National Indian Gaming Commission

# NOTICE OF VIOLATION

NOV-05-07

To: Rick Behrendsen (Agent for Service of Process)
Tribal Gaming Manager
Bad River Band of Lake Superior
Tribe of Chippewa Indians
Chief Blackbird Center
P.O. Box 39
Odanah, WI 54861
FAX: (715) 682-7149

Donald Moore, Chairman
Bad River Band of Lake Superior
Tribe of Chippewa Indians
Chief Blackbird Center
P.O. Box 39
Odanah, WI 54861
FAX: (715) 682-7111

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Bad River Band of Lake Superior Tribe of Chippewa Indians (Respondent or Tribe), located in Odanah, Wisconsin, is in violation of NIGC regulations for failure to submit timely quarterly fee statements and fee payments.

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 the Indian Gaming Regulatory Act (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. 25 U.S.C. § 2717(a) – IGRA mandates that the Commission shall establish a schedule of annual fees to be paid to the Commission annually by each Indian gaming operation that conducts class II or class III gaming, and that such fees shall be payable to the Commission on a quarterly basis. Failure to pay the scheduled fees may be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required for the operation of gaming.

B. 25 C.F.R. § 514.1(c) – NIGC regulations require that each gaming operation on Indian lands compute quarterly statements determining the amount of fees owed to the Commission.

C. 25 C.F.R. §§ 514.1(c)(2) – Quarterly statements are due on March 31, June 30, September 30, and December 31 of each calendar year the gaming operation is subject to the jurisdiction of the NIGC.

D. 25 C.F.R. §§ 514.1(c)(4) – Quarterly statements shall be transmitted to the Commission to arrive no later than the due date.

E. 25 C.F.R. § 514.1(c)(5) requires each gaming operation to remit to the Commission the fees due each quarter with the quarterly statement.

4. Role of Quarterly Fees and Quarterly Statements

The annual fees collected by the NIGC in order to fund the agency's work are based upon the quarterly worksheets submitted by Indian gaming operations. NIGC must set a fee rate sufficient to fund its annual budget, yet may not exceed the fee cap set by Congress. Thus, it is imperative that the NIGC receive worksheets from the gaming operations in a timely manner so that the NIGC is able to set accurate preliminary and final fee rates.

5. Circumstances of the Violation

A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Odanah, Wisconsin.

B. Respondent operated its gaming facility, Bad River Casino, during all or part of the following year: 2003 & 2004.

C. Respondent's quarterly statement and fee payment for the quarter ending December 31, 2004, for Bad River Casino were received by the NIGC on January 11, 2005.

D. Pursuant to NIGC regulations, the final quarterly statement and fee payment for 2004 were due on December 31, 2004. 25 C.F.R. § 514.1(c)(2). Quarterly statements and fee payments must arrive at the NIGC on or before the

quarter ending date. 25 C.F.R. § 514.1(c)(4). Respondent is therefore in violation of these regulations for failure to submit a timely quarterly statement and fee payment.

6. Measures Required to Correct these Violations

There is no way to rectify the late submission of the December 31, 2004 quarterly statement and fee payment. The regulations require that the quarterly statement and fee payment be transmitted to the Commission to arrive no later than the due date.

7. 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.

8. 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 16 of March, 2005.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

ANDREA LORD
Staff Attorney

## Certificate of Service

I certify that this Notice of Violation was sent by facsimile and mailed on this 17th day of March 2005 to:

Rick Behrendsen (Agent for Service of Process)
Tribal Gaming Manager
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Andrea

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Staff Attorney

**ATTACHMENTS NOT INCLUDED; AVAILABLE FROM OGC**