

# National Indian Gaming Commission

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## NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

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Ref: CFA-00-6

To: Jerry G. Haney, Principal Chief  
Seminole Nation of Oklahoma  
P.O. Box 1498 (½ mile E of junction 59 & 270)  
Wewoka, OK 74884

1. Under the authority of 25 U.S.C. § 2713 (a), of the Indian Gaming Regulatory Act (IGRA), and the regulations of the National Indian Gaming Commission (NIGC) at C.F.R. § 575.), the Chairman of the NIGC hereby provides notice of his intent to assess a civil fine against the Seminole Nation of Oklahoma, Wewoka, Oklahoma (Respondent), for violations of 25 C.F.R. §§ 502.4 and 573.6 (a)(11), as set forth in detail in Notice of Violation No. NOV-00-6 and Closure Order No. CO-00-6, issued on May 30, 2000, a copy of which is attached hereto (Exhibit 1). NOV-00-6 and CO-00-6 required the immediate cessation of play of "Red Hot Respin" and "other such gambling devices" at all gaming facilities operated by the Seminole Nation of Oklahoma.
2. Pursuant to 25 U.S.C. § 2713 (a) and 25 C.F.R. § 575.4, the Chairman of the NIGC may assess a civil fine, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4 (a)(2).
3. The NIGC regulations at 25 C.F.R. § 575.5 provide that, within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine. Respondent did not submit any information under 25 C.F.R. § 575.5 about the violation.
4. The Chairman has considered the factors set forth in 25 C.F.R. § 575.4, as follows:
  - i. Economic benefit of noncompliance. Respondent has obtained an economic benefit from its continued operation of Class III gambling devices, in the absence of a compact with the State of Oklahoma. The NIGC requested detailed financial data about the number of Class III gambling devices, the total number of all of Respondent's devices, the revenue generated by each type of machine, and the date the Class III gambling devices were first offered for play. Respondent did

not comply fully with this request. While Respondent indicated that its 32 "Red Hot Respin" machines generated well in excess of \$198,000, it did not indicate the date that Class III gambling devices were first offered for play nor did it provide the information requested about revenue generated by each type of machine.

- ii. Seriousness of the violations. Respondent offered for play in its gaming facility several Class III gambling devices that may be operated within the State of Oklahoma only under a tribal-state compact. Respondent and the State of Oklahoma, however, have not entered a compact allowing the operation of these Class III gambling devices. Offering Class III gambling devices in the absence of a tribal-state compact is a serious violation because it undermines the delicate balance between tribal sovereignty and state public policy struck by Congress in the Indian Gaming Regulatory Act. Moreover, Respondent's actions give Respondent an unfair competitive advantage over other tribes that have elected not to operate illegal gambling devices in their facilities. Accordingly, the violations are serious.
- iii. History of violations. The Chairman has issued two prior Notices of Violation to Respondent: one similar to the present one, for operating Class III gambling devices in the absence of a tribal-state compact, and the other for failure to conduct background investigations and submit required documents to the NIGC. The Chairman has issued the following Notices of Violation, Closure Orders, and Civil Fines to Respondent:
  - a. Notice of Violation No. NOV-98-01 and Order of Temporary Closure No. CO-98-01, January 13, 1998, for operating "Reels of Skill," a Class III gambling device, in the absence of a tribal-state compact (Exhibit 2). The Chairman agreed to defer the closure order to allow Respondent to continue to operate the game until the issuance of a final Commission decision. Respondent appealed (Exhibit 3). Following an administrative hearing, the Presiding Official issued a decision on June 29, 1998 (Exhibit 4), finding that the Chairman appropriately issued NOV-98-01 and CO-98-01 and recommending that the Commission uphold them. The Commission subsequently issued a Notice of Decision and Order on July 24, 1998, finding that "Reels of Skill" was a Class III gambling device and that its operation by Respondent was a violation of IGRA (Exhibit 5).
  - b. Proposed Civil Fine Assessment No. CFA-98-01, February 12, 1998, in the amount of \$30,000 (Exhibit 6). The Chairman and Respondent agreed to stay enforcement of the civil fine pending the outcome of the decision in NOV-98-01 (Exhibit 7). Following issuance of the Commission's final decision in NOV-98-01 (see "a" above), the Chairman and Respondent entered into an Agreement on November 30, 1998, whereby Respondent

agreed to pay a civil fine in the reduced amount of \$7500 (Exhibit 8), which was paid.

- c. Notice of Violation No. NOV-99-03, March 2, 1999, for failure to conduct background investigations on primary management officials and key employees and to submit employee applications, investigative reports, and suitability determinations to the Commission (Exhibit 9).
- d. Civil Fine Assessment No. NOV-99-03, June 3, 1999, in the amount of \$4500 for the violations identified in NOV-99-03 (Exhibit 10). Respondent did not pay the fine.

iv. Negligence or willfulness. As noted above, Respondent has offered "Red Hot Respin" or "other such gambling devices" in its gaming facilities since at least March 1, 2000, when an NIGC official observed "Red Hot Respin" gambling devices in operation at the Wewoka Trading Post, the Seminole Nation Rivermist, and the Seminole Nation Travel Plaza. On March 14, 2000, the NIGC issued three Potential Notices of Violation (PNOV) concerning the operation of these gambling devices and requested that play of these gambling devices cease at all facilities. The purpose of a PNOV is to make Respondent aware of the violation and provide an opportunity for voluntary compliance. At a meeting with Respondent's attorney and other tribal officials on April 19, 2000, the NIGC reiterated its determination that these gambling devices are Class III gambling devices. Nevertheless, NIGC representatives observed Class III gambling devices being offered for play at the Rivermist facility on May 11, 2000. Further, by virtue of the above-referenced NOV-00-6 and CO-00-6, Respondent understood that it was to cease operating illegal Class III gambling devices at all of its facilities within twenty-four hours of its receipt of that order on May 30, 2000. Although Respondent indicated that "Red Hot Respin" gambling devices were shut down at 6:30 A.M. on May 31, 2000, it has continued to offer similar Class III gambling devices at all of its facilities. Despite these warnings, Respondent continued to offer these gambling devices at all of its facilities. That Respondent knowingly disregarded these notices and continued to offer these gambling devices for play demonstrates that this is a willful violation.

v. Good faith. Respondent continues to offer Class III gambling devices for play despite the issuance of multiple PNOVs and an NOV. Therefore, Respondent has not demonstrated a good faith effort to achieve compliance with IGRA and NIGC regulations.

5. WHEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of \$400,000 (four hundred thousand dollars) is assessed on the Respondent for operation of illegal gambling devices from March 14, 2000, the date of the PNOVs, through August 17, 2000.

6. Respondent further will be assessed a continuing fine of \$2000 (two thousand dollars) per day beginning on the date of service of this civil fine assessment for each day that Respondent continues operation of these gambling devices.
7. The above-described amounts represent an appropriate balancing of the other factors cited above.
8. Pursuant to 25 C.F.R. § 577.3, within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, Respondent may appeal the proposed fine to the full Commission by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that sets forth 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, and 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 17<sup>th</sup> day of August 2000.



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Montie R. Deer  
Chairman

Sandra J. Ashton  
Staff Attorney  
202-632-7003