

**National Indian Gaming Commission**

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**NOTICE OF VIOLATION**

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NOV-06-05

To: President Mark Chino (Agent for Service of Process)  
Mescalero Apache Tribe  
Box 227  
Mescalero, NM 88340  
FAX: (505) 464-9191

Albert Apodaca, Executive Director  
Mescalero Apache Gaming Commission  
PO Box 329  
Mescalero, NM 88340  
FAX: (505) 464-4129

1. Notification of Violation

The Chairman of the National Indian Gaming Commission ("NIGC") hereby gives notice that the Mescalero Apache Tribe ("Respondent" or "Tribe"), located in Mescalero, New Mexico, is in violation of NIGC regulations for failure to submit a timely annual audit report and failure to submit timely quarterly statements and fees.

2. Authority

Under regulations of the National Indian Gaming Commission, the Chairman of the NIGC ("Chairman") may issue a Notice of Violation ("NOV") to any person for violation of any provision of the Indian Gaming Regulatory Act ("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 requires an annual audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC. 25 U.S.C. § 2710(b)(2)(C).
- B. 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 gaming operation's fiscal year. 25 C.F.R. §§ 571.12 and 571.13.

- C. NIGC regulations require that each gaming operation on Indian lands compute quarterly statements determining the amount of fees owed to the Commission. The quarterly statements are due on March 31, June 30, September 30, and December 31 of each calendar year the gaming operation is subject to the jurisdiction of the NIGC. The quarterly statements shall be transmitted to the NIGC and arrive no later than the due date. 25 C.F.R. §§ 514.1(c) and 514.1(c)(2)-(4).
- D. NIGC regulations require each gaming operation to remit to the NIGC the fees due each quarter with the quarterly statement. 25 C.F.R. § 514.1(c)(5).

#### 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. Role of Quarterly Fees and Quarterly Statements

The annual fees collected by the NIGC to fund the agency's work are based upon the quarterly worksheets submitted by Indian gaming operations. NIGC must set a fee rate sufficient to fund its annual budget, yet may not exceed the fee cap set by Congress. Thus, it is imperative that the NIGC receive worksheets from the gaming operations in a timely manner so that the NIGC is able to set accurate preliminary and final fee rates.

#### 6. Circumstances of the Violation

- A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Mescalero, New Mexico.
- B. Respondent operated its gaming facilities, Casino Apache and Inn of the Mountain Gods Resort and Casino, during all or part of the following years: 2003, 2004 and 2005.

- C. The NIGC has not received an audit report for Casino Apache and Inn of the Mountain Gods for the fiscal year ending April 30, 2005. The audit report was due to the NIGC on August 29, 2005, 120 days after the end of the gaming operation's fiscal year.
- D. The NIGC has received untimely quarterly statements and fee payments for the quarters up to December 31, 2004 as follows:

<u>Quarter:</u>	<u>Due:</u>	<u>Received:</u>
1st 2001	3/31/01	4/11/01
1st 2002	3/31/02	4/2/02
1st 2003	3/31/03	4/3/03
2nd 2003	6/30/03	8/18/03
3rd 2003	9/30/03	10/7/03
4th 2003	12/31/03	1/5/04
2nd 2004	6/30/04	7/2/04

6. Measures Required to Correct these Violations

It is impossible for the Tribe to correct the untimely submission of the audit report. The audit report was due by August 29, 2005 and it was not received by that date. In fact, the NIGC has yet to receive the audit report. Despite the impossibility of correcting the violation, the Tribe must nevertheless submit the fiscal year 2005 audit report to the NIGC.

The untimely submission of the quarterly statements and fee payments is likewise impossible to correct. The statements and payments were due on specific dates and were not received on those dates.

7. Appeal

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, 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.

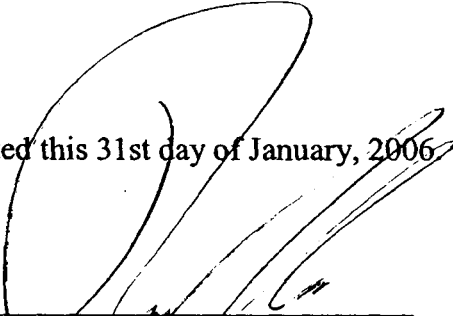
Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to 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.

8. 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 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 31st day of January, 2006



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PHILIP N. HOGEN  
Chairman  
National Indian Gaming Commission



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WENDY L. HELGEMO  
Staff Attorney

**Certificate of Service**

I certify that this **Notice of Violation** was sent by facsimile and mailed VIA U.S. certified mail return receipt requested on this 31st day of January, 2006 to:

President Mark Chino (Agent for Service of Process)  
Mescalero Apache Tribe  
Box 227  
Mescalero, NM 88340  
FAX: (505) 564-9191

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Wendy Helgemo  
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