



NIGC Issues Notice of Violation to the Seneca Nation

Washington, DC September 3, 2008 — This afternoon, Philip Hogen, the Chairman of the National Indian Gaming Commission (NIGC) issued a notice informing the Seneca Nation of New York that its gaming facility in Buffalo, New York is operating in violation of federal law and informed the tribe that correction of the on-going violation requires ceasing gaming at its Buffalo facility within five days of the issuance of the notice or otherwise coming into compliance with federal law. The United States Attorney's Office filed a copy of the notice with the district court.

This action was precipitated by the July 8 and August 26, 2008 decisions and orders of Judge William M. Skretny of the U.S. District Court of the Western District of New York.

On July 8, 2007, Judge Skretny issued a decision and order in *CACGEC v. Hogen* vacating the Chairman's approval of the Nation's Class III gaming ordinance. Judge Skretny held that the Nation's land in Buffalo qualifies as "Indian Lands" for purposes of the Indian Gaming Regulatory Act (IGRA), but that the parcel fails to satisfy the settlement of a land claim exception of IGRA's prohibition against gaming on trust land acquired after October 17, 1988. Thus, the Judge concluded that the Chairman's approval of the site-specific ordinance was arbitrary and capricious. On August 26, 2008, Judge Skretny further directed the Chairman to take action consistent with the court's July 8 decision, including issuance of a notice of violation. Chairman Hogen stated, "This is a difficult situation, however, as a consequence of the district court's decisions and orders, I issued a notice of violation."

Consistent with the district court's decisions and orders, the Chairman found that the Nation violated the IGRA by operating its Buffalo, New York gaming facility in the absence of an approved Class III gaming ordinance and by gaming on land ineligible for gaming under IGRA. IGRA requires that a tribe have an approved Class III gaming ordinance prior to conducting Class III gaming. 25 U.S.C. § 2710(d)(1)(A).

Today's notice of violation is the result of litigation that is on-going. The NIGC is working with the Department of Justice and the Department of the Interior to determine what course of action to pursue in the litigation. Nonetheless, at this time, the Nation is currently in violation of IGRA, although the Chairman may determine that the situation has changed at the conclusion of the litigation or as a consequence of other circumstances which are outlined in the notice.

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The NIGC is an independent regulatory agency established within the Department of the Interior pursuant to the Indian Gaming Regulatory Act of 1988.