National Indian Gaming Commission

NOTICE OF VIOLATION

Ref. No.: NOV-02-04

VIA CERTIFIED MAIL

To: Clerk, Seneca Nation of Indians
1490 Route 438
Irving, New York 14081

Respondent

1. **The Chairman of the National Indian Gaming Commission, hereby notifies you, the Seneca Nation of Indians (hereinafter referred to as Respondent), that you are in violation of the Indian Gaming Regulatory Act.**

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.

3. Applicable federal and tribal laws.

a. IGRA divides Indian gaming into three categories: Class I, Class II, and Class III. Class I games include "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6). Class II includes "the game of chance commonly known as bingo. . . and other games similar to bingo . . ." 25 U.S.C. § 2703(7). Class II gaming includes pull-tabs, but only when offered in the same location as bingo. 25 U.S.C. § 2703(7)(A)(III).

b. Class III is defined as "all forms of gaming that is not Class I or Class II gaming." 25 U.S.C. § 2703 (8). Class III gaming therefore includes most forms of casino style gaming and lotteries. Under its broad definition, Class III also necessarily includes the play of pull-tabs, if pull-tabs are being played in the same location as bingo. 25 C.F.R. § 502.3. Class III gaming is allowed only if a tribe and a state have entered into a compact authorizing such play. 25 U.S.C. § 2710(a)(2), (b). The law as to pull-tabs can be summarized as follows: pull-tabs may be offered as a Class II game if offered in the

same location as bingo; pull-tabs may not be offered in any other location unless authorized by a tribal-state compact.

c. Under IGRA, a license issued by the tribe is required for each place, facility or location on Indian land where a tribe elects to allow Class II or Class III gaming. 25 U.S.C. § 2710(b)(1)(B) and (d)(1)(A)(ii). The Seneca Nation's own gaming law also contains the licensure requirement. Seneca Nation Gaming Law § 7.1(b). The facility licensure requirement reflects the fact that, under IGRA, Indian tribes bear the primary responsibility for regulating Indian gaming. The licensure requirement insures that the appropriate Indian tribe has clearly recognized the facility and has undertaken its proper regulatory role, including the important responsibility of working to protect the integrity of Indian gaming. Absent a license issued by an appropriate tribal regulatory authority, the Commission lacks any assurance that a tribe is properly regulating a gaming facility.

4. Circumstances of the violation.

a. On April 10, 2002, a representative of the NIGC visited the following facilities:

Seneca One-Stop (on the Oil Spring Reservation)
5402 West Shore Road
Cuba, NY 14727

Seneca One-Stop (on the Cattaraugus Reservation)
11150 Rts 5 & 20
Irving, NY 14081

b. Both operations are located on Seneca Nation Indian lands and are tribally owned operations. The NIGC representative observed that pull-tabs were being offered for play in both facilities. The NIGC representative purchased pull-tabs from the pull-tab dispenser and opened the pull-tabs, essentially "playing" the game of pull-tabs. Bingo was not being offered for play at either of the operations. Because Respondent does not have a compact with the State of New York that authorizes Class III gaming at Respondent's gaming facility, Respondent is operating such games in the absence of a tribal-state compact in violation of 25 U.S.C. § 2710(d) and 25 C.F.R. § 573.6(a)(11).

c. Despite the requirement in IGRA and the tribal law that each facility be licensed, no facility license was visible.

d. The NIGC has sought compliance from Respondent on several occasions through telephone conversations with Respondent's representatives and correspondence with the Tribe dated January 8, 2002, and January 22, 2002. Despite the NIGC's efforts to obtain compliance through means less onerous than a formal enforcement action, Respondent has failed to cease illegal play of pull-tabs.

5. Measures required to correct this violation.

To correct the violations, Respondent must cease all unlicensed non-compacted Class III gaming at the Seneca One Stops listed above.

6. Appeal

a. 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, 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 Notice of Violation.

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.

7. 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 pay. 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 30th day of May, 2002.

Montie R. Deer
Chairman
National Indian Gaming Commission

Danna R. Jackson
Staff Attorney