

# National Indian Gaming Commission

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## NOTICE OF VIOLATION

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NOV-23-01

To: Turtle Mountain Band of Chippewa Indians  
Attn: Jamie Azure, Chairman  
4180 Highway 281  
Belcourt, North Dakota 58316

Turtle Mountain Band of Chippewa Indians  
Attn: Jamie Azure, Chairman  
P.O. Box 900  
Belcourt, North Dakota 58316

1. Notification of Violations

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Turtle Mountain Band of Chippewa Indians (Tribe), located in Belcourt, North Dakota, has violated Indian Gaming Regulatory Act (IGRA) and NIGC regulations by failing to provide notice of intent to issue a facility license at least 120 days before allowing KEYA Radio Station (KEYA) to begin hosting class II and III gaming, failing to issue a facility license to KEYA where class II and III gaming were being conducted, failing to notify the NIGC within 30 days of the expiration of Chippewa Downs Racetrack (Chippewa Downs) facility license, failing to issue a facility license to Chippewa Downs where class III gaming was being conducted, and failing to submit Chippewa Downs facility license to the NIGC within 30 days of issuance.

2. Authority

Pursuant to IGRA and NIGC regulations, the Chairman of the NIGC may issue a Notice of Violation (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.<sup>1</sup>

3. Applicable Federal Laws

A. IGRA requires tribes to issue a separate license for each place, facility, or location on Indian lands at which gaming is conducted.<sup>2</sup>

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<sup>1</sup> 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

<sup>2</sup> 25 U.S.C. § 2710(b)(1).

- B. NIGC regulations define “facility license” as the license issued by a tribe to each place, facility, or location on Indian lands where the tribe elects to allow class II or III gaming.<sup>3</sup>
- C. NIGC regulations require tribes to submit to the Chairman notice (Facility License Notice) that a facility license is under consideration for issuance at least 120 days before opening any new place, facility, or location on Indian lands where class II or III gaming will occur.<sup>4</sup>
- D. NIGC regulations require tribes to submit to the Chairman a copy of each newly issued or renewed facility license within 30 days of issuance.<sup>5</sup>
- E. NIGC regulations require tribes to notify the Chairman within 30 days if a facility license expires.<sup>6</sup>

#### 4. Role of the Facility License Notice and Facility Licenses

- A. A Facility License Notice is necessary to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming.<sup>7</sup>
- B. The Facility License Notice must contain a legal description of property and documentation of the property’s ownership.<sup>8</sup>
- C. To be timely, the Facility License Notice must be submitted to the NIGC at least 120 days before a new gaming facility opens to allow adequate time for review of the submitted documentation.<sup>9</sup> Tribes may request, and the Chairman may grant or deny, an expedited 60-day review period.<sup>10</sup>
- D. A facility license and its accompanying attestation certify each place, facility, or location is authorized to conduct class II or III gaming and tribe has identified and enforces laws, resolutions, codes, policies, standards or procedures applicable to each gaming place facility, or location that protect the environment and the public health and safety, including standards, under a tribal-state compact or Secretarial procedures.<sup>11</sup>

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<sup>3</sup> 25 C.F.R. § 502.23.

<sup>4</sup> 25 C.F.R. § 559.2(a).

<sup>5</sup> 25 C.F.R. § 559.3.

<sup>6</sup> 25 C.F.R. § 559.5.

<sup>7</sup> 25 C.F.R. § 559.1(a).

<sup>8</sup> 25 C.F.R. § 559.2(b).

<sup>9</sup> 25 C.F.R. § 559.2(a).

<sup>10</sup> 25 C.F.R. § 559.2(a)(1).

<sup>11</sup> 25 C.F.R. § 502.23; 25 C.F.R. §559.4.

- E. To be timely, the facility license must be submitted to the NIGC within 30 days of issuance so the NIGC is notified gaming is occurring at the gaming facility and can ensure that the gaming facilities are constructed, operated, and maintained in a manner that adequately protects the environment, and public health and safety.<sup>12</sup>
- F. To be timely, a tribe must notify the NIGC within 30 days of a facility license expiration so the NIGC is notified gaming is no longer authorized at the gaming facility.<sup>13</sup>

5. Circumstances of the KEYA Violations

- A. The Tribe is a federally recognized Indian tribe with tribal headquarters in Belcourt, North Dakota.
- B. On February 28, 2018, the NIGC issued a Letter of Concern (2018 LOC) to the Tribe regarding six gaming operations including KEYA. The 2018 LOC, among other things, noted the statutory requirements for submission of facility license and environmental public health and safety attestation certification, recommended the closure of the six gaming operations, and required the Tribe to submit facility licenses for any facility the Tribe wished to re-open, along with the Indian lands documentation described in 25 C.F.R. § 559.2(b).<sup>14</sup>
- C. Although KEYA was initially identified as one of the six gaming operations requiring facility license submission, it was later determined that a facility license was not required for KEYA because it served as a technical aid to gaming that was being conducted at a licensed facility (LaDots Hall).<sup>15</sup>
- D. KEYA continued to operate gaming at the licensed facility (LaDots Hall) after the satisfaction of the 2018 LOC.<sup>16</sup> The Tribe did not submit a Facility License Notice to the NIGC stating that it intended to issue a separate facility license to KEYA for the independent operation of gaming at KEYA.<sup>17</sup>
- E. On March 14, 2022, NIGC Compliance Officer (CO) McKee was notified, via teleconference with Turtle Mountain Gaming Commission (TMGC) Gaming Inspector, that bingo games that were formally held at the licensed facility were now conducted entirely at KEYA.<sup>18</sup> The TMGC Gaming Inspector

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<sup>12</sup> 25 C.F.R. § 559.3.

<sup>13</sup> 25 C.F.R. § 559.5.

<sup>14</sup> Letter of Concern for failure to submit documents for six bingo facilities (February 28, 2018).

<sup>15</sup> Letter from Dustin Thomas, NIGC Director of Compliance regarding Satisfaction of February 28, 2018 Letter of Concern to Jamie Azure, Turtle Mountain Chairman (March 25, 2019).

<sup>16</sup> See Turtle Mountain Quarterly Fee Worksheets for Fiscal Years ending September 30, 2019 and September 30, 2020 and Declaration of Charles Parker, NIGC Auditor (February 3, 2023).

<sup>17</sup> Declaration of Shawn Chase, NIGC Region Director (February 3, 2023).

<sup>18</sup> Declaration of James McKee, NIGC Compliance Officer (February 3, 2023).

indicated KEYA started conducting the bingo games at its facility at some point after March 2020.<sup>19</sup>

- F. On March 18, 2022, NIGC Region Director (RD) Chase, via email, inquired regarding status of KEYA's bingo operation, noted the Tribe has not issued a facility license to KEYA, and asked whether the Tribe intended to continue gaming from KEYA.<sup>20</sup>
- G. On March 22, 2022, via email, RD Chase provided TMGC Gaming Inspector facility license submission requirements under 25 C.F.R. §559 and requested confirmation that the Tribe intends to license KEYA.<sup>21</sup> On the same day, RD Chase, by phone, advised TMGC Gaming Inspector that, because KEYA was now conducting bingo games at its facility, a facility license would need to be issued for KEYA immediately or as soon as practical.<sup>22</sup>
- H. On April 5, 2022, via email, RD Chase inquired how often KEYA conducted bingo games.<sup>23</sup> TMGC Gaming Inspector responded, via email on the same day, stating KEYA conducts bingo games twice weekly and she was waiting on the land description from the BIA to submit the Facility License Notification.<sup>24</sup>
- I. On May 4, 2022, by phone, RD Chase discussed the facility license submission requirements with the TMGC Gaming Inspector and informed the Gaming Inspector the Tribe should consider closing KEYA or move the gaming operation to a licensed facility until compliance could be achieved.<sup>25</sup>
- J. On May 9, 2022, RD Chase sent an email to the TMGC Gaming Inspector that summarized the May 4, 2022 telephone call and requested the Gaming Inspector to submit a Facility License Notice and stop all gaming at KEYA until the facility is licensed.<sup>26</sup> RD Chase further suggested the Tribe consider moving the bingo games to a licensed facility.<sup>27</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Email from Shawn Chase, NIGC Rapid City Region Director to Marty Davis, Turtle Mountain Gaming Inspector regarding Late Audit Submissions, Radio Station Bingo, and Letter of TA (March 18, 2022).

<sup>21</sup> Email from Shawn Chase, NIGC Rapid City Region Director to Marty Davis, Turtle Mountain Gaming Inspector regarding Late Audit Submissions, Radio Station Bingo, and Letter of TA (March 22, 2022).

<sup>22</sup> Declaration of Shawn Chase, NIGC Region Director (February 3, 2023).

<sup>23</sup> Email from Shawn Chase, NIGC Rapid City Region Director to Marty Davis, Turtle Mountain Gaming Inspector regarding Late Audit Submissions, Radio Station Bingo, and Letter of TA (April 5, 2022).

<sup>24</sup> Email from Marty Davis, Turtle Mountain Gaming Inspector to Shawn Chase, NIGC Rapid City Region Director regarding Late Audit Submissions, Radio Station Bingo, and Letter of TA (April 5, 2022).

<sup>25</sup> Declaration of Shawn Chase, NIGC Region Director (February 3, 2023).

<sup>26</sup> Email from Shawn Chase, NIGC Rapid City Region Director to Marty Davis, Turtle Mountain Gaming Inspector regarding Corrective action plan (May 9, 2022).

<sup>27</sup> *Id.*

- K. On May 24, 2022, the Tribe submitted a Facility License Notice for KEYA for class II charitable gaming with a request for expedited 60-day review.<sup>28</sup> The Tribe noted in the submission that until such time as a licensing determination is made, all gaming will be conducted at a licensed facility, LaDots Hall.<sup>29</sup>
- L. On June 16, 2022, RD Chase reviewed KEYA's website and observed that KEYA was still conducting bingo games and 50/50 raffles on a weekly basis.<sup>30</sup> RD Chase called KEYA on the same day and asked general questions about the gaming operation.<sup>31</sup> KEYA staff member indicated during the call that all gaming was occurring at KEYA and they had not conducted the games at LaDots Hall for quite some time.<sup>32</sup>
- M. On June 23, 2022, the NIGC Chairman denied the Tribe's request for expedited review of the Facility License Notice.<sup>33</sup> The Chairman noted the purpose of the expedited review process is to shorten the time period a tribe has to wait before opening a gaming facility and KEYA is already operating.<sup>34</sup>
- N. On August 12, 2022, via phone, the TMGC Gaming Inspector reported to CO McKee that the bingo games were now operating out of a licensed facility.<sup>35</sup> The Gaming Inspector later informed CO McKee, via e-mail on August 15, 2022, that the bingo games began operating out of a licensed facility, Sprung Structure, on July 12, 2022.<sup>36</sup>
- O. On August 12, 2022, RD Chase called KEYA and spoke with its General Manager who indicated that the bingo games had been moved to the Sprung Structure approximately three weeks prior.<sup>37</sup> RD Chase asked about the 50/50 raffle and the General Manager reported they were still conducting the raffle at KEYA.<sup>38</sup>
- P. On September 9, 2022 and September 15, 2022, RD Chase reviewed KEYA's Facebook page which included status updates with photographs of recent

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<sup>28</sup> Email from Marty Davis, Turtle Mountain Gaming Inspector to Shawn Chase, NIGC Rapid City Region Director regarding Facility License request (May 24, 2022).

<sup>29</sup> Letter from Marty Davis, Turtle Mountain Band of Chippewa Indians Gaming Inspector, to Shawn Chase, NIGC Rapid City Regional Director, re Notice to issue Facility License 25 CFR Part 559. (May 23, 2022).

<sup>30</sup> Declaration of Shawn Chase, NIGC Region Director (February 3, 2023).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Letter from E. Sequoyah Simermeyer, NIGC Chairman, to Jamie Azure, Turtle Mountain Band of Chippewa Indians Tribal Chairman, re Written denial of the Turtle Mountain Band of Chippewa Indians' request for expedited review (June 23, 2022).

<sup>34</sup> *Id.*

<sup>35</sup> Declaration of James McKee, NIGC Compliance Officer (February 3, 2023).

<sup>36</sup> Email from Marty Davis, Turtle Mountain Gaming Inspector to James McKee, NIGC Compliance Officer regarding Turtle Mountain (August 15, 2022).

<sup>37</sup> Declaration of Shawn Chase, NIGC Region Director (February 3, 2023).

<sup>38</sup> *Id.*

50/50 raffle winners and their prize amounts, with the captions, “THIS COULD BE YOU!! STOP BY K.E.Y.A. & GET YOUR TICKETS!!” or “THIS COULD BE YOU!! STOP BY K.E.Y.A. & GET YOUR KEYA KASH TICKETS!!”<sup>39</sup>

- Q. KEYA facility license submission was received by the NIGC on December 1, 2022.<sup>40</sup> The license for class II and III gaming was issued on November 22, 2022 and is effective until December 31, 2025.<sup>41</sup>
- R. Therefore, the Tribe failed to submit the Facility License Notice 120 days prior to allowing KEYA to begin hosting class II and III gaming. The Tribe should have submitted the Facility License Notice at least 120 days prior to March 2020.
- S. Therefore, between March 2020 and November 21, 2022, the Tribe failed to issue a facility license to KEYA where class II and III gaming were being conducted.

#### 6. Circumstances of the Chippewa Downs Violations

- A. The Tribe is a federally recognized Indian tribe with tribal headquarters in Belcourt, North Dakota.
- B. On June 20, 2019, the NIGC issued a Letter of Concern (2019 LOC) to the Tribe regarding the failure to submit documents for Chippewa Downs.<sup>42</sup> The 2019 LOC noted that over a period of several months, the NIGC made multiple attempts to obtain land information and a facility license for Chippewa Downs from the Tribe.<sup>43</sup> The Tribe ultimately issued a facility license on June 3, 2019, with an expiration date of June 1, 2022, and a copy of which was received by the NIGC on June 4, 2019.<sup>44</sup>
- C. After the expiration of the facility license and on August 12, 2022, CO McKee reached out to the TMGC Gaming Inspector by e-mail regarding the status of the Chippewa Downs.<sup>45</sup>
- D. On August 15, 2022, CO McKee received information, by e-mail, that Chippewa Downs continued gaming operations after the expiration of the

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<sup>39</sup> *Id.* Also See K.E.Y.A. Public Radio KEYA KASH Facebook status updates between April 22, 2022 through September 2, 2022. Screenshots obtained by Shawn Chase, NIGC Region Director (September 15, 2022).

<sup>40</sup> Email from Marty Davis, Turtle Mountain Band of Chippewa Indians Gaming Inspector to James McKee, NIGC Compliance Officer regarding KEYA (December 1, 2022).

<sup>41</sup> Facility License to KEYA Radio issued by the Turtle Mountain Gaming Commission on November 22, 2022.

<sup>42</sup> *Letter of Concern* for Failure to Submit Documents for the Chippewa Downs Racetrack (June 20, 2019).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Email from James McKee, NIGC Compliance Officer to Marty Davis, Turtle Mountain Gaming Inspector regarding Turtle Mountain (August 12, 2022).

facility license on June 1, 2022.<sup>46</sup> The TMGC Gaming Inspector acknowledged the expiration of the facility license and took full responsibility for the license expiration.<sup>47</sup>

- E. On September 15, 2022, RD Chase, via email to TMGC Gaming Inspector, noted the issue with the expired Chippewa Downs facility licensed and requested verification that wagers were accepted at the facility.<sup>48</sup> TMGC Gaming Inspector responded on the same day, via e-mail, confirming pari-mutuel wagering was conducted and renewed license was being prepared.<sup>49</sup>
- F. On October 19, 2022, the NIGC received a facility license for Chippewa Downs Race Track issued by the Tribe on September 6, 2022 with an expiration date of December 31, 2025.<sup>50</sup>
- G. Therefore, the Tribe failed to notify the NIGC within 30 days of the expiration of Chippewa Downs facility license. The Tribe should have notified the NIGC of the facility license expiration within 30 days of June 1, 2022.
- H. Therefore, between June 2, 2022 and September 5, 2022, the Tribe failed to issue a facility license to Chippewa Downs where class III gaming was being conducted.
- I. Therefore, the Tribe failed to submit facility license for Chippewa Downs to the NIGC within 30 days of issuance. The Tribe should have submitted the facility license to the NIGC within 30 days of September 6, 2022.

## 7. Measures Required to Correct the Violations

- A. No remedial action can correct the violation of failing to timely submit notice that a facility license was under consideration for issuance before allowing KEYA to begin hosting class II and III gaming.
- B. No remedial action can correct the violation of failing to issue facility licenses to KEYA and Chippewa Downs where class II and class III gaming were being conducted.

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<sup>46</sup> Email from Marty Davis, Turtle Mountain Gaming Inspector to James McKee, NIGC Compliance Officer regarding Turtle Mountain (August 15, 2022).

<sup>47</sup> *Id.*

<sup>48</sup> Email from Shawn Chase, NIGC Rapid City Region Director to Marty Davis, Turtle Mountain Gaming Inspector regarding Race Track Question (September 15, 2022).

<sup>49</sup> Email from Marty Davis, Turtle Mountain Gaming Inspector to Shawn Chase, NIGC Rapid City Region Director regarding Race Track Question (September 15, 2022).

<sup>50</sup> Facility License to Chippewa Downs Race Track issued by the Turtle Mountain Gaming Commission on September 6, 2022. *See also*, Email from Marty Davis, Turtle Mountain Band of Chippewa Indians Gaming Inspector to James McKee, NIGC Compliance Officer regarding Chippewa Downs (October 19, 2022).

C. No remedial action can correct the violation of failing to notify the NIGC within 30 days of the expiration of Chippewa Downs facility license.

D. No remedial action can correct the violation of failing to submit the Chippewa Downs facility license within 30 days of issuance.

## 8. Appeal

The Tribe may appeal this NOV within 30 days of service.<sup>51</sup> The Tribe may either (1) request a hearing before a Presiding Official,<sup>52</sup> or, (2) 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.<sup>53</sup> In any event, an appeal of this NOV should be submitted to the NIGC at the following address:

NIGC Attn: Office of General Counsel  
1849 C Street NW  
Mail Stop #1621  
Washington, D.C. 20240

The Tribe has a right to assistance of counsel in such an appeal.<sup>54</sup> If the Tribe file a notice of appeal, it must refer to this NOV-23-01.<sup>55</sup>

If the Tribe elects to have a hearing, the Tribe must file a brief with the Commission within ten (10) days of filing a notice of appeal.<sup>56</sup> The brief must state with particularity the relief desired, and the grounds in support including, when available, supporting evidence in the form of affidavits.<sup>57</sup> If the Tribe prefers a closed hearing, it must include, with the brief, a request to do so and why.<sup>58</sup> If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the brief.<sup>59</sup> The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony.<sup>60</sup> The Tribe 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.<sup>61</sup>

## 9. Fine-Submission of Information

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<sup>51</sup> 25 C.F.R. § 584.3(a); 25 C.F.R. § 585.3.

<sup>52</sup> 25 C.F.R. § 584.

<sup>53</sup> 25 C.F.R. § 585.

<sup>54</sup> 25 C.F.R. § 580.3.

<sup>55</sup> 25 C.F.R. § 584.3(a); 25 C.F.R. § 585.3.

<sup>56</sup> 25 C.F.R. § 584.3(b).

<sup>57</sup> 25 C.F.R. § 584.3(b)(2).

<sup>58</sup> 25 C.F.R. § 584.3(b)(1).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> 25 C.F.R. § 584.3(c).



Each of the violations cited above may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$57,527 per violation per day.<sup>62</sup> The Tribe may submit written information about the violations to the Chairman within 15 days after service of this NOV (or such longer period as the Chairman may grant for good cause).<sup>63</sup> The Chairman shall consider any information submitted in determining the facts surrounding the violations and the amount of the civil fine, if any.<sup>64</sup>

Dated this 16th of February, 2023.



E. Sequoyah Simermeyer  
Chairman

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<sup>62</sup> 25 C.F.R. § 575.4.

<sup>63</sup> 25 C.F.R. § 575.5(a).

<sup>64</sup> *Id.*

**Certificate of Service**

I certify that this **NOV-23-01** was sent on this 16th day of February, 2023 by

Certified U.S. mail, return receipt requested, to:

Turtle Mountain Band of Chippewa Indians

Attn: Jamie Azure, Chairman

P.O. Box 900

Belcourt, North Dakota 58316



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Shakira Ferguson

Legal Staff Executive Administrator