Jicarilla Department of Labor
Oil & Gas Indian Preference Contracting and Employment Ordinance Industry Brochure

Amended Ordinance Approved August 5, 2010
by Tribal Legislature Ordinance No. 2010-O-373-08
Including Revisions to Fee and Permit Policies
Welcome to Oil and Gas Industry

The Jicarilla Apache Nation Department of Labor is responsible for providing updated information and advisories to oil and gas companies that operate on the Jicarilla Apache Reservation regarding employment and contracting. The Jicarilla Apache Nation, as of August 5, 2010, revised its ordinance and this brochure provides a summary of the provisions and policies as well as special industry alerts to assist in understanding requirements for compliance enforcement purposes of Ordinance.

The purpose of this brochure is:
• To promote employment preferences for qualified Indian individuals.
• To promote contracting preferences for qualified, Indian-owned and controlled oil and gas businesses that seek contracts with the Jicarilla Apache Nation or are otherwise subject to the Jicarilla Apache Nation’s jurisdiction.
• To ensure that the Nation’s laws maximize employment opportunities for qualified Indian individuals and contract opportunities for qualified, Indian-owned and controlled oil and gas businesses that operate within the Jicarilla Apache Nation’s jurisdiction.

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Industry Alert: Companies and subcontractors should maintain a copy of this brochure when operating on the Jicarilla Apache Reservation.
Purpose
To clarify the authority roles and responsibilities of the Department of Labor as the principal organization responsible for implementing provisions of the Oil and Gas Indian Preference Contracting and Employment Ordinance.

Authority
The Department of Labor was established in accordance with the Jicarilla Apache Nation Code Title 23, Business, in fulfilling Tribal civil jurisdiction over operators, companies, and subcontractors in the implementation of Tribal codes and company requirements.

Department of Labor Role in Ordinance Implementation
• The Jicarilla Apache Nation Department of Labor is authorized to determine compliance with this Ordinance and to determine the eligibility of businesses applying for Indian Preference Certification under this Ordinance.
• All Oil and Gas Permit Holders, including Oil and Gas Lessees, Oil and Gas Operators, and Oil and Gas Contractors must promptly report to the Department of Labor all prospective Oil and Gas contracts to be awarded so future employment needs and opportunities are known.

Tribal Employment Rights Office
• The Department of Labor will maintain a skills bank that identifies members of the Jicarilla Apache Nation who desire employment.
• An Oil and Gas Permit Holder may not use any job qualification criteria or personnel requirements that serve as barriers to the employment of Indians unless they are required by business necessity.
• All contracting entities and employees must complete a minimum of 2 hours cultural awareness training.
• If neither the Oil and Gas Permit Holder nor the Department of Labor can locate a qualified member of the Jicarilla Apache Nation, the Oil and Gas Permit Holder will make a good faith effort to locate and hire a member from another Indian Nation for employment.

Industry Alert: The burden is on the Oil and Gas Permit Holder to demonstrate due diligence in employment per Tribal criteria.
Ordinance Overview and Fees

Purpose
To summarize the contents of the approved Ordinance and fees which apply to contracts for oil and gas activity on the Jicarilla Apache Indian Reservation.

Sections of Chapter I, Oil and Gas Indian Preference Contracting and Employment Ordinance

§ 1. General Provisions
§ 2. Definitions
§ 3. Application of This Chapter to All Oil and Gas Permit Holders
§ 4. Implementation of This Ordinance
§ 5. Civil Jurisdiction
§ 6. Compliance Mandatory
§ 7. Fees
§ 8. Work Permits
§ 9. Indian Preference Certification for Oil and Gas Businesses
§ 10. Procedures for Awarding Contracts
§ 11. Tribal Employment Rights Office
§ 12. Prohibited Acts
§ 13. Monitoring Indian Preference in Employment
§ 14. Enforcement
§ 15. Reporting a Violation
§ 16. Mediation
§ 17. Citation
§ 18. Initiation of Formal Hearing
§ 19. Formal Hearing Procedure
§ 20. Penalties and Sanctions
§ 21. Appeals
§ 22. Sovereign Immunity
§ 23. Severability
§ 24. Effective Date
§ 25. Effect of Other Laws
§ 26. Effect of Title 18

Applicable Fees
Application Fee: $150
Annual Recertification: $100
Annual Corporate Administration Fee: $500
Work Permit Fee: $10

Industry Alert: All Oil and Gas permit holders, contractors, principals, and individuals working on the Jicarilla Apache Nation Reservation must comply with provisions of this Ordinance and fee policy.
Overall Ordinance Process and Jurisdiction

**Purpose**
To outline the step-by-step process for implementation of the Ordinance so that affected parties understand the flow of events, from initial outreach and notice on the Ordinance to resolution of disputes or violations. Details of key steps are provided in subsequent sections.

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**Ordinance Process**

1. **Ordinance Implementation**
2. **Fees**
3. **Work Permits**
4. **Indian Preference Certification**
5. **Awarding Contracts**
6. **Employment**
7. **Monitoring and Enforcement**
8. **Prohibited Acts**
9. **Citation and Dispute Resolution**
10. **Penalties**
11. **Hearings**
12. **Appeals**

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**Civil Jurisdiction**

- In implementing the Ordinance process, every Oil and Gas Permit Holder who enters into an Oil and Gas contract, agreement, or lease otherwise and/or conducts Oil and Gas activities as within the exterior boundaries of the Jicarilla Apache Nation hereby subjects itself to the jurisdiction of the Jicarilla Apache Nation and the Jicarilla Apache Nation’s Court for enforcement of this Ordinance.
- By entering into an Oil and Gas contract with the Jicarilla Apache Nation, the entity understands and agrees that a consensual relationship exists between the Jicarilla Apache Nation and the Oil and Gas Permit Holder.
- Any term or provision of an Oil and Gas contract attempting to remove jurisdiction away from the Jicarilla Apache Nation is null and void and will have no effect.

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**Industry Alert:** The Jicarilla Apache Nation Department of Labor Executive Director should be contacted regarding any clarification of process steps and civil jurisdiction.
Implementation Overview

Purpose
To outline the process for implementing the Ordinance including reporting requirements of entities affected and rules of other supporting agencies in implementation.

Implementation Steps
1. The Jicarilla Apache Nation Department of Labor determines compliance and eligibility of businesses.
2. All entities report to the Jicarilla Apache Nation Department of Labor all prospective oil and gas contracts to be awarded so future employment needs and opportunities are known.
3. Federal Indian Preference established to the fullest extent of Federal law.
4. Jicarilla Apache Nation Department of Labor Executive Director provides copies of the Ordinance to affected parties.
5. Lessees, operators and contractors submit written report to Jicarilla Apache Nation Department of Labor Executive Director within sixty (60) days of notice; report specifies:
   a. List of all existing contracts for oil and gas activity
   b. Description of type, site, and duration of contracts anticipated in upcoming twelve (12) months
   c. Description of technical qualifications and other requirements
   d. List of all individuals employed with valid Oil & Gas Operating Permits

Tribal Law Enforcement Agencies
The Executive Director may also seek assistance from the Jicarilla Apache Nation Law Enforcement Agencies and Tribal Officials to enforce the Work Permit requirement of the Ordinance. The Jicarilla Apache Nation Law Enforcement Agencies and Tribal Officials have the authority to issue citations for failure to possess a Work Permit.

Jicarilla Oil and Gas Administration
The Jicarilla Oil and Gas Administration serves as the principal Tribal department in meeting oil and gas regulatory compliance and enforcement standards of the Jicarilla Apache Nation. This includes responsibilities for lease processing, plans of development, APD review and Conditions of Approval (COAs), operating permits, and compliance and enforcement.

Federal Agency Coordination
The Department of Labor also acts in coordination with the Bureau of Indian Affairs Jicarilla Agency and the Bureau of Land Management. The authorities, roles and responsibilities of coordinating agencies are contained in the July 2010 “Bureau of Indian Affairs Jicarilla Agency Regulatory Guidelines for Oil and Gas Industry Officials Operation on the Jicarilla Apache Reservation.”

Industry Alert: It is the responsibility of operators, companies and subcontractors to familiarize themselves with the civil authority of the Jicarilla Apache Nation as well as the applicable authority and responsibilities of cooperating federal agencies.
Work Permits

Purpose
To outline Work Permit policies and applications approval steps.

Work Permit Process

1. Review Work Permit Policies
2. Prepare Application Form
3. Identify All Affected Employees
4. Provide Drivers License or Current Photo ID
5. Secure Employee Signature
6. Pay Permit Fee
7. DOL Execute Permit
8. DOL Advise Other Affected Agencies

Policies

• **Work Permit Fee** – The Work Permit fee will be established by the Department of Labor and is required for all individuals conducting oil and gas activity on the Jicarilla Apache Reservation.

• **Work Permit Requirement** – No Oil and Gas Permit Holder may begin performing an Oil and Gas contract or Oil and Gas Activity within the Jicarilla Apache Nation unless all individuals have obtained a Work Permit.

• **Work Permits for Individuals**
  › All individuals working on the Jicarilla Apache Reservation as an Oil and Gas Permit Holder must obtain a Work Permit from the Department of Labor.
  › All employees of an Oil and Gas Permit Holder must obtain a Work Permit from the Department of Labor.

• **Failure to Possess Work Permit** – Any individual employed by a covered Oil and Gas Permit Holder who does not have a valid Work Permit will be removed from the job site and removed from the Jicarilla Apache Reservation.

• **Work Permit Forfeiture** – An Oil and Gas Permit Holder and/or his employee that violates any provision of this ordinance, as determined by the Department of Labor, automatically forfeit their Work Permit.

• **Work Permit Compliance with Jicarilla Apache Nation Laws** – All Work Permit Holders agree to abide by all the laws of the Jicarilla Apache Nation. Work Permit Holders failing to abide by the laws of the Jicarilla Apache Nation shall forfeit their Work Permit.

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**Industry Alert:** Work permit can be suspended if proven violation or if invalid. Must have a Work Permit to come on Reservation.
Indian Preference Certification Process

Purpose
To outline policy and procedures for Indian Preference Certification.

Policy
Any oil and gas business seeking to obtain Indian Preference status pursuant to Title 23 of the Jicarilla Apache Nation Code must submit a complete application for certification as an Indian business. The amended Indian Preference Ordinance has established two (2) types of certification: (1) 100% Jicarilla Apache-owned business, and (2) Indian-owned business. Failure to meet the requirements of certification will result in a non-certification.

Procedure
1. Business submit documentation that demonstrates it is 100% Jicarilla Apache-owned or at least 51% Indian-owned
2. Business submit documentation describing the relevant, qualified field(s) for which it is seeking to be certified
3. Business submit documentation of its financial status and workforce/employees
4. Only completed applications are considered
5. All applications are held as strictly confidential by the Department of Labor
6. Department of Labor verifies any information provided in application. Providing false or misleading information will subject the applicant to any and all sanctions available under the laws of the Jicarilla Apache Nation.
7. Department of Labor Certification: update list of all certified oil and gas companies
8. Revocation of Certification if determined inappropriate

Applicable Fees
Application for Certification - $150.00 due at the time of application
Annual Re-certification - $100.00 for each business

Industry Alert: Certification must be renewed annually with certification fee and Federal Income Tax Return.
Awarding Contracts and Employment

**Purpose**
To outline policies and procedures for awarding contracts and employment applicable to oil and gas activities.

**Contracting Policies**
- **Certified Oil and Gas Businesses List** – Department of Labor will maintain a list of all Certified Oil and Gas Businesses that must be used by Oil and Gas Permit Holders.
- **Notice to Department** – The Oil and Gas Permit Holder must contact the Executive Director to determine if a Certified Oil and Gas Business exists.
- **Oil and Gas Contracts** – All contracts for services related to Oil and Gas activity must be awarded in accordance with this Ordinance.
- **Awarding Priority** – Contract awards must be awarded in the following order of priority: (1) 100% Jicarilla Apache-Owned Businesses; (2) Other Indian-Owned Business; (3) Non-Indian Owned Businesses.
- **Right of First Refusal** – Certified Business must be given the first right to accept and perform the contract.

**Contracting Procedure**

1. Notice to Department
2. Contract Documentation
3. Priority Determination
4. Right of First Refusal
5. Lowest Bid Determined
6. No Certified Business Determination
7. Indian Preference Reporting
8. Monthly Reports
9. Scope of Work Revision
10. Enforcement Actions if Non-compliance

**Employment Policies**
- Access Department of Labor skills bank for qualified individuals
- Remove barriers to employment
- Cultural awareness training
- Good faith efforts to hire other Native Americans
- Notice to Department of Labor of vacancy
- Relieve non-Indian first in layoffs/reductions in force
- Promotion preferential treatment for Jicarilla Apache Members

**Industry Alert:** An Oil and Gas Permit Holder may not use any job qualification criteria or personnel requirements that serve as barriers to the employment of Indians unless they are required by business necessity.
Monitoring and Enforcement Process

**Purpose**
To clarify policies and procedures regarding monitoring and enforcement of the Ordinance.

**Reporting**
- Copies of amended Ordinance to all affected parties
- Permit holder reporting

**Enforcement**
- Department of Labor Executive Director authority
- Tribal law enforcement agencies and Tribal officials

**Monitoring and Enforcement Process**

1. **Violation Reporting**
2. **Dismissal of Complaint**
3. **Mediation**
4. **Citation Issuance**
5. **Effect of Citation**
6. **Contesting Citation**
7. **Payment of Fine**
8. **Formal Hearing Process Steps**

**Industry Alert:** The Executive Director will monitor compliance with the certification, contracting, and employment provisions and will initiate an investigation and hearing, when necessary, to determine a violation of such provisions.
Prohibited Acts

**Purpose**
To emphasize the importance of preventing and penalizing prohibited acts and non-compliance in implementing the Ordinance.

**Prohibited Acts**
- **Bid Shopping Prohibited** – Subject to penalties, sanctions and/or exclusion
- **Bribery of a Tribal Official** – Subject to penalties, sanctions and/or possible exclusion
- **Illegal Aliens** – Subject to penalties, sanctions and/or exclusion
- **Labor Organization/Unions: Freedom of Choice Guaranteed** – Subject to penalties, sanctions and/or exclusion from the Jicarilla Apache Reservation:
  - Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of, a labor organization
  - Become or remain a member of a labor organization
  - Pay dues, fees, assessment or other charges of any kind or amount to a labor organization, or
  - Pay any dues, fees, or assessments required of members of a labor organization
  - No Indian employee may be required to travel to a site to be processed by a union hiring hall
  - Any agreement between a labor organization and an Oil and Gas Permit Holder that violates the rights guaranteed to employees
- **Retaliation**
  - Punishment, termination, retaliation against employee or other person who has exercised rights under Ordinance
  - Employee harassment or abuse of an employee of Department of Labor carrying out official duties under Ordinance will be removed from the Jicarilla Apache Reservation
  - Penalties, sanctions and/or exclusion for retaliation conduct
- **Business Fronts** – Seeking to gain certification by attempting to use business fronts

**Industry Alert**: Oil and Gas Permit Holders are responsible for the actions of their employees and for the actions of their contractors with respect to prohibitions.
Citations

Purpose
To define the basics of citations, which occur after a violation of complaint is reported, for non-compliance with policies of the Ordinance.

Citation Contents
A citation is a formal notice to an individual that a violation of the Ordinance has been alleged.

Issuance of Citation
- **Executive Director, Law Enforcement, Tribal Official Issuance of Citation** – The Executive Director, Law Enforcement employees and Tribal Officials who are Jicarilla Apache Nation employees that have been asked to assist the Department of Labor, may issue a citation.
- **Hearing Officer Issuance of Citation** – The Hearing Officer may also issue a citation if he has been appointed by the Executive Director to investigate a complaint or finds there is cause that a violation has taken place.

Effect of Citation
- **Discretionary Revocation of Work Permit** – The Tribal Official issuing the citation may, in his discretion, temporarily suspend a Work Permit if there is a violation of the Indian Preference Ordinance based on the facts and circumstances.
- **Automatic Revocation of Work Permit** – An Oil and Gas Permit Holder’s Work Permit is automatically suspended if he is responsible for the supervision of employees and an employee fails to have a valid Work Permit.

Contesting the Citation
- **Request for Hearing** – An individual or Oil and Gas Permit Holder may contest the citation.
- **Time Limit to Contest Citation** – An individual or Oil and Gas Permit Holder has 10 business days to contest a citation.

Paying the Fine
- In lieu of contesting the citation, an individual or Oil and Gas Permit Holder may choose to pay the fine.

Industry Alert: Mediation on a violation may occur, at the discretion of the Executive Director or appointed Hearing Officer, or upon request from any party.
Penalties and Sanctions

Purpose
To summarize policies and civil fines regarding penalties and sanctions. To also outline special circumstances and factors considered in imposing sanctions.

Penalties
After conducting hearings and making a determination that a violation has occurred, a hearing officer may impose any or all of the following penalties:

• **Employment Violation** – Up to $2,500 for first violation, up to $5,000 for second violation, additional $200/day for failure to comply on date set

• **Contracting Violation** – Up to 10% of contract for first violation, up to 20% for subsequent violations, additional $300/day for failure to comply on date set

• **Failure to Have a Valid Work Permit** – Up to $500

• **Obtaining Contract by False or Misleading Information** – Penalty equal to contract amount

• **Failure to Submit a Report** – Civil fine up to $500 for failure to submit within requisite time frame

• **Illegal Aliens** – Civil fine up to $10,000 for each illegal alien

Imposition of Sanctions
After conducting a hearing and making a determination that a violation has occurred, the Hearing Officer may, in addition to the penalties, impose any and all of the following sanctions:

• Suspension or termination of a violator’s authorization to engage in business activity.

• Require the violator, within the time set by the Hearing Officer, to make such changes in its performance, procedures, or policies as necessary.

• In accordance with all applicable laws of the Jicarilla Apache Nation, remove to exclude the violator indefinitely or for a specific amount of time.

• Sanctions may also be imposed, at the discretion of the Hearing Officer, upon the record title holder of the lease, the holder of operating rights, and/or the contract operator.

Factors Considered in Imposing Sanctions
• Whether the violation was intentional

• Whether the Oil and Gas Permit Holder acted swiftly to resolve the violation

• Whether the Oil and Gas Permit Holder has been cited for past violations

Industry Alert: The Department of Labor and Oil and Gas Administration may exercise discretion to forego sanctions and penalties with a showing of exigent or emergency circumstances.
Hearings and Appeals

Purpose
To outline steps to ensure that all facts are fairly developed during a hearing and that the issues of law and legal argument are presented to the Hearing Official in writing and in such a manner as to aid in the proper and speedy resolution.

Hearing Procedure
1. Presence required at proceedings
2. Documentation within five (5) business days of complaint
3. Requirement for witnesses to appear
4. Legal arguments received five (5) days prior to scheduled hearing
5. Examination of witnesses by Hearing Officer
6. Time limits for additional testimony/evidence
7. Final decision within 10 days after hearing
8. Imposition of penalties, as determined by Hearing Office
9. Imposition of additional sanctions, as determined by Hearing Officer
10. Appeal of Hearing Officer’s final decision

Appeals Policy
• Appeals – The Hearing Officer’s final decision may be appealed to the Jicarilla Apache Nation’s Tribal Court.
• Scope of Appellate Review – Any appeal to the Jicarilla Apache Nation is limited to a review of the record compiled. De novo review is not permitted.
• Authority of Tribal Court – The Tribal Court has the authority to issue a cease and desist order, issue an order of attachment, direct a rebidding of the contract at issues, or reverse or affirm a decision regarding penalties imposed by the Hearing Officer.
• Limitation – No damages may be awarded against the Jicarilla Apache Nation, its officials, or employees.

Industry Alert: Any challenge to the manner in which the Ordinance is implemented or enforced may be brought only to the Courts of the Jicarilla Apache Nation.
Definitions

Purpose
To summarize key definitions which apply to the terms used in this Ordinance.

Definitions
1. **Bid Shopping** – Soliciting or communicating information about a competitor’s bid before or after bid opening so as to intentionally underbid the competitor.
2. **Oil and Gas Permit Holder** – The holder of an oil and gas operating permit issued under JANC § 18-1-1 (I).
3. **Department of Labor Certified Oil and Gas Business** – Any entity that operates in the oil and gas industry that is currently certified by the Jicarilla Apache Nation Department of Labor as being eligible for the Indian Preference in accordance with this Ordinance.
4. **Oil and Gas Contract** – Any verbal or written agreement related to oil and gas activity written.
5. **Oil and Gas Administration** – The Oil and Gas Administration of the Jicarilla Apache Nation or its successor.
6. **Oil and Gas Activity** – An activity conducted by an individual or business within the Jicarilla Apache Nation.
7. **Oil and Gas Lessee** – Any individual or business that holds rights to engage in oil and gas activity pursuant to a lease.
8. **Owned and Controlled** – Ownership of a business demonstrated by entitlement to at least fifty-one (51) percent of the profits or losses of the business.
9. **Non-Performance** – Oil and Gas Business’s failure to adhere in whole or in part to a term or condition of an existing Oil and Gas contract.
10. **Unsafe Performance** – Oil and Gas Business’s failure to abide by the minimum safety standards of performance of oil and gas activity or allows unsafe conditions to exist that are inconsistent with the laws and regulations of the Jicarilla Apache Nation and any other applicable federal laws and regulations in performance of an Oil and Gas contract.
11. **Work Permit** – Documentation issued by the Department of Labor authorizing the holder to be on the Jicarilla Apache Indian Reservation to conduct work activity associated with oil and gas business.
Location and Contacts

Office Locations

Location Code
1. BIA Agency
2. OGA
3. Administration Building / D.O.L.
4. Ishkoteen Judicial Complex

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