National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-06-16

To: Glen Edwards, Chairman (Agent for Service of Process)
Swinomish Gaming Commission
12885 Casino Drive
Anacortes, WA 98221
Fax: (360) 299-1618

Brian Cladoosby, Chairman
Swinomish Indians of Swinomish Reservation, Washington
P.O. Box 817
LaConner, WA 98257
Fax: (360) 466-5309

James Jannetta
Swinomish Tribal Attorney
P.O. Box 817
LaConner, WA 98257
Fax: (360) 466-5309

1. The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Swinomish Indians of the Swinomish Reservation (hereafter referred to as "Respondent"), located in Anacortes, Washington, is in violation of the Indian Gaming Regulatory Act (IGRA), NIGC regulations and its Gaming Ordinance for failure to submit annual audits and quarterly statements of gross assessable revenue.

2. Authority.

   Under regulations of the National Indian Gaming Commission, 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 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)(C) – An annual audit of each gaming operation is required and a copy of the results of the annual audit must be submitted to the NIGC.

   B. 25 C.F.R. §§ 571.12 and 571.13 – NIGC regulations require that a tribe cause to be conducted annual independent audits of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and any management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each fiscal year.

   C. Section 16-02.040 of the Swinomish Indians of the Swinomish Reservation's Gaming Ordinance – In compliance with 25 U.S.C. § 2710(b)(2)(C)and (D) and Appendix A, Section 5 of the Tribal-State Compact, all gaming activities shall be subject to an audit by independent certified public accountants, not less than annually, and copies of the annual audit shall be provided to the NIGC. All contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to Class II or Class III gaming shall be subject to such audits.

4. Role of Independent Audit Report.

   Submission of the annual independent audit 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 an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principals provides a certain level of assurance as to the security of tribal gaming revenues. The audit 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 books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

5. The circumstances of the violation are:

   A. Respondent is a federally recognized Indian Tribe with tribal headquarters in LaConner, Washington.

B. Respondent continuously operated its gaming facility, Swinomish Northern Lights Casino, during all or part of fiscal year 2005.

C. To date the NIGC has not received audit reports or management letters for Swinomish Northern Lights Casino for fiscal year 2005.

6. IGRA requires that tribes submit annual audits of each gaming facility. 25 U.S.C. 2710(b)(2)(C). NIGC regulations require that a tribe cause to be conducted annual independent audits of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and any management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each fiscal year. 25 C.F.R. §§ 571.12-13. Respondent is therefore in violation of IGRA, 25 U.S.C. 2710(b)(2)(C), NIGC regulations, 25 C.F.R. §§ 571.12-13, and Respondent's Gaming Ordinance at section 16-02.040 for failure to submit an annual independent audit report to the NIGC. Respondent's fiscal year ended on December 25, 2005. Therefore, Respondent's annual audit was due on April 24, 2006.

7. On April 26, 2006, the Tribe requested an extension for filing of the audit due to unforeseen circumstances. The NIGC advised the Tribe that it does not grant extensions for the preparation and submission of audits.

8. To correct this continuing violation, Respondent shall submit an independent audit report and management letter for 2005 within 15 days of receipt of this letter.

9. Appeal.

   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, 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.

10. 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 8 th day of August, 2006

Philip N. Hogen
Chairman
National Indian Gaming Commission

Maria Getoff
Staff Attorney

CERTIFICATE OF SERVICE

I certify that the Notice of Violation: NOV-06-16 for the Swinomish Indians of Swinomish Reservation has been sent by facsimile and U.S. mail this 8 th day of August, 2006, to:

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Shakira Ferguson

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