NATIONAL INDIAN GAMING COMMISSION

NOTICE OF VIOLATION

Ref. No.: NOV-03-01

VIA FEDERAL EXPRESS AND CERTIFIED MAIL

To: Honorable Denny Guiterrez, Governor (And Agent for Service of Process)
Pueblo of Santa Clara
P.O. Box 580
Espanola, NM 87532

Respondent

1. **The Chairman of the National Indian Gaming Commission, hereby notifies you, the Santa Clara Pueblo (hereinafter referred to as Respondent), that you are in violation of the Indian Gaming Regulatory Act, National Indian Gaming Commission Regulations, and your tribal gaming ordinance.**

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

a. Applicable federal and tribal laws.

i. The IGRA requires a tribe to conduct background investigations on primary management officials and key employees and to notify the NIGC of the results of such background checks before the issuance of any gaming licenses. 25 U.S.C. §2710(b)(2)(F).

ii. NIGC regulations require a tribe to forward to the NIGC employment applications, an investigative report on each background investigation conducted and a copy of the eligibility determination. 25 C.F.R. §§ 556.5. and 558.3.

iii. Specifically, 25 C.F.R. § 558.3 requires that upon completion of a background investigation and a determination of eligibility for employment, a tribe shall forward the investigative report to the NIGC within 60 days after an employee begins work.[1] The report shall include a copy of the eligibility determination. 25 C.F.R. § 556.5(c).

iv. The NIGC has 30 days from receipt of the materials to notify the tribe of any objection it has to the licensing of any individual. If the NIGC has an objection, the tribe must take the objection into account when deciding whether to license an individual. 25 C.F.R. § 558.4(a) and (B).

v. Respondent's Tribal Gaming Code (Ordinance) at Section 65.7(B)(3) requires Respondent to submit the complete application, investigative report and eligibility determination to the NIGC. (Exhibit 1)

3. Circumstances of the violation.

a. Respondent has conducted gaming activities at Big Rock Casino in Espanola, New Mexico since June 15, 2001.

b. The NIGC often utilizes a device called a Potential Notice of Violation (hereinafter referred to as "PNOV") to advise a tribe of an issue of non-compliance. The PNOV is an attempt to cure the non-compliance so as to avoid the issuance of a more serious NOV.

c. During a training session conducted in May 2001, prior to the opening of Respondent's gaming operation, NIGC Region Chief Ken Billingsley instructed Respondent's Tribal Gaming Commission (TGC) in the requirements for background investigations and submission of investigative materials to the NIGC. (Exhibit 2)

d. On October 24, 2001, the NIGC Phoenix office issued a PNOV to Respondent advising of its failure to comply with NIGC regulations regarding the submission of employee applications, investigative reports and eligibility determinations. (Exhibit 3) On October 24, 2001, the NIGC Phoenix office issued a PNOV to Respondent advising of its failure to comply with NIGC regulations regarding the submission of employee applications, investigative reports and eligibility determinations. (Exhibit 3) This PNOV was issued based on a visit on the same date by NIGC Field Investigator Lance Vallo who reviewed the Pueblos' Gaming Commission records and observed that 24 licenses were incomplete.

[1] NIGC regulations provide that the employee application shall be forwarded to the NIGC when the employee begins work. The NIGC allows tribes to submit the application together with the investigative report and eligibility determination within 60 days of employment.

e. A site visit by NIGC Field Investigator Ronald Ray to Respondent's TGC on November 13, 2002 (Exhibit 5), revealed a list of 34 key employees and primary management officials whose investigative materials had not been submitted to the NIGC. (Exhibit 6) Thirty-two of these employees had been employed since June 2001, one since October 2001, and one since January 2002.

f. On December 10, 2002, Region Chief Ken Billingsley and Ronald Ray met with the Santa Clara Tribal Council to discuss their concerns regarding the Pueblo's non-compliance. They told the Tribal Council to ensure that all employee applications, investigative reports and eligibility determinations were submitted to the regional office by January 6, 2003. That date came and passed without any submissions to the Regional office. (Exhibits 2 and 5)

g. On January 16, 2003, based on a current list of casino employees from which key employees and primary management officials were identified (Exhibit 7) the NIGC Region III office issued 5 PNOVs to Respondent advising that the NIGC had not received documentation on a total of 24 key employees and primary management officials within the time period required by NIGC regulations.[2] (Exhibit 8) Some of these employees have been working at Respondent's gaming operation since May 2001.

h. Despite these repeated efforts by the NIGC Region III staff to bring Respondent into compliance with the law, Respondent has persisted for over a year and a half in its failure to provide timely the NIGC with employee applications, investigative reports, and eligibility determinations.

i. The Chairman has determined that the Respondent has failed to forward complete applications, investigative reports and eligibility determinations timely to the NIGC as required. Because of this failure the Respondent is in violation of IGRA, NIGC regulations and its Ordinance.

4. Measures required to correct this violation. The NIGC must receive, within **10 days** of the date of this NOV, completed applications, investigative reports, and eligibility determinations for all current employees who have been employed by Respondent's gaming operation for 60 days or more. In addition, because this is an ongoing violation, Respondent must, in the future, submit completed applications, investigative reports and eligibility determinations for all employees no later than 60 days from the date of employment.

5. Appeal

a. Within 30 (thirty) 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.

[2] Of these 24 employees, 19 are in addition to the 34 employees discussed in paragraph (e), above. Five are inadvertent duplicate names that first appeared on the list of 34 employees.

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 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.

6. Fine – Submission of Information.

The violation cited above may also result in the assessment of civil fines 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 4th day of March, 2003.

Philip N. Hogen
Chairman
National Indian Gaming Commission

Maria Getoff
Staff Attorney