National Indian Gaming Commission

NOTICE OF VIOLATION

NOV- 06 -17

To: Troy Little Axe, Chairman (Agent for Service of Process)
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1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Kaw Nation of Oklahoma (hereinafter referred to as Respondent or Tribe), located in Kaw City, Oklahoma, is in violation of the Indian Gaming Regulatory Act (IGRA), NIGC regulations and its gaming ordinance for failure to submit an Agreed Upon Procedures (AUP) Report prepared by independent Certified Public Accountants verifying compliance with 25 C.F.R. § 542 Minimum Internal Control Standards (MICS).

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,

regulation or resolution approved by the Chairman. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3.

3. Applicable Federal and Tribal Laws

A. IGRA provides that the NIGC shall monitor Class II gaming conducted on Indian lands on a continuing basis. 25 U.S.C. § 2706(b)(1).

B. IGRA provides that the NIGC may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of Class II gaming conducted on Indian lands and other matters necessary to carry out the duties of the NIGC under this chapter. 25 U.S.C. § 2706(b)(4).

C. IGRA provides that the NIGC shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter. 25 U.S.C. § 2706(b)(10).

D. NIGC regulations require that each Class II Tribal gaming authority, in accordance with the Tribal gaming ordinance, establish and implement tribal internal control standards (TICS) that equal or exceed the level of control set forth in the NIGC MICS. 25 C.F.R. § 542.3(c).

E. NIGC regulations require that each Class II gaming operation develop and implement an internal control system that, at a minimum, complies with TICS. 25 C.F.R. § 542.3(d).

F. NIGC regulations require that a tribe cause an independent certified public accountant (CPA) to perform Agreed Upon Procedures (AUP) to verify that the gaming operation is in compliance with the NIGC MICS and submit two copies of the report to the NIGC within 120 days of the gaming operation's fiscal year end. 25 C.F.R. § 542.3(f).

G. The Kaw Nation of Oklahoma Gaming Ordinance (Ordinance) was enacted to set the terms for Class II gaming on lands over which the Tribe exercises jurisdiction pursuant to applicable federal law. *Kaw Nation of Oklahoma Gaming Ordinance*, Section 1-02 and Section 1-11.

H. The Ordinance authorizes Class II gaming as defined in IGRA and by regulations promulgated by the NIGC. *Kaw Nation of Oklahoma Gaming Ordinance,* Section 1-04.

I. The Ordinance provides that the Tribe has sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by it. *Kaw Nation of Oklahoma Gaming Ordinance*, Section 1-07.

J. The Ordinance established the Kaw Nation Tribal Gaming Commission (Gaming Commission) to regulate gaming on Tribal land. *Kaw Nation of Oklahoma Gaming Ordinance*, Section 2-01.

K. The Ordinance provides that the Gaming Commission is fully empowered to comply with all regulations promulgated by the NIGC, including reporting requirements relating to ordinances. *Kaw Nation of Oklahoma Gaming Ordinance*, Section 9-01.

L. The Ordinance provides that the Gaming Commission may promulgate rules and regulations governing the conduct of all games authorized by IGRA, including rules governing the equipment (chips, cards, tiles, etc.) used in such games. *Kaw Nation of Oklahoma Gaming Ordinance*, Section 2-07.

M. The Ordinance provides that the Gaming Commission may promulgate rules governing the control of internal fiscal affairs of gaming operations. *Kaw Nation of Oklahoma Gaming Ordinance*, Section 2-08.

N. The Kaw Nation Gaming Commission has established and implemented tribal internal control standards (TICS) equaling or exceeding those set forth in 25 C.F.R. § 542. *Kaw Nation Gaming Commission Resolution No. 04-02.*

4. Role of the AUP Report

Submission of the AUP 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 CPA testing and render an opinion on the AUP provides a certain level of assurance as to the security of tribal gaming revenues. Since gaming transactions are based on cash or cash equivalents, gaming operations are generally considered to possess a high level of inherent risk. The AUP 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 internal control standards associated with gaming and gaming related transactions and activities.

5. Circumstances of the Violation

A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Kaw City, Oklahoma.

B. Respondent operated its gaming facility, Kaw Nation South Wind Casino, during all or part of fiscal year 2005.

C. Respondent's gaming facility, Kaw Nation South Wind Casino, is predominantly a Class II facility, including during fiscal year 2005.

D. On December 5, 2006, the NIGC received an AUP report for the Kaw Nation South Wind Casino for the fiscal year ending December 31, 2005. The AUP report was due to the NIGC on May 1, 2006, within 120 days of the gaming operation's fiscal year end.

E. NIGC regulations require that tribes submit AUP reports for each gaming facility within 120 days after the gaming operation's fiscal year end. 25 C.F.R. § 542.3(f). Respondent is therefore in violation of this regulation, as well as Section 9-01 of its Ordinance, for failure timely to submit an AUP report.

6. Measures Required to Correct this Violation

Late submission of an AUP report cannot be corrected. NIGC regulations require that AUP reports be received within 120 days of the gaming operation's fiscal year end. 25 C.F.R. § 542.3(f).

7. Appeal

Within 30 (thirty) days after service of this NOV, Respondent may appeal to the full Commission under 25 C.F.R. § 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 NOV.

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 NOV (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 5th day of January, 2007.

Philip N. Hogen
Chairman
National Indian Gaming Commission

Carrie Newton Lyons
Staff Attorney