

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-06-10

To: Carl Venne, Chairman (Agent for Service of Process)
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Crow Agency, MT 59022
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1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Crow Tribe of Montana, also known as the Crow Tribal Council, Crow Indian Tribe, or Crow Nation (Respondent or Tribe), located in Crow Agency, Montana, is in violation of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations for failure to conduct background investigations, including federal criminal history checks, on key employees and primary management officials, failure to make eligibility determinations of suitability for employment in a gaming operation based on sufficient background investigations, and failure to notify the NIGC when it licenses key employees and primary management officials.

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. § 2710(b)(2)(F)(i) – IGRA requires that a tribe have in place an adequate system to ensure that background investigations are conducted on key employees and primary management officials of a gaming operation.
- B. 25 U.S.C. § 2710(b)(2)(F)(ii)(I) – IGRA requires that tribal gaming operations issue tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses.
- C. 25 U.S.C. § 2710(b)(2)(F)(ii)(II) – IGRA requires that a tribal gaming operation shall maintain a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment.
- D. 25 U.S.C. § 2710(b)(2)(F)(ii)(III) – IGRA requires that a tribal gaming operation notify the Commission of the background investigation results before issuing a license to key employees or primary management officials.
- E. 25 C.F.R. § 556.4 – NIGC regulations require that a tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.
- F. 25 C.F.R. § 522.2(h) and 25 C.F.R. § 556.4(a)(14) – NIGC regulations require that a tribe shall collect fingerprints from an applicant for a primary management official or key employee position and conduct a criminal history check including a check of the criminal history record information maintained by the FBI.
- G. 25 C.F.R. § 556.4(b) - NIGC regulations require that a tribe shall conduct an investigation sufficient to make a suitability determination regarding the licensing of the person pursuant to 25 C.F.R. § 558.2.
- H. 25 C.F.R. § 556.5(a) - NIGC regulations require that when a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed employment application.
- I. 25 C.F.R. § 556.5(b) – NIGC regulations require that, before issuing a license to an employee, a tribe shall forward to the Commission an investigative report on each background investigation including the following: (1) Steps taken in

conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The bases for those conclusions.

- J. 25 C.F.R. § 556.5(c) – NIGC regulations require that a tribe shall include a copy of the eligibility determination made by the tribe pursuant to 25 U.S.C. § 558.2 with the investigative report forwarded to the Commission.
- K. 25 C.F.R. § 558.2 – NIGC regulations require that an authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.
- L. 25 C.F.R. § 558.3(a)(1) NIGC regulations require that a tribal gaming operation forward the Commission a completed application for employment when a key employee or primary management official begins work at a tribal gaming operation.
- M. 25 C.F.R. § 558.3(a)(2) NIGC regulations require that a tribe conduct a background investigation pursuant to 25 C.F.R. Part 556 to determine the eligibility of key employee or primary management official for continued employment in a gaming operation.
- N. 25 C.F.R. § 558.3(b) NIGC regulations require that, upon completion of a background investigation and a determination of eligibility for employment in a gaming operation, a tribe shall forward a report to the Commission within sixty (60) days after an employee begins work or within sixty (60) days of the Chairman's approval of an ordinance under 25 C.F.R. Part 523.
- O. 25 C.F.R. § 558.3(b) NIGC regulations require that a gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.
- P. Section 13.A of the Crow Tribe Gaming Ordinance (CTGO), Resolution No. 92-26, approved by the NIGC Chairman on February 8, 1994, state that tribal employee licenses shall be valid for a period of one year.
- Q. Sections 14.A.1 and 14.D.6 of the CTGO requires that an application to receive a gaming license shall not be granted unless the Tribal Gaming Commission finds that the person is eligible and suitable for work in a gaming facility.

- R. Section 14.B.2.a of the CTGO requires that no primary management official or key employee shall be employed in a tribal gaming facility who has not applied for and received a tribal license.
- S. Section 14.C.4(13) requires the tribe to conduct FBI criminal history checks through processing by a law enforcement agency. The First Amendment to CTGO requires the tribe to submit fingerprints for to the NIGC for processing.
- T. Section 14.D.1 of the CTGO requires the Tribal Gaming Commission to conduct a background investigation which verifies all information on the employment application, and obtain a criminal history record of potential key employees and primary management officials.
- U. Section 14.D.2 of the CTGO requires the Tribal Gaming Commission to prepare a report listing: (1) Steps taken in conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The bases for those conclusions.
- V. Section 14.D.3 of the CTGO requires the Tribal Gaming Commission to review the background investigation report and make an eligibility determination of whether an applicant for a key employee or primary management official position is suitable for work in a gaming operation.
- W. Section 14.D.4 of the CTGO requires the Tribal Gaming Commission to notify the NIGC prior to issuing an employee license.
- X. Section 14.D.6 of the CTGO requires that the Tribal Gaming Commission shall notify the NIGC prior to issuing a gaming license, and shall forward to the NIGC the investigative report and a copy of the eligibility determination
- Y. Crow Tribe Description of Procedures Pursuant to C.F.R. § 522.2(b), (c), (f), (h) – Background Checks section requires the tribal police to perform criminal background checks and to report the criminal history background investigation to the NIGC. The Tribal Gaming Commission will perform a civil background check and verification, including a full credit report, financial institution records, and contact of personal references.
- Z. Crow Tribe Description of Procedures Pursuant to C.F.R. § 522.2(b), (c), (f), (h) – Tribal Licensing states that temporary licenses will be valid for only ninety (90) days, and that employee licenses shall be valid for a period of one year.

4. Role of Background Investigations and Employee Licensing

The background investigation and licensing process for Key Employees and Primary Management Officials is crucial to maintaining the integrity of Indian gaming. Submission of the completed

application, background investigation report, and licensing determination to the NIGC so that it may object to the issuance of a license is an integral part of this process as laid out in the IGRA. Gaming is a cash intensive business that requires a carefully screened employee base and careful implementation of internal controls. The background investigation and licensure process helps insure that employees who have access to cash and other gaming resources are worthy of positions of trust. Accordingly, under IGRA, the licensure of Key Employees and Primary Management Officials is a key tribal governmental responsibility.

5. Circumstances of the Violation

- A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Crow Agency, Montana.
- B. Respondent operated its gaming facility, Little Big Horn Casino (Casino), located in Crow Agency, Montana, during all or part of the following years: 2003, 2004, 2005, and 2006.
- C. The NIGC received zero (0) copies of completed employment applications for a key employee or primary management official for the Casino during all or part of 2003, 2004, 2005, and 2006 despite the hire of new employees during those years.
- D. The NIGC received zero (0) background investigation reports for the Casino detailing the steps taken in conducting a background investigation; results obtained; conclusions reached; and the bases for those conclusions during all or part of 2003, 2004, 2005, and 2006 despite the hire of new employees during those years.
- E. The NIGC received zero (0) fingerprint cards from the tribe for processing and dissemination of Federal Bureau of Information (FBI) criminal history information during all or part of 2003, 2004, 2005, and 2006 despite the hire of new employees during those years.
- F. The NIGC received zero (0) notices from the Tribe that it had licensed a new key employee or primary management official for the Casino during all or part of 2003, 2004, 2005, and 2006 despite the hire of new employees during those years.
- G. The Tribe failed to conduct background investigations of its employees sufficient to enable the Tribal Gaming Commission to make eligibility determinations of the suitability of the employees for work in a gaming operation.
- H. The Tribe is in violation of the IGRA, NIGC regulations, and the Tribal gaming ordinance as follows:

- i. NIGC regulations require that a tribal gaming operation forward the Commission a completed employment application when a key employee or primary management official begins work or is employed at a tribal gaming operation. 25 C.F.R. §§ 558.3(a)(1), 556.5(a). The Tribe has failed to submit completed employment applications for key employees or primary management officials
- ii. The IGRA and NIGC regulations require the Tribe to conduct background investigations of applicants for key employee or primary management official positions 25 U.S.C. § 2710(b)(2)(F)(i); 25 C.F.R. §§ 556.4, 558.3(a)(2). That background investigation shall be sufficient to enable the Tribe to make an eligibility determination of an individual's suitability to work in the Tribe's gaming operation. 25 C.F.R. § 556.4(b). The Tribe's gaming ordinance requires the Tribal Gaming Commission to conduct a background investigation which verifies all information on the employment application and to obtain a criminal history record for potential key employees or primary management officials. CTGO § 14.D.1. The Tribe has failed to conduct background investigations on its currently employed key employees or primary management officials, or, if it has begun the background investigations, has obtained only partial results insufficient to enable the Tribe to make eligibility determinations of suitability for work in a gaming facility.
- iii. NIGC regulations and the Tribe's gaming ordinance require the Tribe to create and forward to the NIGC background investigation reports including: (1) Steps taken in conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The bases for those conclusions. 25 C.F.R. §556.5(b); CTGO § 14.D.4. The report must be forwarded to the Commission within sixty (60) days after an employee begins work. 25 C.F.R. § 558.3(b). The Tribe has failed to prepare background investigation reports for its employees, and has further failed to forward such reports to the NIGC within sixty (60) days after an employee has begun work.
- iv. NIGC regulations and the Tribe's gaming ordinance require the Tribe to collect fingerprint cards from each applicant, and to process the cards for criminal history checks through the FBI fingerprint database. 25 C.F.R. § 556.4(a)(14); CTGO § 14.C.4(13). The Tribe is to send the fingerprint cards to the NIGC for processing. First Amendment to Crow Tribe Gaming Ordinance. The Tribe has failed to forward fingerprint cards to the NIGC for processing of FBI criminal history checks.
- v. The IGRA, NIGC regulations, and the Tribe's gaming ordinance require the Tribe to make an eligibility determination of a person's suitability to work in a gaming operation. 25 U.S.C. §2710(b)(2)(F)(ii)(II); 25 C.F.R. §§ 556.5(c), 558.2; CTGO § 14.D. The Tribe is to forward such eligibility determination to the NIGC when forwarding the background investigation report. 25 C.F.R. § 558.2; CTGO § 14.D.6. The Tribe has failed to make eligibility determinations of a person's suitability to work in a gaming operation and has failed to forward such eligibility determinations to the NIGC.

- vi. The IGRA and the Tribe's gaming ordinance require the Tribe to issue a Tribal license to each primary management official and key employee. 25 U.S.C. § 2710(b)(2)(F)(ii)(I); CTGO § 14.B.2.a. The Tribe may not issue a license until the Tribal gaming commission has review the applicant's background investigation. CTGO § 14.A.1. The Tribe must notify the Commission of the background investigation results before issuing a license to a key employee or primary management official. 25 U.S.C. § 2710(b)(2)(F)(ii)(III); CTGO § 14.D.4. Respondent has failed to review applicants' background investigation reports, including the results of federal criminal history checks, prior to issuing gaming licenses to key employees and primary management officials.
- vii. NIGC regulations require that a gaming operation shall not employ a primary management official or key employee who does not have a license after ninety (90) days. 25 C.F.R. § 558.3(b). The CTGO allows employees to work with a temporary license for no more than ninety (90) days, after which the employees must receive a tribal employee license valid for a period of one year. Crow Tribe Description of Procedures Pursuant to C.F.R. § 522.2(b), (c), (f), (h). Respondent has failed to notify the NIGC of any licenses issued to key employees or primary employment officials.

6. Measures Required to Correct these Violations

In order to correct the past and ongoing violations of the IGRA, NIGC Regulations, and the Tribe's gaming ordinance, Respondent must:

- A. Within 15 days, collect fingerprint cards from all current casino employees who hold key employee or primary management official positions at the Casino and send them to the NIGC with appropriate fees for processing;
- B. Within 30 days, perform complete background investigations and obtain FBI criminal history checks on all current primary management officials and key employees and create background investigation reports;
- C. Within 45 days, review the completed background investigation reports, containing FBI criminal history information, key employees or primary management officials and make eligibility determinations of suitability for employment in a gaming operation;
- D. Within 60 days, notify the NIGC whether a key employee or primary management official has been granted a Tribal gaming license and submit to the NIGC a copy of the completed employment application, background investigation report, and eligibility determination;
- E. Not employ persons as key employees or primary management officials whose ninety (90) day temporary licenses have expired; and
- F. Notify the NIGC in 15 day intervals of the measures taken to correct this violation. The required information must be submitted to the Chairman, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

7. Appeal

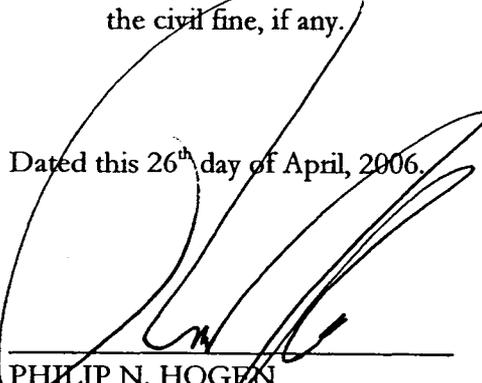
Within 30 (thirty) days after service of this Notice of Violation, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. 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. Temporary Closure Order or Fine--Submission of Information

The violation cited above may result in a temporary closure order or 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 26th day of April, 2006.



PHILIP N. HOGEN
Chairman
National Indian Gaming Commission



ANDREA LORD
Staff Attorney