

National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-22-01

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

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

1. Under the Indian Gaming Regulatory Act and National Indian Gaming Commission regulations, the NIGC Chairman may issue a Notice of Violation to any person for violations of any provision of the IGRA, NIGC regulations, or a tribal gaming ordinance or resolution approved by the Chairman.¹
2. In addition, IGRA authorizes the Chairman to issue civil fines for violations of IGRA, NIGC regulations, or tribal regulations, ordinances, or resolutions approved by the Chairman.²
3. Pursuant to NIGC regulations, each tribe shall submit a copy of the Audited Financial Statements and Agreed Upon Procedures reports within 120 days of the end of a tribe's fiscal year.³ The Yankton Sioux Tribe fiscal year ends December 31.⁴ Thus, the Tribe's 2019 AFS and AUP reports were due no later than April 29, 2020, and the 2020 AFS and AUP reports no later than April 30, 2021.
4. Also pursuant to NIGC regulations, a Tribe shall 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. A tribe need not provide a notification of seasonal or temporary closures of less than 180 days.⁵

¹ 25 U.S.C. § 2713 (a)(3); 25 C.F.R. § 573.3(a).

² 25 U.S.C. § 2713(a)(1).

³ 25 C.F.R. § 571.13(a).

⁴ NOV-22-01 at Exhibit 1.

⁵ 25 C.F.R. § 559.5.

5. On March 30, 2022, I issued NOV-22-01 to the Tribe for failure to submit AFS and AUP reports for fiscal years 2019 and 2020 to the NIGC and for failure to submit a closure notice for the gaming at YSTP.⁶
6. On April 5, 2022, the Tribe requested a copy of the exhibits to NOV-22-01.⁷ I provided these exhibits to the Tribe on April 12, 2022.⁸
7. NIGC regulations provide that within 15 days after service of a NOV, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the civil fine amount.⁹
8. On April 12, 2022, the Tribe requested a one-week extension of time, until April 21, 2022, to review the exhibits and to submit information for me to consider when determining the amount of the proposed civil fine assessment.¹⁰
9. On April 13, 2022, I granted the Tribe's request.¹¹
10. On April 21, 2022, the Tribe timely submitted a letter containing written information in response to NOV-22-01.¹²
11. On April 29, 2022, the Tribe submitted a Supplemental Response which included copies of the 2019 and 2020 AUP reports, a closure notice for YSTP, and an explanation of the status of the 2019 and 2020 AFSs.¹³
12. NIGC regulations provide that the Chairman shall review each NOV to determine whether to assess a civil fine, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.¹⁴
13. The Chairman shall serve a copy of the proposed assessment within 30 days of the NOV, where practical.¹⁵ Because the Tribe requested additional time to submit information, and

⁶ NOV 22-01. (Although not the subject of this enforcement action, the NIGC has also not received the Tribes' FY 2021 AFS and AUP reports, due May 2, 2022).

⁷ Email from Linda Cooper, Tribe's counsel to Maria Getoff, NIGC, dated April 5, 2022 (Exhibit 1).

⁸ Email from Linda Cooper, Tribe's counsel to Maria Getoff, NIGC, dated April 12, 2022 (Exhibit 2). (The Chairman provided the exhibits as a courtesy; NIGC regulations require that the Chairman provide the record upon which he relied within 10 days of the filing of a Notice of Appeal. The Tribe did not appeal NOV-22-01).

⁹ 25 C.F.R. § 575.5(a).

¹⁰ Email from Linda Cooper, Tribe's counsel to Maria Getoff, NIGC, dated April 21, 2022 (Exhibit 3).

¹¹ Email from Maria Getoff, NIGC to Linda Cooper, Tribe's counsel, dated April 13, 2022 (Exhibit 4).

¹² Letter from Chairman Flying Hawk to Chairman Simermeyer, dated April 21, 2022, Re: Yankton Sioux Tribe Response to NOV-22-01 (Exhibit 5).

¹³ Letter from Flying Hawk to Simermeyer, dated April 29, 2022, Re: Yankton Sioux Tribe Supplemental Response to NOV-22-01 (Exhibit 6).

¹⁴ 25 C.F.R. § 575.3.

¹⁵ 25 C.F.R. § 575.5(b).

because the Chairman must consider such additional information, it was not practical to serve the civil fine assessment within the 30-day period, here April 29, 2022.

14. NIGC regulations permit a party to appeal a NOV within thirty days of service by the Chair.¹⁶ The Tribe did not appeal NOV-22-01.
15. With respect to curing the violation, NOV-22-01 explains that there is no action that will correct the untimely filing of AFS and AUP reports.¹⁷ It further states that no remedial action will correct the failure to timely submit the closure notice.¹⁸ Nevertheless, the Tribe remained obligated to submit the reports and the notice.
16. The NOV-22-01 further provided that the Tribe must submit the 2019 and 2020 AFS and AUP reports for the Fort Randall Casino and YSTP within 30 days of the date of the issuance of NOV-22-01, or April 29, 2022. On that date, the Tribe submitted the 2019 and 2020 AUP reports for both facilities, and a closure notice for YSTP. On May 31, 2022, the NIGC received the 2019 AFS report. The 2020 AFS report is outstanding. Failure to comply within the time period proscribed in a NOV is a substantial violation under NIGC regulations,¹⁹ and subjects the Tribe to closure orders.²⁰
17. The Chairman has authority to levy and collect appropriate civil fines, not to exceed \$57,527²¹ per violation, against a tribe, management contractor, or individual operating Indian gaming for any violation of any provision of IGRA and NIGC regulations.²² If noncompliance continues for more than one day, the Chairman may treat each daily act or omission as a separate violation.²³
18. In arriving at the proposed civil fine assessment, I considered the factors set forth in 25 C.F.R. § 575.4(a)-(e), as well as the information the Tribe submitted, as follows:
 - a. Economic benefit of noncompliance. The Chairman may consider the documented benefits derived from the noncompliance or may rely on reasonable assumptions regarding such benefits.²⁴

The Tribe states it derived no economic benefit from noncompliance because it eventually engaged an accounting firm to conduct the required audits.²⁵ While the Tribe did not engage the audit firm until June 22, 2021, for the AFS work,²⁶

¹⁶ 25 C.F.R. §§ 584.3 and 585.3.

¹⁷ NOV-2022-01 at 7.A.

¹⁸ *Id.*

¹⁹ 25 C.F.R. § 573.4(a)(1)(i).

²⁰ *Id.*

²¹ 87 Fed. Reg. 2549 (Jan. 18, 2022).

²² 25 U.S.C. § 2713(a)(1); 25 C.F.R. § 575.4.

²³ 25 C.F.R. § 575.4 (a)(2).

²⁴ *Id.* § 575.4(a)(1).

²⁵ Affidavit of Chairman Robert Flying Hawk at ¶ 3, Unnumbered Exhibit to April 21, 2022 letter Flying Hawk to Simermeyer (Exhibit 5).

²⁶ AFS Engagement Letter from SDK to Chairman Flying Hawk, dated February 8, 2021 (signed June 22, 2021), Exhibit 2 to Letter, Flying Hawk to Simermeyer, April 29, 2022.

and June 9, 2021, for the AUP work²⁷ (well past the deadlines to submit); I find that any economic benefit was negligible and derives from not paying for the audit work until recently.

As to the failure to submit the closure notice, I find there was no economic benefit.

Seriousness of the violations. The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.²⁸

These are serious violations. It is IGRA's declared policy to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; and to assure that gaming is conducted fairly and honestly by both the operator and players.²⁹ Submission of the annual independent audit report by an independent accountant is critical to the NIGC's mission to protect the integrity of Indian gaming. An accountant's ability to conduct an audit and to issue an opinion on the financial statements provides assurance of the security of tribal gaming revenues. The audited financial statements and accompanying AUP reports are evidence of, among other things, the integrity of the gaming operation and, more specifically, the adequacy of the books and records, and the functioning of the internal financial controls. Further, 25 C.F.R. § 571.12 is explicit: the annual submission must be for each fiscal year end and the financial statements must be audited and certified by an independent certified public accountant. Only then can the NIGC confidently rely on the data. Such confidence is necessary to assure that the NIGC is able to effectively analyze the operation's risk level.

While a serious violation in the first instance, it is exacerbated by the length of time that elapsed between when the 2019 and 2020 AUP reports were due and when they were submitted (1,459 and 729 days respectfully), when the 2019 AFS was due and when it was submitted (762), and that the 2020 AFS is still outstanding.

The Tribe appreciates the seriousness of the violation, but as the Covid-19 pandemic caused the delays, suggests there was no willful intent.³⁰

The failure to notify the NIGC of closure of a gaming operation is a less serious violation, yet such notices are important as they give the NIGC an accurate understanding of where gaming under its jurisdiction is occurring. Furthermore,

²⁷ (AUP Engagement Letter from SDK to Chairman Flying Hawk, dated April 7, 2021 (signed June 9, 2021) Exhibit 2 to Letter, Flying Hawk to Simermeyer (April 29, 2022).

²⁸ 25 C.F.R. § 575.4(b). Seriousness and willfulness are two separate factors; willfulness is addressed herein.

²⁹ 25 U.S.C. § 2702.

³⁰ Letter from Flying Hawk to Simermeyer (April 21, 2022).

NIGC regulations require that tribes take certain action following the closure of a facility, such as closing the books with an audit,³¹ and submitting final quarterly worksheets and fees.³² This information is important to ensure the NIGC is adequately monitoring gaming and meeting its regulatory mission.

- c. History of violations. The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five years.³³ The Chairman has not issued a NOV to the Tribe in the past 5 years.
- d. Negligence or willfulness. The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.³⁴

The Tribe states that its failure to timely submit the 2019 and 2020 AFS and AUP reports was neither willful nor negligent, but rather was the result of two events: the March 2019 flooding of the FRC, which resulted in reduced revenue from which to pay an auditor and accountant; and financial, staffing, and physical access issues related to the Covid-19 pandemic.³⁵ The Tribe further advises that its gaming operations were closed due to the pandemic from April to September 2020.³⁶ Finally, the Tribe advises that it issued a Stay-at-Home Order in March of 2020 that was lifted in March of 2022, and that during this time, no outside auditors or accountants were allowed on-site and thus could not perform the work.³⁷

I am aware of the stresses and strains the pandemic put on Indian gaming operations across the country. At the outset of the pandemic, and under my direction, the NIGC assisted tribes in a multitude of ways. Yet here, I find this explanation unpersuasive based simply on the chronology of events and the Tribe's unwillingness to be forthcoming regarding the status of the audit work.

2019 AUP and AFS reports. The 2019 reports were due at the end of April 2020, which fell about one month after the start of the pandemic. To alleviate some of the stress associated with meeting this deadline, on March 20, 2020, I instructed the NIGC Compliance Division to give all tribes a 30-day grace period to provide more time for them to communicate with their auditors, complete the work, and submit the reports. I communicated this directive to all tribes that same day.³⁸

³¹ 25 C.F.R. § 571.13(c).

³² 25 C.F.R. § 514.7(b) provides that in the event of closure, the Chairman may request the fees and worksheets.

³³ 25 C.F.R. § 575.4(c).

³⁴ 25 C.F.R. § 575.4(d).

³⁵ Letter from Robert Flying Hawk, Chairman, Business and Claims Committee, to Chairman E. Sequoyah Simermeyer (April 21, 2022).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Dear Tribal Leader Letter from NIGC Chairman Simermeyer to all tribal gaming leaders, March 20, 2020 (Exhibit 5).

Therefore, for all intents and purposes, and as a direct result of the pandemic, the reports were not due until the end of May 2020.

Yet the timeliness of the Tribe's submission was mostly unaffected by the March 2020 onset of the pandemic, or any continuing pandemic-related delays. The AUP and AFS reports for 2019 are based on, and report, activity that takes place in 2019. To timely submit for fiscal year 2019, the Tribe would have engaged an auditor no later than the end of 2018, as random testing may begin as soon as the beginning of 2019. AUP testing would then have occurred at both scheduled and unscheduled times throughout 2019.

Following the close of the fiscal year on December 31, 2019, the auditor would prepare the AFS primarily in the first quarter of 2020 to ensure timely submission by the end of April. With the benefit of the 30-day grace period, all tribes that made the proper preparations to have their reports timely submitted made the deadline. I find that neither the pandemic nor the Stay-At-Home order affected the ability to timely submit for 2019. The reports were not timely submitted because the Tribe did not engage an auditor until June of 2021,³⁹ more than one year after both the start of the pandemic and the 2019 submission due date.

Yet rather than advise the NIGC of the audit work status, on September 3, 2020, Tribal Chairman Flying Hawk wrote to Co James McKee to advise that the Tribe would submit the fiscal year 2019 AFS report by December 31, 2020.⁴⁰ Notably, because the auditor was not engaged until 10 months later, this would have been impossible.

Then, on both January 5, 2021, and January 25, 2021, RD Durbin communicated by email to Chairman Flying Hawk to request an update and received no response.⁴¹

With the 2019 AFS and AUP reports almost a year overdue, on February 12, 2021, Chief Compliance Officer Tom Cunningham issued a *Letter of Concern*.⁴² On March 12, 2021, Chairman Flying Hawk responded with a *Corrective Action Plan* to submit the outstanding 2019 AFS and AUP reports by June 30, 2021.⁴³ Yet this was not truthful, because no audit firm was engaged to do the work until earlier that same month. Presented with another opportunity to advise the NIGC of the situation, the Tribe instead indicated a date certain by which it would submit that, given the amount of work involved, would have been impossible in the span of 8 days between the engagement on June 22, 2021, and June 30, 2021.

³⁹ AFS Engagement letter (signed June 22, 2021); AUP Engagement Letter (signed June 22, 2021).

⁴⁰ NOV-22-01 at Exhibit 8.

⁴¹ NOV-22-01 at Exhibit 10.

⁴² NOV-22-01 at Exhibit 11.

⁴³ Letter Chairman Flying Hawk to Chairman Simermeyer, March 12, 2021 (Exhibit 6).

Over the course of the next several months, the NIGC Compliance Division continued to communicate with the Tribe, periodically requesting the submissions, as more fully detailed in NOV 22-01. No reports were forthcoming, nor did the Tribe at any time advise the NIGC that the work had not been engaged. On June 3, 2021, GM Stone advised CO McKee by email that the delay was due to a lack of financial reporting from the YSTP.⁴⁴

Again, I find that the reason for the delay was primarily the Tribe's failure to engage an auditor to perform the work required. I also find that the Tribe negligently and willfully withheld this failure from the NIGC and actively suggested that the work was ongoing when it was not. The NIGC has the important mission of ensuring the integrity of Indian gaming. This undertaking is made difficult when a tribe not only refuses to comply with NIGC regulations, but then leads the NIGC to believe that it is attempting to comply.

2020 AFS and AUP reports. With the 2019 AFS and AUP reports still outstanding, the deadline to submit for 2020 came and went. On May 28, 2021, Compliance Officer James McKee advised the Tribe that the 2020 AFS and AUP reports, due on April 29, 2021, were overdue.⁴⁵

The NIGC continued to routinely seek compliance, including issuing a *Letter of Concern* on August 25, 2021.⁴⁶ At no time did the Tribe advise the NIGC that it had not engaged an auditor to do the work until June 2021 and that this caused the delay.

Financial, public health, and other unforeseen impediments to securing audit work are understandable and, all things being equal, these would be potentially mitigating factors. Here, however, I do not find these circumstances caused the delay. Rather, I find that the Tribe willfully and negligently failed to engage an auditor to do the work, and then repeatedly misled the NIGC as to the status of the work.

Closure notification

The Tribe stopped its class II gaming at YSTP on January 7, 2020 and removed the gaming machines two days later on January 9, 2020.⁴⁷ This effectively closed gaming at YSTP, as these machines were the only form of gaming occurring there. The remainder of the facilities and amenities at the Travel Plaza continued to operate.

Section 559.5 of 25 C.F.R. provides that, "[a] tribe must notify the Chair within 30 days if a facility license is terminated or expires or if a gaming place, facility,

⁴⁴ NOV-22-01 at Exhibit 14.

⁴⁵ NOV 2022-01, Exhibit 13.

⁴⁶ NOV 2022-01, Exhibit 19.

⁴⁷ Email from GM Stone to CO McKee, dated March 2, 2022, attached as Exhibit 1.

or location closes or reopens.”⁴⁸ The Tribe did not notify the NIGC that it closed the gaming at YSTP, and the Tribe’s Gaming Commission continued to issue facility licenses.⁴⁹

On August 19, 2020, former NIGC Region Director Linda Durbin sent an email to GM Stone and indicated several unresolved compliance issues, including submission of the required closure notification for YSTP. GM Stone attached to his declaration submitted to the NIGC on April 21, 2022, an email message he sent to RD Durbin on August 20, 2020. In that email he indicated that the Tribe had shut down all “NIGC regulated gaming machines.”⁵⁰ He states in his declaration that he “intended this statement to provide the required notice that the Tribe was no longer offering Class II gaming....”⁵¹ On September 3, 2020, Chairman Flying Hawk reiterated that the Tribe closed the games at YSTP.⁵²

It appears the Tribe misunderstood the application of 25 C.F.R. § 559.5 to the gaming at YSTP, believing notice was only required if the entire location, including the non-gaming areas, closed. A sizeable number of Indian gaming facilities around the country, however, operate inside other businesses, such as smoke shops and travel plazas. If the regulation were to apply only if the entire physical location closed, the NIGC would not receive any notification when only the gaming closed. Such a reading is inconsistent with the regulation’s purpose to keep the NIGC informed about when and where Indian gaming is occurring.

Nevertheless, I find that the Tribe’s failure to notify the NIGC of the closure of the games until requested in August 2020 was neither negligent nor willful, but rather the result of a misreading of the regulation.

The matter does not end there, however. When GM Stone advised the NIGC of the closure in August 2020, he did so by stating that the Tribe had “shut down all NIGC regulated gaming.”⁵³ RD Durbin then asked for more formal notification of this and other compliance matters from the Tribe’s gaming regulatory authority⁵⁴, and on September 3, 2020, Chairman Flying Hawk advised that the Tribe did “not have any Class II games or machines in operation.”⁵⁵ While this information advised the NIGC that the Tribe no longer operated the Class II games it removed, it did not serve to notify the NIGC that no gaming whatsoever was occurring there. The ambiguity of this notification was amplified by the existence of a disagreement between the Tribe and the NIGC regarding the proper

⁴⁸ 25 C.F.R. § 559.5.

⁴⁹ Declaration of NIGC Compliance Officer James McKee, dated June 9, 2022 at ¶.8.

⁵⁰ Declaration of Casino GM James Stone, submitted with April 21, 2022 letter Flying Hawk to Simermeyer.

⁵¹ *Id.*

⁵² NOV-22-01 at Exhibit 8.

⁵³ Exhibit to Declaration of Casino GM James Stone, submitted with April 21, 2022 letter Flying Hawk to Simermeyer.

⁵⁴ *Id.*

⁵⁵ NOV-22-01 at Exhibit 8.

classification of poker. The Compliance Division further attempts to obtain a clarifying closure notification were unsuccessful. Thus, for any voluntary closure notification, the best practice is to clearly state that all gaming at the place, facility, or location is closed so as not to leave room for the question whether some other form of gaming might be in play.

It is also noteworthy that the Tribe complied with a Covid closure notification request for its Fort Randall Casino. On March 16, 2020, the NIGC requested that tribes notify it of any Covid-related closures.⁵⁶ On April 3, 2020, the Tribe submitted a Covid Closure Notification for Fort Randall Casino.⁵⁷

- e. Good faith. A civil fine may be reduced by the degree of good faith a respondent takes in attempting to achieve rapid compliance after a NOV.⁵⁸

The Tribe advised in its April 29, 2022, letter that since receiving the NOV, it has intensified its efforts to come into compliance and has engaged Wipfli LLP, a consulting accounting firm, to assist it with developing a *Corrective Action Plan* and coordinating a schedule for audit completion.⁵⁹

2019 Audited Financial Statements

The Tribe stated that its outside auditor completed most of the preliminary work for the 2019 audit and expected the audit firm to be onsite the weeks of May 2 and May 9, 2022, to fully complete the work, with a goal of submitting the 2019 AFS by the end of May 2022.⁶⁰ On May 23, 2022, GM Stone advised CO McKee that SDK was not on-site those dates after all, but that: (1) the field work was complete; (2) SDK had what it needed to finalize the 2019 audit;⁶¹ and (3) that May 31, 2022, was the target date for submission.⁶² On May 31, 2022, the NIGC received the 2019 AFS.⁶³ I find the Tribe took good faith steps to submit the 2019 AFS following the NOV.

2020 Audited Financial Statements

In its April 29, 2022, letter the Tribe advised that upon completion of the 2019 audit, the SDK would begin work on the 2020 audit.⁶⁴ The Tribe stated its goal to

⁵⁶ Dear Tribal Leader Letter, from NIGC Chairman Simermeyer to all tribal leaders, March 16, 2020 (Exhibit 7).

⁵⁷ Covid Closure Notification, Fort Randall Casino, April 3, 2020.

⁵⁸ 25 C.F.R. § 575.4(e).

⁵⁹ April 29, 2022 letter at p.1 (Exhibit 6).

⁶⁰ *Id.* at p.2.

⁶¹ Declaration of CO James McKee, ¶ 3, June 9, 2022.

⁶² *Id.* at para. 3.

⁶³ *Id.* at para. 5.

⁶⁴ April 29, 2022, letter at p. 2.

have the internal work for 2020 completed by May 18, 2022.⁶⁵ The Tribe also advised that SDK would be onsite the weeks of June 6 and June 13, 2022, to complete the fieldwork for the 2020 audit, with the goal of submitting the AFS to the NIGC by July 15, 2022.⁶⁶

Based on these statements, I find that the Tribe is acting in good faith to complete and submit the 2020 AFS following receipt of the NOV.

As a separate matter, the Tribe notes that the Fort Randall Casino was closed from April 3, 2020, until September 4, 2020, and that therefore there was “limited activity for this timeframe.”⁶⁷ In addition, it reports there was no gaming activity at the Travel Plaza after January 7, 2020 (and revenue of only \$1,812), thus the 2020 audit would not include the Travel Plaza.⁶⁸

The 2020 AFS must include information from all gaming at both locations, regardless of the level of gaming activity or the amount of revenue generated,

Since the NOV issued, the Tribe has made efforts to comply, and as of the date of this Proposed CFA, has submitted 2019 and 2020 AUP reports and the 2019 AFS.

Closure notification

On April 29, 2022, in response to the NOV, the Tribe submitted a closure notification for YSTP, dated April 22, 2022. The notification submitted was in the form of a Covid Closure Notification, although the closure was not Covid related. I find this was a good faith attempt to remedy the closure notification violation.

Proposed Civil Fine Assessment

19. Pursuant to IGRA⁶⁹ and NIGC regulations,⁷⁰ fines for continuing violations may be assessed in an amount up to \$57,527 per day per violation.
20. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.⁷¹
21. The 2019 AUP and AFS were due on April 29, 2020. The NIGC received them on April 29, 2022. These reports were 730 days late each, for a total of 1,460 days late. The maximum fine amount allowed for these two reports is \$83,989,420.00.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 25 U.S.C. § 2713(a).

⁷⁰ 25 C.F.R. §§ 575.3 and 575.4.


⁷¹ 25 C.F.R. § 575.4(a)(2).

22. The 2020 AUP and AFS were due on April 30, 2021. The 2020 AUP was received on April 29, 2022. This AUP report was 364 days late. The maximum fine amount allowed for the late 2020 is \$20,939,828.00.
23. The NIGC has not received the 2020 AFS.⁷² As of the date of this Proposed Civil Fine Assessment, this submission is 432 days late. The maximum fine amount allowed for the late 2020 is \$24,851,664.00
24. I have carefully reviewed the facts and circumstances of these violations, and applied the factors set forth in 25 C.F.R. §§ 575.4(a)-(d). I propose a combined CFA of \$150,000 for late 2019 and 2020 AUP reports, the late 2019 AFS, and the outstanding 2020 AFS. No part of this proposed fine is attributed to the closure notification violation.
25. Without timely submissions, the NIGC cannot properly analyze regulatory compliance or technical assistance needs.
26. Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date.⁷³
27. Within 30 days after service of this Notice of Proposed Civil Fine Assessment, the Tribe may appeal the proposed fine⁷⁴ by submitting a notice of appeal to the following:

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

28. The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. The Tribe has the right to a hearing and to present evidence.⁷⁵ The Tribe may waive that right and have the matter decided by the Commission solely on written submissions.⁷⁶ Different rules and filing dates apply to each procedure.

Dated this 6th day of July 2022.



E. Sequoyah Simermeyer
Chairman

⁷² 25 C.F.R. §§ 543.23(d)(2) and 571.13.

⁷³ 31 U.S.C. § 3717.

⁷⁴ 25 C.F.R. §§ 584.3(a); 585.3.

⁷⁵ 25 C.F.R. Part 584.

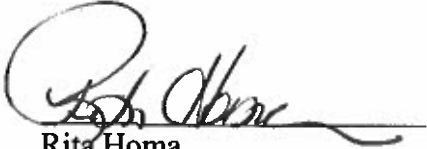
⁷⁶ 25 C.F.R. Part 585.

CERTIFICATE OF SERVICE

I certify that this NOTICE OF PROPOSED CIVIL FINE ASSESSMENT has been sent by email this 6th day of July 2022, to:

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

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



Rita Homa
Executive Administrator