National Indian Gaming Commission

NOTICE OF VIOLATIONS

NOV-06-11

TO: Puyallup Tribe of Indians
Attn: Herman Dillon, Sr.
Chairman of the Puyallup Tribal Council
(Agent for Service of Process)
1850 Alexander Ave.
Tacoma, WA 98421

1. Notice of Violations

The Chairman of the National Indian Gaming Commission ("NIGC") hereby gives notice that the Puyallup Tribe of Indians ("the Tribe" or "Respondent"), located in Tacoma, Washington, has violated, and is in violation of, the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.*; and the approved Puyallup Tribal Gaming Ordinance, Res. No. 060900. The specific violations are as follows:

Count 1: The Tribe has misallocated, and is misallocating, net revenues by making monthly per capita payments to all tribal members in excess of the amounts allowed under the Tribe's approved Revenue Allocation Plan ("RAP"), in violation of IGRA, 25 U.S.C. § 2710(b)(3)(A)-(B), and the Puyallup Tribal Gaming Ordinance, Section 3.02;

Count 2: The Tribe has misallocated, and is misallocating, net revenues by making per capita payments without having established individual trust accounts to manage deferred per capita payments for minors and legal incompetents as required by the RAP, in violation of IGRA, 25 U.S.C. § 2710(b)(3)(C), and the Puyallup Tribal Gaming Ordinance, Section 3.02;

Count 3: The Tribe has misallocated, and is misallocating, net revenues by making direct monthly disbursements to the parents/guardians of minors and legal incompetents in excess of the $300 allowable cap for such payments established in the RAP, in violation of IGRA, 25 U.S.C. § 2710(b)(3)(C), and the Puyallup Tribal Gaming Ordinance, Section 3.02.

2. Authority

Under IGRA and the NIGC's regulations, the Chairman of the NIGC ("the 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 U.S.C. § 2713(a)(3); 25 C.F.R. § 573.3.

3. Circumstances of the Violations in Count 1

A. Respondent is a federally recognized Indian tribe with tribal headquarters in Tacoma, Washington.

B. The Tribe currently owns two gaming operations: the Emerald Queen Hotel & Casino in Tacoma, Washington, adjacent to Interstate Highway 5 ("EQC at I-5"), which commenced operations in July 2002 and continues to operate to the present; and the Emerald Queen Casino – Best Western Hotel in Fife, Washington ("EQC at Fife"), which commenced operations in December 2004 and continues to operate to the present. The Tribe previously owned and operated the Emerald Queen Casino Riverboat in Tacoma, Washington, which commenced operations in December 1996 and closed in December 2004. The Tribe currently licenses and collects a percentage of gaming revenue from an individually-owned gaming operation known as B.J.'s Bingo, located in Tacoma, Washington, which commenced operations in 1980 and continues to operate to the present.

C. In November 1997, the Tribe adopted its initial Class II/III Gaming Revenue Allocation Code, Ordinance No. 241197. This initial Gaming Revenue Allocation Code was approved by the Department of the Interior on April 10, 1998.

D. In July 2002, the Tribe repealed its initial Class II/III Gaming Revenue Allocation Code, and replaced it with the current Gaming Revenue Allocation Plan ("RAP"), to "govern the disbursements and payments of all net revenues obtained from gaming activities licensed or operated by the Tribe." Res. No. 090702. The current RAP was approved by the Department of the Interior on April 28, 2003.

E. The Tribe's current, approved RAP allows the Tribe to allocate its net gaming revenue as follows:

27.6% to Tribal Government Operations and Programs;
35.4% to General Welfare of the Tribe and its Members;
1.6% to Promote Tribal Economic Development; and
35.4 % for Monthly Per Capita Payments to Tribal Members.

F. Beginning in or about May 2002, the Tribe began making per capita payments from its net gaming revenue of $2,000/month to each tribal member. Such per capita payments have continued every month since on or about May 2002, including every month during which the current RAP has been effective, continuing to the present.

G. Since at least fiscal year 2002, the Tribe periodically distributed a supplemental per capita payment to its tribal members in addition to the $2,000/member monthly payment. Such supplemental per capita payments have included an annual Spring Bonus of $500/member, increased in fiscal year 2005 to $1,000/member; an annual Thanksgiving Bonus of $30/adult member; and an annual Christmas Bonus of $500/member.

H. During fiscal year 2003, the Tribe made per capita payments of $77,577,522. The Tribe's net gaming revenue, including gaming revenue received from B.J.'s Bingo, was $92,644,827 for fiscal year 2003. Therefore, during fiscal year 2003, the Tribe made per capita payments totaling 83.7% of the Tribe's net gaming revenue.

I. During fiscal year 2004, the Tribe made per capita payments of $80,605,229. The Tribe's net gaming revenue, including gaming revenue received from B.J.'s Bingo, was $108,228,719 for fiscal year 2004. Therefore, during fiscal year 2004, the Tribe made per capita payments totaling 74.5% of the Tribe's net gaming revenue.

J. During fiscal year 2005, the Tribe made per capita payments of $86,526,854. The Tribe's net gaming revenue, including gaming revenue received from B.J.'s Bingo, was $134,045,095 for fiscal year 2005. Therefore, during fiscal year 2005, the Tribe made per capita payments totaling 64.6% of the Tribe's net gaming revenue.

K. During fiscal years 2003-2005, the Puyallup Tribal Council authorized each monthly distribution by Council Resolution. Each applicable Council Resolution during fiscal years 2003-2005, together with its supporting documentation from tribal staff, identified the monthly distributions as a per capita payment, not as a distribution made—in whole or in part—as a general welfare payment.

L. During fiscal years 2003-2005, the Puyallup Tribal Council authorized each monthly distribution by Council Resolution. Each applicable Council Resolution during fiscal years 2003-2005, together with its supporting documentation from tribal staff, identified the source of funds for the monthly distributions as the Emerald Queen Casino or from an account funded by the Tribe's casino operation(s), not from any non-gaming funds.

M. During fiscal years 2003-2005, the Tribe's accounting records categorized the expenses made to fund the monthly distributions as "per capita" expenses, not as general welfare expenses.

N. During fiscal years 2003-2005, the monthly distributions were made to every tribal member, regardless of need or circumstance, and therefore the payments did not qualify—in whole or in part—as general welfare payments. For example, the $2,000/member monthly distributions were made to every member of the Puyallup Tribal Council, each of whom received a considerably high salary from the Tribe, thus making it highly unlikely that such individuals would have qualified for any bona fide welfare program.

O. In contrast to the monthly distributions, the Tribe operates a number of bona fide welfare programs which provide welfare payments and/or provide welfare services to tribal members with identifiable needs or who are in particular circumstances that justify welfare assistance. The monthly distributions are not associated with any of these bona fide welfare programs.

4. Circumstances of the Violations in Count 2

A. The allegations contained in paragraph 3 above are incorporated herein.

B. The Tribe's current, approved RAP requires that: "[a] disbursement of net revenues made to minors and legal incompetents shall be deposited in individual trust accounts established by the Tribe . . . ."

C. During fiscal years 2003-2005, the Tribe disbursed net revenues to minors and legal incompetents in part by making "deferred" payments on behalf of each minor and legal incompetent into a single holding account owned and controlled by the Tribe, not into individual trust accounts as required by the RAP.

D. The Tribe is continuing to deposit monthly deferred per capita payments for minors and legal incompetents into a single holding account, rather than into individual trust accounts, during the current fiscal year.

5. Circumstances of the Violations in Count 3

A. The allegations contained in paragraphs 3-4 above are incorporated herein.

B. The Tribe's current, approved RAP states that: "a maximum of Three-Hundred Dollars ($300.00) of each monthly per capita payment will be disbursed to the parent(s) [of minors] or legal guardian(s) [of legal incompetents] to be used for the day-to-day health, education, and welfare of the minor or legal incompetent."

C. From on or about September 2004 through the present, the Tribe has disbursed $685 (less a federal tax withholding) of the $2,000/month per capita payments for minors and legal incompetents directly to the parents/guardians of the minors or legal incompetents.

6. Federal and Tribal Laws that Have Been, or Are Being, Violated

A. The Tribe's approved gaming ordinance restricts the use of net gaming revenues to the following five purposes:

a) to fund tribal government operations or programs;
b) to provide for the general welfare of the Tribe and its members;
c) to promote tribal economic development;
d) to donate to charitable organizations; or
e) to help fund operations of local government agencies.

Puyallup Tribe of Indians Tribal Gaming Ordinance, Ordinance No. 060900, Section 3.02.

B. The Tribe's approved gaming ordinance states that if the Tribe elects to make per capita payments to tribal members from the net revenues received from gaming activity, it shall authorize such payments only upon approval of a plan submitted to

the Secretary of the Interior under 25 U.S.C. Section 2710(b)(3). *Puyallup Tribe of Indians Tribal Gaming Ordinance*, Ordinance No. 060900, Section 3.02.

C. IGRA states that an Indian tribe may use net revenues to make per capita payments to members of the Indian tribe only in accordance with a RAP approved by the Secretary of the Department of the Interior. 25 U.S.C. § 2710(b)(3)(A)-(B).

D. IGRA states that an Indian tribe may use net revenues to make per capita payments to members of the Indian tribe only if the per capita payments for minors and other legally incompetent persons are protected and preserved and the per capita payments are disbursed to the parents or legal guardians of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person under a RAP approved by the Secretary of the Department of the Interior. 25 U.S.C. § 2710(b)(3)(C).

7. Measures Required to Correct the Violations and Information Regarding Civil Fines

A. Count 1: The Tribe must immediately cease and desist making monthly per capita payments that are in excess of 35.4% of the Tribe's net gaming revenues. Within 15 days after service of this NOV, the Tribe is requested to provide a written plan to the NIGC for compliance with this requirement, including information regarding how the Tribe is achieving immediate compliance, and how the Tribe plans to maintain future compliance. The Chairman shall consider the adequacy of such compliance measures, along with any other information about this violation that the Tribe may wish to submit, in determining whether to issue a civil fine for Count 1, and if so, the amount of such civil fine. *See* 25 C.F.R. § 575.5(a).

B. Count 2: The Tribe must timely establish individual trust accounts to manage deferred per capita payments on behalf of all tribal minors and legal incompetents. If individual trust accounts are not timely established for all tribal minors and legal incompetents, the Tribe must cease and desist making per capita payments to any tribal member until an individual trust account is established for each tribal minor or legal incompetent. Within 15 days after service of this NOV, the Tribe is requested to provide a written plan to the NIGC for compliance with this requirement, including deadlines for the timely establishment of the individual trust accounts. The Chairman shall consider the adequacy of such compliance plan, along with any other information about this violation that the Tribe may wish to submit, in determining whether to issue a civil fine for Count 2, and if so, the amount of such civil fine. *See* 25 C.F.R. § 575.5(a).

C. Count 3: The Tribe must immediately cease and desist making monthly disbursements to the parent(s) or legal guardian(s) of tribal minors and legal incompetents in excess of $300. Within 15 days after service of this NOV, the Tribe is requested to provide a written plan to the NIGC for compliance with this requirement, including information regarding how the Tribe is achieving immediate compliance, and how the Tribe plans to maintain future compliance. The Chairman

shall consider the adequacy of such compliance plan, along with any other information about this violation that the Tribe may wish to submit, in determining whether to issue a civil fine for Count 3, and if so, the amount of such civil fine. *See* 25 C.F.R. § 575.5(a).

8. Notice of Rights of Appeal

A. Within thirty (30) days after service of this NOV, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, a 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.

B. 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 a 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.

Dated this 12th day of June, 2006.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

JEFFREY C. NELSON
Staff Attorney

Certificate of Service

I certify that this **Notice of Violations** was sent by facsimile and certified mail, return receipt requested, this 12th day of June, 2006 to:

Puyallup Tribe of Indians
Attn: Herman Dillon, Sr.
Chairman of the Puyallup Tribal Council
(Agent for Service of Process)
1850 Alexander Ave.
Tacoma, WA 98421
Fax: (253) 680-5996

Shakira Ferguson

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