

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV - 22 - 01

To: Robert Flying Hawk, Chairman
Yankton Sioux Tribe of South Dakota
800 Main Street SW
P.O. Box 1153
Wagner, SD 57380

Arthur Standing Cloud, Chairman
Yankton Sioux Tribal Gaming Commission
P.O. Box 77
Pickstown, SD 57367

1. Notification of Violation

The National Indian Gaming Commission Chairman hereby gives notice that the Yankton Sioux Tribe, which operated two gaming facilities in Pickstown, SD, violated the Indian Gaming Regulatory Act, NIGC regulations, and the Tribe's Gaming Ordinance by failing to submit Audited Financial Statements and Agreed Upon Procedures reports for fiscal years 2019 and 2020 to the NIGC in a timely manner.

2. Authority

Pursuant to IGRA and NIGC regulations, the NIGC Chairman may issue a Notice of Violation to any person for violation of any provisions of the IGRA, NIGC regulations, or of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

3. Applicable Federal law and Tribal Ordinance provisions

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 define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses. 25 C.F.R. § 502.10.

- C. NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b).
 - D. The NIGC regulations further require a tribe to submit a copy of the financial statements and audit reports, with any management letter(s) and other documents/reports setting forth the results of the annual audit to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 571.13.
 - E. The NIGC regulations also require a tribe to submit within 120 days after the end of the fiscal year an Agreed Upon Procedures report for each class II operation. 25 C.F.R. § 543.23(d). The AUP report details the state of compliance with Class II Minimum Internal Control Standards.
 - F. The Tribe's Gaming Ordinance, Section Chapter 4 §1 (Audit of Gaming Operations), approved by the NIGC Chairman on June 25, 1995, as amended on March 24, 2008, provides that the Yankton Sioux Gaming Commission "shall require annual audits of the gaming operations to be conducted by an independent certified public accountant, and the Tribal Gaming Commission shall submit the resulting audit reports to...the [NIGC]."
4. Role of Independent Audit Report and Agreed Upon Procedures
- A. Submission of the annual Independent Audit Report and Agreed Upon Procedures by a certified public accountant is critical to the NIGC's mission to protect the integrity of Indian gaming. A CPA's ability to conduct an audit in accordance with Generally Accepted Auditing Standards and provide an opinion on the financial statements prepared in conformity with Generally Accepted Accounting Principles 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.
 - B. The Agreed Upon Procedures report reviews the internal controls, which are the primary procedures that protect the integrity of casino funds and games and are a vitally important part of properly regulated gaming. Inherent in gaming operations are concerns related to customer and employee access to cash, questions of fairness of games, and the threat of collusion to circumvent controls. Submission of the Agreed Upon Procedures report promotes IGRA's purposes by ensuring that a tribe is the primary beneficiary of the gaming operation and protecting gaming as a means of tribal revenue.

5. Summary of the violations

- A. The Tribe is a federally recognized Indian tribe with tribal headquarters located on its reservation in South Dakota.
- B. The Tribe's gaming operations' fiscal year ends on December 31.¹
- C. The Tribe operated two gaming facilities in Pickstown, SD: (1) the Fort Randall gaming facility licenses for FRC for 2019, 2020, and 2021 and for YSTP for 2019 and 2020.²
- D. Casino (FRC)³; and (2) the Yankton Sioux Travel Plaza (YSTP).⁴
- E. The Tribe conducted gaming at FRC and YSTP during FYs 2019 and part of 2020. The Tribe reported gross gaming revenues for both the FRC and YSTP for that time period.⁵ In addition, the Tribe submitted facility licenses for both the FRC and YSTP for that time period. The Tribe failed to submit the AFS and AUP for both gaming operations for FY19 and FY20. In addition, the Tribe failed to submit a notice of temporary closure of gaming at YSTP for more than 180 days.⁶ as required when it closed.
- F. Compliance Officer (CO) James McKee conducted site visits at FRC and YSTP on November 5.

6. Circumstances of the violations

*2019-Failure to submit AFS and AUP reports for FRC and YSTP 6, 2019.*⁷

- A. The Tribe closed the FRC on April 3, 2020, due to the COVID-19 pandemic.⁸ The FRC reopened on September 4, 2020.⁹

- 1. The FY19 AFS and AUP reports for both facilities were due April 29, 2020. On August 19, 2020, Former Region Director (RD) Linda Durbin sent an email to Tribal Gaming Commission Chairman Arthur Standing Cloud and the

¹ See *2018 Independent Audit Report, Yankton Sioux Tribe* (Exhibit 1).

² FRC and YSTP facility licenses for 2019-2020. (Exhibit 3).

³ FRC is located at 538 East Hwy 46, P.O. Box 229, Pickstown, SD, 57367.

⁴ YSTP is located at 38541 SD Highway 46, P.O. Box 229, Pickstown, SD, 57367.

⁵ FRC and YSTP Quarterly Fee Worksheets for FY 2019-2020 (Exhibit 2).

⁶ 25 C.F.R. §559.5.

⁷ Declaration of CO James McKee, paragraph 2 (Exhibit 4).

⁸ Email from GM Stone to CO McKee (April 3, 2020) (Exhibit 5).

⁹ Email from GM Stone to CO McKee (March 2, 2022) (Exh.6).

gaming operations' General Manager Jim Stone regarding the failure to submit FY19 AFS and AUP reports, among other things.¹⁰

2. On September 3, 2020, RD Durbin received a letter from Tribal Chairman Robert Flying Hawk advising that the FY19 AFS report would be submitted by December 31, 2020, and that all Class II games had been removed from the gaming operations.¹¹ On October 13, 2020, RD Durbin responded by letter encouraging the Tribe to make a speedy submission as there would be no extensions of time.¹²
3. On both January 5, 2021, and January 25, 2021,¹³ RD Durbin communicated by email to Chairman Flying Hawk and TGRA Chairman Standing Cloud requesting an update on the FY19 AFS and AUP submissions and received no response to either message.
4. On February 12, 2021, Chief Compliance Officer (CCO) Tom Cunningham issued a *Letter of Concern* to the Tribe for its failure to submit FY19 AFS and AUP reports for both operations.¹⁴ On March 12, 2021, Tribal Chairman Flying Hawk responded with a *Corrective Action Plan* to submit the FY19 AFS and AUP reports by June 30, 2021.¹⁵ On May 12, 2021, during a technical assistance teleconference, CO McKee reminded the Tribe's attorney, GM Stone, and the TGC Commissioner Lois Weddell of the upcoming *CAP* due date, and that the FY20 AFS and AUP reports were late as well.
5. On May 28, 2021, CO McKee emailed TGC Chairman Standing Cloud and GM Stone a reminder that the FY20 AFS and AUP reports were late, but that the Compliance Division would not recommend the Chairman take enforcement if they were received by May 30, 2021.¹⁶
6. On June 3, 2021, CO McKee received an email from GM Stone requesting a call and reporting that the delay was due to a lack of financial reporting from the YSTP.¹⁷

¹⁰ Email from RD Durbin to GM Stone (Aug. 19, 2020) (Exh. 7).

¹¹ Letter from Tribal Chairman Flying Hawk to CO McKee (Sept. 3, 2020) (Exh. 8).

¹² Letter from RD Durbin to Tribal Chairman Flying Hawk (Oct. 13, 2020) (Exh. 9).

¹³ Emails from RD Durbin to Tribal Chairman Flying Hawk (Jan 5 and Jan 25, 2021) (Exh.10).

¹⁴ *Letter of Concern* for FY19 AFS and AUP reports (Feb. 12, 2021) (Exh.11).

¹⁵ Response Letter from Tribal Chairman Flying Hawk to NIGC (March 12, 2021) (Exh.12).

¹⁶ Email from CO McKee to GM Stone (May 28, 2021) (Exh. 13).

¹⁷ Email from GM Stone to CO McKee (June 3, 2021) (Exh. 14).

7. On June 28, 2021,¹⁸ and June 30, 2021,¹⁹ CO McKee emailed GM Stone and TGC Chairman Standing Cloud reminders of the *CAP* due date. On June 30, 2021, GM Stone reported that the FY19 and FY20 AFS and AUP reports would not be submitted until September 1, 2021, and November 30, 2021, respectively.
8. On August 25, 2021, RD Chase issued a *Status of Letter of Concern* to Chairman Flying Hawk for submission of the FY19 AFS and AUP reports.²⁰ RD Chase informed the Tribe that the Compliance Division would recommend the NIGC Chairman take enforcement action if the FY19 AFS and AUP reports were not received by September 1, 2021.²¹
9. As of today's date, the NIGC has not received these reports.²²

B. *2020-Failure to submit FY20 AUP and AFS reports*

1. On August 25, 2021, Chief CO Cunningham issued a *LOC* for failure to submit FY20 AFS and AUP reports and requested the submissions by November 30, 2021.²³ Cunningham explained that the NIGC is aware of, and considers the impacts and hardships resulting from, the COVID-19 pandemic including funding shortages, staff shortages, and reoccurring travel restrictions. Cunningham further noted the NIGC is aware that the Tribe's gaming operations were closed as a result of the pandemic from April 3, 2020, to September 4, 2020, and briefly again in November of 2020.²⁴
2. Chief CO Cunningham also explained that in March of 2020, the NIGC Chairman addressed these concerns and instructed the Compliance Division not to recommend enforcement action for FY19 AFS and AUP reports that were less than 30 days late.²⁵ Chief CO Cunningham requested that the completed FY20 AFS and AUP be submitted by November 30, 2021, or the Compliance Division would recommend enforcement action to the Chairman.²⁶

¹⁸ Email from CO McKee to GM Stone and TGC Chairman Standing Cloud (June 28, 2021) (Exh.15).

¹⁹ Email from CO McKee to GM Stone and TGC Chairman Standing Cloud (June 30, 2021) (Exh.16).

²⁰ Status of Letter of Concern from RD Chase to Chairman Flying Hawk (August 25, 2021) (Exh. 17).

²¹ *Id.*

²² Declaration of Charles Parker, paragraph 5 (March 3, 2022) (Exh. 18).

²³ Letter of Concern for FY20 AFS and AUP reports (August 25, 2021) (Exh.19).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

3. On September 1, 2021, RD Chase and GM Stone spoke by phone and discussed the *Status of Letter of Concern* for FY19 submissions and the *Letter of Concern* for FY20 submissions. GM Stone followed up the call later that day with an email to RD Chase in which Stone reported that the Tribe had not completed the FY19 audit and requested an extension.²⁷ The Tribe reported it had issues submitting records to the CPA and had to resend items multiple times, which has caused delays to the original projection for completion.²⁸
4. The Tribe has not offered any type of gaming regulated by the NIGC since April 3, 2020.

As of today's date, the NIGC has not received the 2020 AFS and AUP reports.²⁹

C. *Failure to submit facility license closure notification*

1. YSTP stopped offering gaming on January 7, 2020. On April 3, 2020, due to the COVID-19 pandemic, the Tribe closed the FRC.³⁰ The Tribe informed the NIGC of the FRC closure by email on April 3, 2020.³¹ The email included a copy of a closure checklist but contained no information regarding the YSTP.³² On August 19, 2020, RD Durbin emailed Chairman Standing Cloud and GM Stone, reminding them to submit a closure notice for the YSTP.³³ On September 4, 2020, after being closed 155 days, the Tribe reopened the FRC.³⁴
2. A tribe must notify the Chairman within 30 days if a facility license is terminated or expires or if a gaming place, facility, or location closes or reopens.³⁵ At the latest, a notice of temporary closure was due to the NIGC on October 30, 2020.³⁶
3. The Tribe has failed to submit a notice of closure for the YSTP as required.

²⁷ Email from General Manager Stone to Region Director Shawn Chase (Sept. 1, 2021) (Exh. 20).

²⁸ *Id.*

²⁹ Declaration of Charles Parker, paragraph 5.

³⁰ James McKee Declaration at paragraph 3 (March 4, 2022) (Exh. 21).

³¹ Email from GM Stone to CO McKee (Apr. 3, 2021).

³² *Id.*

³³ Email from RD Durbin to Tribal Gaming Commission Chairman Standing Cloud and GM Stone (Aug. 19, 2020).

³⁴ Declaration of CO James McKee, paragraph 3 (March 4, 2022).

³⁵ 25 C.F.R. § 559.5.

³⁶ 180 days of temporary closure plus 30 additional days to submit notice to the original closure, the last date to timely submit the closure notice for YSTP was October 30, 2020.

7. Measures Required to Correct the Violations

- A. No remedial action will correct the violations of failing to submit AFS and AUP reports timely. In addition, no remedial action will correct the failure to timely submit the closure notice. Nevertheless, the Tribe remains obligated to submit the reports and the notice. The Tribe must submit the 2019 and 2020 AFS and AUP reports for FRC and YSTP within 30 days of the date of this notice. Failure to comply within that time period is a substantial violation under NIGC regulations,³⁷ and subjects the Tribe to closure orders.
- B. The Tribe must implement improved controls to ensure timely submissions of future comparative financial statements and audits.

8. Appeal

The Tribe may appeal this Notice of Violation within 30 days of service. The Tribe may either: 1) request a hearing before a Presiding Official under 25 C.F.R. Part 584; 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 pursuant to 25 C.F.R. Part 585.

In any event, an appeal of this Notice of Violation should be submitted to the NIGC at the following address:

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

A notice of appeal must reference this Notice of Violation.

The Tribe has a right to assistance of counsel in such an appeal.

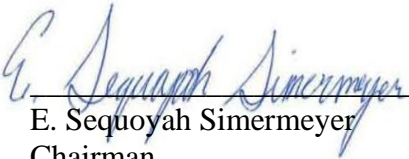
If the Tribe elects a hearing, it must file a brief with the Commission (within ten days after filing a notice of appeal), which states with particularity the relief desired and the grounds in support including, when available, evidence in the form of affidavits. If the Tribe prefers a closed hearing, it must include, with the brief, a request to do so and why. 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. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony. 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.

³⁷ 25 C.F.R. § 571.4(a)(1).

9. Fine – Submission of Information

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.³⁸ Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violation to the Chairman within 15 days after service of the NOV (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the proposed civil fine, if any.

Dated this 30th of March 2022.


E. Sequoyah Simermeyer
Chairman

³⁸ 87 Fed. Reg. 2549 (Jan. 18, 2022).

CERTIFICATE OF SERVICE

I certify that this **NOV-22-01** was sent by e-fax this 30th day of March, 2022, to:

Robert Flying Hawk, Chairman
Yankton Sioux Tribe
800 Main Street, SW
Wagner, SD 57380
(605) 384-5687

Arthur Standing Cloud, Chairman
Yankton Sioux Tribal Gaming Commission
PO Box 77
Pickstown, SD 57367
(605) 487-7116



Rita Homa
Executive Administrator
National Indian Gaming Commission