National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-06-12

To: John Morales, Chairman (AGENT FOR SERVICE OF PROCESS)
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
P.O. Box 1027
Poplar, MT 52955
FAX: (406)768-5478

Commissioner Sidney Bird
Tribal-State Agreements Oversight Commission
P.O. Box 1027
Poplar, MT 59255
FAX: (406)768-5478

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (Respondent, Tribe, or Tribes), located in Poplar, Montana, is in violation of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations for failure to timely submit annual audits.

2. Authority

Under regulations of the National Indian Gaming Commission, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 C.F.R. § 573.3.

3. Applicable Federal and Tribal Laws

A. IGRA requires an annual outside audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC. 25 U.S.C. § 2710(b)(2)(C).

B. NIGC regulations define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity. 25 C.F.R. § 502.10.

C. NIGC regulations require that a tribe cause to be conducted annual independent audits of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and any management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each fiscal year. 25 C.F.R. §§ 571.12 and 571.13.

D. Section 101 of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation Gaming Ordinance (Ordinance), the Tribes' approved gaming ordinance, declares that IGRA provides for certain Federal regulation of Indian gaming and that tribal regulation of gaming activity is vital to the protection of trust lands and the interests of the Tribes and their members.

E. Section 411 of the Ordinance requires that each licensee, including the Tribes, shall cause to be conducted an annual outside audit of the operation for presentation to the NIGC. The tribal subdivisions shall provide their audit reports to the Tribes for review at least thirty (30) days before they are due to the NIGC and the Tribes forward all audit reports to the NIGC.

F. Section 206 of the Ordinance defines "tribal subdivision" as the community organization of each Reservation community, non-profit entities organized to raise funds and operate programs to promote the health and welfare of tribal members and/or to organize and operate ceremonies, celebrations and powwows and tribal school boards.

4. Role of Independent Audit Report

Submission of the annual independent audit report by a firm of certified public accountants is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm's ability to conduct an audit in accordance with Generally Accepted Auditing Standards (GAAP) and render an opinion on the financial statements prepared in conformity with GAAP provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

5. Circumstances of the Violation

A. Respondent is a Federally recognized Indian Tribe with tribal headquarters in Poplar, Montana.

B. Respondent licensed a gaming operation, B & S Laundry, during all or part of 2003, 2004 and 2005.

C. Respondent licensed a gaming operation, Dad's Bar, during all or part of 2003, 2004 and 2005.

D. Respondent licensed a gaming operation, T.J.'s Quick Stop, during all or part of 2003, 2004 and 2005.

E. Respondent operated a gaming operation, Tribal Express Casino, during all or part of 2003, 2004 and 2005.

F. Respondent licensed a gaming operation, Silverwolf Casino, during all or part of 2003, 2004 and 2005.

G. The Tribes did not timely submit an audit report for B & S Laundry, Dad's Bar, T.J.'s Quick Stop, Tribal Express Casino or Silverwolf Casino for the fiscal year ending September 30, 2003. Audit reports were due to the NIGC on or before January 28, 2004, 120 days after the end of the Tribes' fiscal year. NIGC received audits for B & S Laundry, Dad's Bar, T.J.'s Quick Stop and Tribal Express Casino on July 6, 2004. NIGC received the audit for Silverwolf Casino on August 30, 2004.

H. The Tribes did not timely submit an audit report for B & S Laundry, Dad's Bar, T.J.'s Quick Stop or Tribal Express Casino for the fiscal year ending September 30, 2004. Audit reports were due to the NIGC on or before January 28, 2005, 120 days after the end of the Tribes' fiscal year. NIGC received audits for B & S Laundry, Dad's Bar, T.J.'s Quick Stop and Tribal Express Casino on May 26, 2005. NIGC received the audit for Silverwolf Casino on January 30, 2005.

I. The Tribes have not submitted an audit report for B & S Laundry, Dad's Bar, T.J.'s Quick Stop or Tribal Express Casino for the fiscal year ending September 30, 2005. Audit reports were due on or before January 28, 2006, 120 days after the end of the Tribes' fiscal year.

J. The Tribes did not timely submit an audit report for Silverwolf Casino for the fiscal year ending September 30, 2005. Audit reports were due to the NIGC on or before January 28, 2006, 120 days after the end of the Tribes' fiscal year. NIGC received the audit for Silverwolf Casino on July 14, 2006.

K. IGRA requires that tribes submit annual audits of each gaming facility. 25 U.S.C. § 2710(b)(2)(C). NIGC regulations require that a tribe cause to be conducted an annual independent audit of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and any management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each fiscal year. 25 C.F.R. §§ 571.12, 571.13. The Tribes are therefore in violation of these statutes and regulations, as well as Sections 101

and 411 of the Ordinance, for failure to timely submit annual independent audit reports.

7. Measures Required to Correct these Violations

There is no way to rectify the late submission of an annual audit. NIGC regulations require that audits be received within 120 days of the end of the fiscal year. 25 C.F.R. § 571.13.

8. Appeal

Within 30 (thirty) days after service of this notice of violation, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this notice of violation.

Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, whether a closed hearing is requested and why. Respondent may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

9. Fine--Submission of Information

The violation cited above may result in the assessment of a civil fine against Respondent in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondent may submit written information about the violation to the Chairman within 15 days after service of this notice of violation (or such longer period as the Chairman of the Commission may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 19th day of July, 2006.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

WENDY L. HELGEMO
Staff Attorney