(2) Identify all proposed drilling and construction schedules; all proposed locations for wells, pipelines, roads, manufacturing, treating or processing facilities and all other surface disturbing activities; and such other information required by the Director;

(3) Be accompanied by copies of all environmental or other land use impact reports that have been prepared concerning the proposed development activities;

(4) Demonstrate that impacts on other land uses, natural resources and the Nation's environment have been considered and minimized consistent with the obligations to develop the hydrocarbon resource diligently and prudently and to perform any other contractual obligations to the Nation;

(5) Demonstrate that the proposed development activities will comply with all applicable regulations and all applicable requirements of the lease, agreement, or other instrument;

(6) Coordinate the proposed development activities with development of adjacent tracts to avoid duplication of roads, pipelines, and other clearing, and to minimize surface disturbance consistent with prudent operating standards and all applicable development and operating regulations of the BLM and the OGA;

(7) Contain a preliminary plan for reclamation of lands affected by the oil and gas development activity after the development activity has been completed, in conformity with applicable regulations of the United States and the Nation. Any portions of the area disturbed by development activity that are not reasonably necessary for prudent operation of the well or other facility or for reasonably anticipated development activity shall be reclaimed.

(C) Departmental Review.

(1) If the Director determines that a proposed development plan complies with the requirements of this Chapter, the Director shall provide copies of the proposed development plan to the reviewing agencies; the Jicarilla Agency Superintendent, the Director of the Environmental Protection Office, the Director of the Game and Fish Department, the Director of the Land Department, the Director of the Forestry Department, and the Department of Labor, and the THPO for review and comment. All documents filed in support of the proposed development plan, including without limitation any environmental or land use impact reports, shall be available for inspection by the reviewing agencies at the offices of the OGA, which shall provide copies to the reviewing agencies upon request.

(D) On-site Inspections.

(1) The Director shall establish procedures for coordinating the participation of the Nation's agencies in on-site inspections conducted by the OGA in connection with proposed oil and gas development activity.

(E) Agency Comments.

(1) Within twenty (20) calendar days after receipt of a proposed development plan, any reviewing agency shall notify the Director in writing, with copies to all other reviewing agencies, whether the proposed activities would violate any provision of the laws of the United States or the Nation that the reviewing agency enforces and shall propose specific amendments to the plan to avoid any such violations.

(F) Review and Approval of Proposed Development Plan.

(1) The Director shall review all written comments from reviewing agencies regarding a proposed development plan, and shall make all revisions necessary to make the plan comply with the requirements of all applicable laws of the United States and the Nation.

(2) The Director shall consider and attempt to accommodate all other written comments and suggestions that are consistent with applicable oil and gas regulations of the United States and the Nation and with the governing oil and gas lease, agreement or other instrument. The Director shall meet with all reviewing agencies that have submitted written comments and shall attempt to reach consensus on the issues raised by the comments.

(3) The Director shall reject, approve, or approve with additional revisions all proposed development plans submitted.

(4) The Director shall provide copies of the final, proposed development plan to each reviewing agency identified in § 1 (C) of this Chapter.



(G) Amendments to Approved Plans. An approved development plan may be amended for good cause. The proposed amendment shall be effective only upon approval by the Director and the contractor, lessee and/or designated operator or operator, provided that any significant amendment shall be subject to the review and comment procedures governing an original development plan.

(H) Appeal of Director Action.

(1) A decision by the Director to reject, approve, or amend a development plan or a decision by the Director that a development plan amendment is not significant may be appealed to the reviewing agencies identified in § 1 (C) of this Chapter.

(2) The party appealing the Director's decision shall file a written notice of appeal to OGA within fourteen (14) calendar days after the date of the Director's decision. The OGA will then forward the written notice to the reviewing agencies. The reviewing agencies shall approve or reject the proposed development plan within thirty (30) days after the notice of appeal is filed with OGA.

(I) Enforcement.

(1) All requirements of an approved development plan shall constitute additional conditions to the designated operating permit of the person submitting the plan and the person who will conduct the development activity per the designated operator permit or the service vendor operator permit.

(2) If the conduct violating the development plan also violates any other provision of the Nation's law or regulation, the conduct shall also be subject to the enforcement provisions of that law or regulation.

§ 2. EMERGENCY SITUATIONS.

(A) If the Director, based on evidence provided, including but not limited to compliance orders, determines that an emergency situation exists that requires immediate attention by the IMDA Lease Holder, lessee and/or designated operator, or operator to protect the lease, the oil and gas resource or the Nation's environment from imminent injury, the Director may authorize such activity without prior filing of a development plan.

(B) The Director's authorization under this subsection is limited to activities necessary to correct the emergency.

(C) An IMDA Lease Holder, lessee and/or designated operator or operator performing any development activity on an emergency basis under this Section shall submit a written report on the activity to the Director within twenty (20) calendar days after the activity is commenced, providing all the information required by a development plan.

(D) For purposes of this Section, emergency situations include equipment failures, leaks, blow outs, explosions, fire, oil spills, and similar events, but do not include the threatened loss of contractual or lease rights due to the failure to develop the property diligently or by a fixed date.

## CHAPTER 7: SURFACE PROTECTION REQUIREMENTS

### § 1. APPLICATION OF SURFACE PROTECTION REQUIREMENTS

These Surface Protection Requirements shall apply to any lessee and/or designated operator, sub-lessee and/or designated operator, assignee, designated operator, pumper and any other agent or subcontractor of lessee and/or designated operator.

### § 2. DUE REGARD FOR LAND MANAGEMENT

Any lessee and/or designated operator, operator or its agent shall conduct all operations authorized by any lease with due regard for good land management; shall avoid unnecessary damage to vegetation, timber, crops or other cover, and to improvements (such as roads, bridges, cattle guards, fences, telephone lines, and the like); shall, whenever practicable, control soil erosion resulting from the operation; shall prevent pollution of soil and water resources; and whenever required by the BIA or BLM, shall fence all sump holes or other excavation made by lessee and/or designated operator. All pits shall be properly lined whether for drilling, completions or otherwise. All pipelines shall be buried below plow depth and below arroyo.

### § 3. GRAZING RIGHTS

The Nation's grazing rights on leased lands shall be protected with stipulations, where applicable, and the Nation's rights respecting the use of water shall be unimpaired.

### § 4. ROADS

A lessee and/or designated operator may use existing roads, shall share in the maintenance of such roads used, and shall have the privilege of constructing and maintaining at its own expense any additional roads to obtain access to its leasehold operations, provided, that prior to construction, the definite location of any new access road shall be approved by the OGA either through the companies development plan, through the Conditions of Approval (COAs) per the

APD, or the Nation's Road Policy. No part of any such road shall inure to the benefit of the public and the public shall obtain no rights thereon, but upon termination of any lease for any cause whatsoever or if at any time it shall become unnecessary for a lessee and/or designated operator to use any such road for conducting the operations authorized under this lease, the right to use such road or roads shall thereupon cease and all rights shall re-vest in the surface owner in accordance with the law. The Nation shall be held harmless against any and all loss or damage that might result from lessee and/or designated operator's negligent construction or maintenance of such roads.

#### § 5. WATER

Water for use in drilling operations shall not be obtained from existing or new water wells, tanks, springs, stock water reservoirs, water courses or lakes without the Nation's prior permission. A lessee and/or designated operator may, at his own expense, and with the Nation's approval, drill and equip water wells on leased premises and shall upon termination of drilling operations on its leasehold leave all water producing wells intact and properly cased. Should any of such wells produce water surplus to the lessee and/or designated operator's needs, such water shall be made available to the Nation.

#### § 6. TIMBER

A lessee and/or designated operator shall not cut or destroy any timber without first obtaining permission from the Nation and shall pay for all merchantable timber cut or destroyed at rates prescribed by the Nation. The lessee and/or designated operator shall remove all brush and cut all trees removed to sixteen inch (16") lengths or as otherwise specified by the Nation.

§ 7. PAYMENT FOR DISTURBANCES AND DAMAGES

A lessee and/or designated operator shall pay an amount per acre for gathering lines and trunk lines as determined by the OGA. A lessee and/or designated operator shall pay a reasonable amount as determined by the OGA for each well site, tank battery, road or other surface disturbance. All surface damage shall be paid to the BIA Jicarilla Agency before any proposed work is started with copies of receipts sent to the OGA.

§ 8. FIRE PREVENTION AND SUPPRESSION

(A) As deemed necessary for fire prevention by authorized BIA and BLM representatives, a lessee and/or designated operator shall construct fire lines and create clearings around well pads.

(B) A lessee and/or designated operator shall maintain those fire tools at well pad locations that are deemed necessary by BIA or BLM officers for fire prevention.

(C) A lessee and/or designated operator shall maintain the access roads around its well pad in such a condition as to assist in the prevention and spread of fires and in a condition that provides an effective route for fire department vehicles and fire department personnel.

§ 9. LOCATION OF STORAGE YARD/OFFICE SITES

A lessee and/or designated operator shall not construct any storage yard or office sites on the land without approval of the authorized representative of the OGA and the BIA. Any such storage yard or office site shall be kept in a neat and sanitary condition, and upon removal of storage yard or office site, all rubbish shall be removed or buried.

§ 10. ARCHAEOLOGICAL CLEARANCE

It is the lessee and/or designated operator's responsibility to obtain necessary archaeological clearance in accordance with federal law prior to the start of any operations which will disturb

the surface. All requests for archaeological clearance should be directed to the OGA, THPO, and the BIA. Archaeological work must be conducted by a licensed archaeologist approved by the Nation for final clearance.

§ 11. COPIES OF REQUIRED REPORTS

The lessee and/or designated operator shall furnish to the Bureau of Indian Affairs - Jicarilla Agency, Dulce, New Mexico, copies of all reports made to the BLM as required by applicable titles of the Code of Federal Regulations at the time such reports are required to be made to the BLM.

§ 12. VIOLATIONS OF THIS CHAPTER

Violation of any provision of this Chapter shall be grounds for any action authorized under applicable federal regulations or applicable provisions of the Jicarilla Apache Nation's Code, including this Title.

§ 13. SHUT DOWN OF OPERATIONS

The Nation, as the surface owner, shall be entitled to shut down or shut in any operation in the event of noncompliance with this Title and shall have automatic and continuing lien on any equipment and production for non-payment of any fee, surface damage, taxes, or royalties.

§ 14. REIMBURSEMENT FOR DAMAGE

Any lessee and/or designated operator, operator or its agent shall pay the surface owner or his tenant, as the case may be, for any and all damage to or destruction of property caused by lessee and/or designated operator's operation hereunder; shall save and hold the Nation harmless from all damage or claims for damage to persons or property resulting from the lessee and/or designated operator's operations under any lease; shall hold the Nation, the leased land and all materials, tools, machinery, appliances, structures, improvements, and equipment of whatsoever

kind or nature, placed in or upon the leased land by the lessee and/or designated operator or at his direction, harmless from all claims or liens of third parties by reason of any act of commission or omission on the part of the lessee and/or designated operator; and shall pay the surface owner, for damage or injury to livestock crops, trees, pipelines, buildings and other improvements on the leased land as well as compensate the owner for any damage or loss to wildlife and indigenous species.

§ 15. LEASE CONDITIONS

These Surface Protection Requirements shall be in addition to the conditions of any applicable oil and gas lease. However, when the lease conditions conflicts with applicable ordinances or resolutions of the Nation or other action authorized by the Nation, then the lease conditions will supersede and take precedence.

## CHAPTER 8: RECORD TITLE ASSIGNMENTS, SUBLEASES, DESIGNATIONS OF OPERATOR AND OPERATING AUTHORIZATION ON OIL AND GAS LEASES

### § 1. OPERATING AUTHORIZATION

This chapter describes the process by which oil and gas operators shall obtain operating authorization to conduct drilling and related operations within the exterior boundaries of the Jicarilla Apache Reservation. Operating authorization conveys no interest or right to an operator other than conditional permission to enter the Jicarilla Apache Reservation to drill for, produce, remove, own and dispose of oil, gas and/or condensate that may be found on and produced from a valid lease assignment. Operating authorization is conditional upon an operator's absolute compliance with the terms of the lease assignment and adherence to the laws of the Jicarilla Apache Nation.

### § 2. REVIEW OF LEASE ASSIGNMENTS

(A) In accordance with federal regulations, a lease assignment within the Nation shall be effective only if such assignment has the consent of the Director.

(B) In accordance with federal regulations, all lease assignments receiving the consent of the Director shall be submitted to the BIA for review and approval.

### § 3. REQUIREMENTS PRIOR TO DRILLING

(A) Prior to the commencement of the drilling of a well, a lessee and/or designated operator shall have the leased premises surveyed by a registered land surveyor, boundaries posted with substantial monuments, and a tie established with the nearest United States Public Land Survey. Certified copies of the survey plats shall be filed with the OGA, and copies deposited with the BIA and BLM. Permission to drill will not be granted by the BLM prior to receipt of a certified copy of the survey plat. Upon completion of any construction, a plat



showing the location of all roads and equipment and the location and depth of all underground lines shall be filed with the Nation and the BIA.

(B) If so required by the BIA, a lessee and/or designated operator shall condition, under the direction of the BLM, any wells drilled which do not produce oil or gas in paying quantities as determined by the BLM, but which are capable of producing water satisfactory for domestic, agricultural or livestock use by the surface owners. Adjustment of cost for conditioning of the wells and for the value of casing and equipment left in or on the well will be made in cases where it is determined that the well will produce satisfactory water.

#### § 4. APPLICATION FOR PERMIT TO DRILL (APD)

(A) The OGA, in consultation with the BIA and the BLM shall maintain guidelines for the APD permitting process.

(B) The guidelines shall provide procedures for cooperation and coordination between the OGA, BIA, and BLM in regards to the APD permitting process.

(C) The APD permitting process guidelines shall be compiled in the OGA Administrative Manual.

#### § 5. REVIEW OF SUBLEASES AND DESIGNATION OF OPERATOR

(A) A sublease or designation of an operator within the Nation shall be effective only if such sublease or designation of operator has the consent of the Director.

(B) All subleases and designations of operator which receive the consent of the Director shall be submitted to the BIA for review and approval.

§ 6. PRIOR APPROVAL REQUIRED

A lessee and/or designated operator or operator shall be permitted on a lease only after the assignment, sublease, or designation of operator has the consent of the Director and the assignment, sublease, or designation of operator has BIA approval.

§ 7. REQUIRED INFORMATION

Each person making an assignment (record title or operating rights), sublease or designation of operator concerning an interest in an oil and gas lease within the Nation shall provide the following information to the BIA and the OGA to support every proposed lease assignment, sublease, operating authorization or designation of operator:

(A) A copy of any assignment, sublease, assignment of operating authorization or designation of operator affecting the leased lands, or any portion thereof;

(B) A status report as to all the conveyances of record affecting said lease then in effect in the form of a skeletal abstract title for each lease;

(C) A copy of each designation of operator, operating agreement, documents evidencing a Nation of overriding royalty and any other agreement pertaining to oil and gas operations then in effect, including but not limited to a farm-out or drilling agreement with respect to oil and gas operations in the lands subject to the lease assignments, sublease, or an assignment of operating authorization or designation of operator;

(D) A statement of the status of all wells on the leases assigned, subleased or operated under a designation of operator or operating agreement with respect to quantities of oil or gas produced and sold for the twelve (12) months preceding the date of said application, and the royalties paid to the Nation thereon;

(E) A certification by the assignor, lessee and/or designated operator or party granting operating authorization that all royalty payments due to the Nation from the affected lands are current as of the date of the proposed assignment.

§ 8. Each proposed lease assignment, sublease, assignment of operating authorization or designation of operator shall be accompanied by a payment in an amount established by the OGA, payable to the Nation, to defray the cost of maintaining records on oil and gas leases on the Nation.

§ 9. The Director shall consider approval of assignments, subleases, assignment of operating authorization and designation of operator of oil and gas leases within the Nation upon certification by the Director as to compliance with the terms of this Title.

§ 10. Record owners of interest in leases within the Nation shall be notified by mail of this Chapter prior to the effective date thereof. This Chapter shall be effective ninety (90) days after enactment thereof and approval in accordance with the Nation's Constitution.

§ 11. This Chapter is enacted pursuant to 25 C.F.R. § 211.29 to supersede any conflicting provision of 25 C.F.R. Part 211. The provisions of this Chapter shall supersede any conflicting provision of 43 C.F.R. § 3160, as amended. Therefore, publication in the Federal Register by the Secretary of the Interior is hereby requested.

§ 12. No assignment of any pipeline or other right-of-way granted under the authority of 25 U.S.C. §§ 323-328 shall be effective until approved by the Council. The BIA is requested to submit all right-of-way assignments to the Nation for its consideration and approval before approval by the Secretary of the Interior.

§ 13. The OGA is authorized to approve or reject proposed assignments, subleases and designations of operator on behalf of the Nation, as provided in this Chapter. The OGA's

decision to approve or reject a proposed assignment, sublease or designation of operator may be appealed by the proponent of the assignment, sublease or designation of operator.

§ 14. The rejection of a proposed assignment, sublease, or designation of operator may be appealed pursuant to Chapter 14 of this Title.

§ 15. Any failure to comply with the provisions of this Chapter shall constitute noncompliance with this Title and is subject to penalties as provided under Chapter 13 of this Title.

## CHAPTER 9: OIL AND GAS OPERATING PERMITS

### § 1. OIL AND GAS OPERATING PERMIT REQUIRED

No person shall engage in any oil and gas activity within the Nation without first obtaining and maintaining in good standing an oil and gas operating permit.

### § 2. APPLICATION FOR OPERATING PERMIT

Every person applying for an operating permit shall submit to the OGA:

(A) A completed application for an operating permit. An application to renew an operating permit shall include a copy of the current or most recent operating permit.

(B) Proof that the applicant has obtained a bond or insurance in an amount established by the OGA from a company authorized to act as surety and acceptable to the OGA, for the activities covered by the permit;

(C) A brief statement of the past oil and gas activity conducted or engaged in by the applicant, including the locations, types of operations or businesses and business names;

(D) Description and location of the premises where oil and gas activity will be conducted;

(E) Description of the oil and gas activity to be conducted;

(F) If the applicant is a corporation, limited liability company or other business entity, a copy of the corporate charter or other organizational document issued by the state, country or other government in which it is organized; a copy of the document authorizing it to do business in the State of New Mexico; and a copy of the power of attorney or other instrument authorizing the applicant to act on behalf of the business entity. The applicant shall also include a statement describing all subsidiary and parent entities of the applicant;

(G) An agreement to abide by all applicable laws and regulations of the Nation and the United States and all conditions upon which the operating permit is issued;

(H) Certification that applicant is not a federal government employee or agent;

(I) Certification that applicant has complied with all requirements of Title 11 of the Nation's Code and paid all taxes and submitted all required reports when due.

(J) Payment of the operating permit application fee in the amount set by the OGA.

### § 3. FEES COLLECTED

All permit fees collected pursuant to this Title shall be deposited into a duly established account and expended solely for OGA uses pursuant to a budget approved by the Legislative Council.

### § 4. APPEALS PURSUANT TO CHAPTER 14

The denial of an application for an operating permit may be appealed pursuant to Chapter 14 of this Title.

### § 5. CONDITIONS OF PERMIT

Every operating permit shall contain the following conditions;

(A) The operating permit shall be for a term of one year renewable annually upon payment of the annual permit fee and update of all information required to be filed. If the operating permit has expired before a completed application to renew the permit is received by the OGA, the application shall be treated as an application for a new operating permit.

(B) The operating permit applicant or operating permit holder shall notify the OGA of a bankruptcy, receivership or any material change in the financial condition of the applicant or permit holder which may render the applicant or permit holder subject to the bankruptcy or receivership laws of the United States, any state, territory, or foreign government.

(C) All premises covered by the operating permit shall:

(1) Be constructed and maintained in a safe and clean manner so as to protect the public health and safety and the health and safety of all employees, contractors or other persons present on the premises;

(2) Be open to inspection by the OGA, the BIA, the BLM, and any other agency of the Nation having regulatory jurisdiction over any activity on the premises; and

(3) Be maintained and operated in compliance with all applicable laws and regulations of the Nation and the United States.

(D) Upon request, either oral or written, by the OGA, the BIA, the BLM, or any law enforcement officer of the Nation, the operating permit holders shall make the operating permit or a copy thereof available for inspection and copying.

(E) Any operating permit holder shall maintain insurance or bonding in an amount established by the OGA to be necessary to protect the Nation and the people and property within the Nation.

(F) The operating permit is non-transferrable.

(G) All vehicles belonging to the operating permit holder which are present on the Jicarilla Apache Reservation for use in oil and gas operations shall have and carry an operating permit and sticker. The sticker will be placed in a visible location on each vehicle. Such vehicles include graders, backhoes, etc.

(H) All employees, contractors, or subcontractors of a permit holder shall have in his/her possession a current work permit as described and required under Title 23 of the Jicarilla Apache Nation Code, with up-to-date employment information

§ 6. FAILURE TO COMPLY

Any failure to comply with the provisions of this Chapter shall constitute noncompliance with this Title and is subject to penalties as provided under Chapter 13 of this Title.



## CHAPTER 10: OIL AND GAS OPERATING REQUIREMENTS

### § 1. OPERATING REQUIREMENTS

The OGA may promulgate and enforce rules, regulations, and orders, including but not limited to the following, with regard to oil and gas operating requirements:

- (A) To require dry or abandoned wells to be plugged;
- (B) To prevent crude petroleum oil or natural gas or water from escaping from strata in which it is found into other strata;
- (C) To require reports showing locations of all oil and gas wells and for the filing of logs and drilling records or reports;
- (D) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment which would reduce the total ultimate recovery of crude petroleum oil or gas;
- (E) To prevent fires;
- (F) To prevent "blow-outs" and "caving in" as generally understood in the oil and gas business;
- (G) To identify the ownership of all oil and gas producing leases, wells, pipelines, structures and all transportation equipment and facilities;
- (H) To require the operation of wells with efficient gas/oil ratios and to fix such ratios;
- (I) To fix the spacing of wells;
- (J) To determine whether a particular well or pool is a gas or oil well or a gas or oil pool and from time to time to classify and reclassify wells and pools accordingly;

(K) To determine the limits of any pool producing crude petroleum oil or natural gas, or both, and, from time to time, to re-determine the limits;

(L) To regulate the methods and devices employed for storage of oil or natural gas, including subsurface storage;

(M) To regulate the injection of any substance into any pool for the purpose of repressuring, cycling, pressure maintenance, secondary or other enhanced recovery operations;

(N) To regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of water in a manner that will afford reasonable protection against contamination of fresh water supplies;

(O) To regulate the necessary and proper plugging of dry and abandoned oil and gas wells;

(P) To regulate the disposal of wastes resulting from the exploration, development, production, or storage of crude oil or natural gas to protect public health and the environment;

(Q) To require wells to be drilled, operated and produced in such manner as to prevent injury to adjacent leases and environmental degradation;

(R) To establish categories of bonds and bond requirements for the plugging and abandonment of wells;

(S) To review and approve unitization agreements;

(T) To implement any other authority delegated to it by the Council and to do all things necessary and proper specified by the authorities granted to it under this Title.

(U) To submit semiannual development plans, per Chapter 6 of this Title, to the OGA.

## § 2. ENVIRONMENTAL PROTECTION STANDARDS

(A) Any and all persons engaging in oil and gas activity shall:

(1) Minimize negative environmental impacts consistent with the obligation to produce hydrocarbon minerals diligently and prudently or to perform other contractual obligations to the Nation;

(2) Comply with all applicable prohibitions and requirements of the OGA and the BLM governing oil and gas activity;

(3) Coordinate the activity with oil and gas development activity and other oil and gas activity on adjacent tracts to avoid duplication of roads, pipelines, and other clearings and to minimize surface disturbance consistent with prudent operating standards and all applicable laws and regulations of the Nation and the United States; and

(4) Comply with all applicable environmental protection requirements imposed by the laws of the Nation and the United States.

(B) The OGA and the Nation's Environmental Protection Office shall cooperate with each other to avoid conflicting regulation of energy resource development activity. The OGA shall consult with the Environmental Protection Office for technical assistance and advice on environmental issues that come before the OGA. The Environmental Protection Office shall consult with the OGA for technical assistance and advice on issues relating to energy resource development that come before the Environmental Protection Office.

### § 3. RECLAMATION OF LANDS IMPACTED BY OIL AND GAS ACTIVITY

(A) Plugging and Abandonment of Wells.

(1) Every oil or gas well drilled within the Nation that permanently ceases production or is a dry hole shall be plugged and abandoned within the time set by regulation of the OGA, unless the Nation assumes ownership of the well.

(2) Any person with an obligation to plug and abandon pursuant to this Chapter, and who owns a record title interest or operating interest in the lease or mineral development agreement covering the land on which the oil or gas well has been drilled, (including dry holes) is jointly and severally liable for the costs of plugging and abandoning the well in compliance with all applicable requirements of the Nation and the United States.

(B) Restoration of Surface.

(1) Upon plugging and abandonment of any oil or gas well within the Nation, if no further oil and gas development activity will take place on the drilling or production site assigned to the abandoned well within twelve (12) months after the well is abandoned, the lands comprising the drilling or production site shall be reclaimed.

(2) Within twelve (12) months after termination of an oil and gas lease or mineral development agreement as to a tract of land, all portions of the tract of land on which oil and gas development activity or other oil and gas activity were conducted shall be reclaimed.

(3) Land reclamation shall restore the lands to grades approximate to original contours and a condition capable of supporting uses which they were capable of supporting before any oil and gas activity, provided that such use or uses do not present any actual or probable hazard to public health or safety, do not cause any adverse effect on the Nation environment, and are not impractical, unreasonable, or inconsistent with the laws of the Nation and the United States, including without limitation applicable land use policies and plans.

(4) Every person who, at the time the obligation for reclamation arises, owns a record title interest or operating interest in the lease or mineral development agreement covering the land on which reclamation is required by this Section is jointly and severally liable for the

costs of reclamation in compliance with all applicable requirements of the Nation and the United States in effect at the time of reclamation.

(5) The obligations of owners of record title interests and operating interests under this Section shall constitute a lien against any and all property of the owner of such interest located within the Nation. The lien shall be enforceable by foreclosure in the Nation's Court, by claim against any available bond, or by any other procedure authorized by law.

## CHAPTER 11: PIPELINE EASEMENTS; TRANSPORTATION OF IN KIND GAS

### § 1. PIPELINE EASEMENTS

Pipeline companies securing easements for operation of pipelines and other facilities within the Nation shall be required, as a condition to grants of easements or extensions of easements, for lateral or main pipelines, or other supporting facilities, to deliver, on demand of the Nation, the Nation's gas for industrial, municipal or domestic use to points on the pipelines of such companies.

### § 2. NEGOTIATIONS OF EASEMENTS

The OGA is authorized to assist in the negotiations of easements, extension of easements, and delivery of the Nation's gas as provided in this Chapter. Charges for transportation and delivery of in kind gas shall be considered as part of the consideration for grant of easements for pipelines and other facilities or extensions of such easements in negotiating with pipeline companies.

### § 3. TRANSPORTATION AND DELIVERY OF THE NATION'S GAS

No easements or extensions of easements for lateral extensions or main pipelines or facilities accessory to operation of such pipelines shall be granted without agreement of such pipeline companies to transport and deliver the Nation's gas as herein provided.

### § 4. FAILURE TO OBTAIN AN EASEMENT

A pipeline company failing to obtain an easement pursuant to this Chapter is in noncompliance with this Title and is subject penalties provided under Chapter 13 of this Title.

## CHAPTER 12: OFF-SITE GAS MEASUREMENT PERMIT

### § 1. APPLICABILITY

This Chapter applies to the measurement of all natural gas produced from an oil or gas well that is located within the exterior boundaries of the Nation and is subject to an oil and gas lease issued pursuant to the 1938 Indian Mineral Leasing Act or a minerals development agreement negotiated pursuant to the 1982 Indian Mineral Development Act.

### § 2. OFF-SITE GAS MEASUREMENT PERMIT

(A) Measurement of natural gas production for purposes of calculating royalty or any applicable tax of the Nation shall take place at the wellhead unless the operator of the well first obtains an off-site gas measurement permit as provided in this Chapter.

(B) An application for an Off-Site Gas Measurement Permit may be approved only if all of the following requirements are established by the applicant:

(1) Each well affected by the permit produces 15 mcf per day or less on a monthly basis (calculated on days of actual production per month, as documented by the most recent twelve (12) month production history;

(2) Off-site gas measurement will take place at a location within the boundaries of the lease or minerals development agreement on which all of the affected wells are located;

(3) Estimates of reduced operating costs or other economic data to show that off-site measurement is likely to extend the economic life of the well and increase total recovery of gas from the well;

(4) Off-site measurement will take place before the gas is commingled with gas from any other well that is subject to a different royalty rate, unless the gas from such other well has been separately measured as provided in this Chapter before commingling;

(5) Each well affected by the permit will be tested for BTU content, at least once each calendar year, before gas from the well is commingled with gas from any other well;

(6) The proposed off-site measurement will not result in economic loss to the Nation.

### § 3. APPLICATION PROCEDURE FOR OFF-SITE GAS MEASUREMENT PERMIT

(A) An application for an Off-Site Gas Measurement Permit shall be on a form approved by the Nation and shall be accompanied by any supporting information required by the application form.

(B) The application shall be submitted to the OGA in triplicate. The OGA shall forward one copy of the application to the Revenue and Taxation Department.

(C) The OGA or the Revenue and Taxation Department may request such additional information as is necessary for a determination whether the permit should be granted.

(D) The OGA and the Revenue and Taxation Department shall act on the application within sixty (60) days after receipt of the application by the OGA, unless within that time either Department notifies the applicant that more than sixty (60) days is necessary to review the application. If final action has not been taken on the application within one-hundred twenty (120) days after the application was received by the OGA, the application will be deemed denied. The OGA shall promptly notify the applicant of the action taken on the application.

(E) If approved, the Off-Site Gas Measurement Permit will be issued by the OGA.



(F) The denial of an application for an Off-Site Gas Measurement Permit may be appealed pursuant to Chapter 14 of this Title.

#### § 4. CONTENT OF OFF-SITE GAS MEASUREMENT PERMIT

A permit issued under this Chapter shall include the following:

- (A) Identity of the permit holder;
- (B) Identification of the well or wells affected by the permit;
- (C) Location of approved off-site measurement;
- (D) Method of approved off-site measurement;
- (E) Method of allocation to individual wells;
- (F) Any special compliance requirements imposed as a condition of approval of the permit;
- (G) Schematic diagram and maps showing the location of each affected well, each meter, the gathering system and all surface equipment related to the affected wells.

#### § 5. REPORTING REQUIREMENTS

(A) Each year by March 1<sup>st</sup>, each permit holder shall submit to the OGA the following information concerning operations to be conducted under the permit during that calendar year:

(1) Copies of all gas analysis test results, including BTU content, for each well affected by the permit;

(2) Any other information required by the OGA and the Revenue and Taxation Department.

(B) Each permit holder shall notify the OGA in writing within thirty (30) days if there are any changes in well status or production affecting the eligibility of the well for off-site metering under this Chapter.

(1) Production from any well affected by the permit exceeds 15 mcf per day on a monthly basis;

(2) Any change in well status or production affecting the eligibility of the well for off-site meter under J.A.N.C. § 18-12-2 are no longer satisfied.

#### § 6. REVOCATION OR MODIFICATION OF PERMIT

(A) The OGA shall give the permit holder at least thirty (30) days written notice before revoking or modifying a permit. During that period the permit holder may submit additional information showing that the permit should not be revoked or modified, or showing that the grounds for revoking or modifying the permit have been corrected.

(B) The OGA may revoke or modify a permit if the permit holder violates any requirement of this Title.

(C) The revocation or modification of an Off-Site Gas Measurement Permit may be appealed pursuant to Chapter 14 of this Title.

#### § 7. EFFECT ON FEDERAL REGULATIONS

The provisions of this Chapter shall be interpreted to supplement applicable regulations of the Department of the Interior, including 43 C.F.R. Part 3160 and Onshore Oil and Gas Order No. 5 promulgated by the BLM, to the extent those federal regulations are not inconsistent with this Chapter. To the extent that any Department of the Interior regulation would authorize activity prohibited by this Chapter, this Chapter shall preempt application of the federal regulation.

#### § 8. EXISTING OFF-SITE METERS

Any operator who is measuring natural gas production at a location other than the wellhead as of the effective date of this Chapter shall, within one-hundred eighty (180) days after the effective

date of this Chapter, apply for an Off-Site Gas Measurement Permit or commence measuring production at the wellhead.

§ 9. GATHERING SYSTEMS

Nothing in this Chapter is intended to require or to prohibit any centralized gas gathering system or any specific configuration of gas gathering pipelines or other equipment other than metering equipment. This Chapter is not intended to regulate the location or configuration of gas gathering pipelines or other gathering equipment.

## CHAPTER 13: NONCOMPLIANCE, PENALTIES, AND ENFORCEMENT

### § 1. NONCOMPLIANCE

A failure to comply with any requirement set forth in this Title shall constitute an incident of noncompliance.

### § 2. ADHERENCE TO FEDERAL REGULATIONS

The following federal regulations, as amended from time to time, are binding and enforceable in conjunction with the Nation's laws:

(A) 43 C.F.R. Part 3160 – Onshore Oil and Gas Operations: General;

(B) 43 C.F.R. Chapter 11, Subchapter A, Royalty Management, to the extent applicable to Indian lands.

(C) 25 C.F.R. Part 169 (Right-of-Ways Over Indian Lands), and Part 211 (Leasing of Tribal Lands for Mineral Development), Part 216 (Surface Exploration, Mining, and Reclamation of Lands), and Part 225 (Oil and Gas, Geothermal, and Solid Minerals Agreements);

(D) BLM's Onshore Oil and Gas Orders;

(E) BLM's Notices to Lessee and/or designated operators.

(F) BLM's Gold Book;

(G) BLM's Operator's Handbook for APD's for Farmington, New Mexico Field Office.

### § 3. ADHERENCE TO THE JICARILLA ROAD POLICY

The Jicarilla Road Policy, as amended from time to time, is binding and enforceable in conjunction with the Nation's laws.

§ 4. CITATIONS FOR INCIDENTS OF NONCOMPLIANCE

(A) Any Authorized official may, upon approval by the Director or his designee, issue a citation under this Chapter to any person who has violated this Title.

(B) All citations issued under this Title shall be on a Compliance Order on a form approved by the Director.

§ 5. ENFORCEMENT ORDERS

(A) The Compliance Order, at the Director's discretion, may contain an order directing either of the following:

- (1) That the person come into compliance with the permit or this Title; or
- (2) That the premises where the noncompliance is occurring be closed.

(B) An order directing either (1) or (2) above shall not bar the assessment of any other civil penalty or the imposition of any other enforcement action authorized by other federal laws or other provisions of the Nation's Code.

§ 6. CIVIL PENALTIES

(A) The Director may assess a civil penalty for noncompliance with this Title.

(B) The Director shall consider the following factors in determining the amount of any civil penalty to be assessed:

- (1) Severity of the incident of noncompliance;
- (2) History of prior incidents of noncompliance;
- (3) Duration of the incident of noncompliance;
- (4) Effort to comply with applicable requirements;
- (5) Compliance history of the person on prior incidents of noncompliance;
- (6) Potential injury to people, the Nation, or the environment.

(C) A civil penalty assessed under this Chapter shall not bar the assessment of any other civil penalty or the imposition of any other enforcement action authorized by other provisions of the Nation's Code or by federal law.

#### § 7. SUSPENSION OR CANCELLATION OF PERMIT

(A) The Director may suspend or cancel an oil and gas operating permit when, in the Director's discretion, the violation is:

- (1) Exceptionally egregious; *or*
- (2) On-going without commencement of any corrective action; *or*
- (3) Uncorrectable.

(B) Suspension or cancellation of a permit under this Section shall not bar the assessment of any other civil penalty or the imposition of any other enforcement action authorized by other provisions of the Nation's Code or by federal law.

#### § 8. SEIZURE OF PROPERTY

(A) Any property located within the Nation, that is owned or that is owned in part by a person who is noncompliance with this Title may be seized and held to secure payment of a civil penalty or to be forfeited.

(B) Seizure under this Section shall not require proof that the owner (or part owner) of the property participated in, had knowledge of, or consented to the illegal use of the property.

(C) Property subject to seizure under this Chapter may be seized by any law enforcement officer of the Nation upon issuance of a notice of noncompliance by the OGA.

(D) Property seized under this Chapter shall be held in the custody of the OGA, subject only to the orders of the Nation's Court, including orders for sale of the property at

public auction to collect any civil penalty assessed under this Title and orders issued in a forfeiture proceeding.

(E) Unless a forfeiture proceeding concerning property seized under this Chapter is initiated pursuant to Title 18, Chapter 14, § 8 (F), below, such property shall be released to its owner upon the earliest of the following:

- (1) Thirty (30) days after seizure of the property,
- (2) Payment of the civil penalty for which the property was seized as security,
- (3) Upon a finding by the Nation's Court that such civil penalty is not proper.

(F) Civil Forfeiture Proceedings.

(1) Within thirty (30) days after seizing property pursuant to this Section, the OGA may initiate an in rem judicial forfeiture proceeding against the seized property. The forfeiture complaint shall describe with reasonable specificity the property at issue and the basis for forfeiture.

(2) The Nation's Court shall give written notice of forfeiture proceedings to all known or reasonably ascertained persons with an interest in the seized property, including any lien interest. All such persons shall answer the complaint and file any adverse claim to the property within thirty (30) days after notice is given.

(3) Upon notice to all interested persons, the Court shall conduct a hearing to adjudicate whether the property and/or any known interests therein have been forfeited to the Nation and shall enter an appropriate judgment. The Court may deny forfeiture of an interest in property if the owner of the interest proves that he or she did not participate in, have knowledge of, or consent to the illegal use of the property; or that the person took all reasonable measures to

prevent the illegal use of the property; or that the person committing the violation obtained possession of the property without consent.

(4) Property forfeited to the Nation and proceeds from the sale thereof shall be retained by the Nation and used to equip and finance enforcement activities under this Chapter.

#### § 9. APPEALS IN FORFEITURE PROCEEDINGS

Any decision by the Nation's Court regarding forfeiture proceedings under this Chapter may be appealed pursuant the appeals process provided in Title 2, Chapter 11, § 9 of the Nation's Code (Written Rules of the Court).

#### § 10. ADDITIONAL PROVISIONS

The following provisions shall apply to the citation for noncompliance:

(A) Notice. The citation shall be either personally served on the person or company alleged to be in noncompliance or sent by certified mailed, return receipt requested, to the last known address of the person or company. Service shall be deemed complete when the notice is received.

(B) Request for Additional Time. The Director may, in his discretion and upon a showing of good cause, grant the request. The person served with a citation may request additional time to:

- (1) Commence actions necessary to cure the noncompliance; or
- (2) Pay any civil penalty; or
- (3) Complete actions necessary to cure the noncompliance.

(C) Failure to Comply or Appeal. The failure of a person to either comply with a citation or to appeal a citation within the time required pursuant to this Title shall result in the



cancellation of the permit, the closure of the premise where the noncompliance is occurring, and any other action required to protect people, the Nation, and/or the environment.

§ 11. PENALTIES FOR LATE PAYMENTS

Any payment lawfully due to the Nation which is not be paid on the due date shall be subject to a late payment charge of one and one-half percent (1½) per month of the amount due or such percentage as the Legislative Council may establish by ordinance or by resolution and shall be billed promptly by the Treasurer of the Nation or by the BIA, as the case may be. This charge shall apply to oil and gas and other rentals and royalties payable to the Nation, to sums charged for unauthorized operation or maintenance of pipelines without easements in effect for the same, and to any other payments, charges or assessments due to the Nation.

§ 12. ADMINISTRATIVE FEE

Every compliance order shall include the assessment of an administrative enforcement fee to be established by the OGA which shall be paid unless the compliance order is vacated by the Director upon submission of application for review or unless the recipient of the compliance order prevails on appeal in the Nation's Court.

§ 13. MONIES COLLECTED

All permit fees collected pursuant to this Title shall be deposited into a duly established account and expended solely for OGA uses pursuant to a budget approved by the Legislative Council.

## CHAPTER 14: APPEALS

The following provisions shall apply to appeals taken from OGA orders, citations, and decisions.

The following provisions shall not apply to appeals taken in forfeiture proceedings before the Nation's Court. See Title 18, Chapter 14, § 9.

### § 1. APPLICATION FOR REVIEW

Within fourteen (14) days after entry of any order, citation, or decision of the OGA, any party adversely affected thereby may file with the Director an application for review of any matter determined by such order or decision, setting forth the reason why such order, citation or decision is believed to be erroneous.

### § 2. DEADLINE FOR REVIEW

The Director shall grant or refuse any such application in whole or in part within twenty (20) days after the application is filed. Failure to act thereon within the twenty (20) day period shall be deemed a refusal thereof and a final disposition of such application.

### § 3. NEW ORDER, CITATION, OR DECISION

If the Director finds the application for review to have merit, the Director may enter such new order, citation, or decision as may be required under the circumstances.

### § 4. AUTOMATIC STAY

Filing an appeal to the Director shall automatically stay the due date for payment of any civil penalty, but shall not automatically stay the effectiveness of any other requirement of the compliance order.

### § 5. APPEAL TO THE NATION'S COURT

A party dissatisfied with the disposition of the application for review may appeal to the Nation's Court within twenty (20) days after the entry of the new order, citation, or decision or twenty (20) days after the final disposition of the application for review.

§ 6. ISSUES ON APPEAL

Petitions for appeal to the Nation's Court shall be limited to issues presented to the Director in the original application for review.

§ 7. SERVICE OF SUMMONS

Notice of such appeal shall be served upon the Director in the manner provided for service of summons in civil proceedings.

§ 8. BURDEN ON APPELLANT

The burden shall be upon the appellant to establish the invalidity of the Director's decision.

§ 9. COURT'S REVIEW

The Court's review shall consider only the following issues:

- (A) Whether the OGA acted within its jurisdiction,
- (B) Whether the OGA's decision, citation, or order is arbitrary or capricious,
- (C) Whether the decision, citation, or order is supported by reasonable evidence.

§ 10. PENDENCY OF APPEAL

Pendency of the appeal in the Nation's Court shall not automatically stay or suspend operation of the order, citation, or decision being appealed. But the appellant may file a motion to the Court to stay or suspend in whole or in part the operation of the order, citation, or decision being appealed.

§ 11. APPEAL OF DECISION

An aggrieved party may seek review of an order or judgment of the Nation's court in accordance with the Rules of Appellate Procedure (Jicarilla Apache Nation Code, Title 2, Chapter 11, § 9).