

National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-00-10

To: Principal Chief
Seminole Nation of Oklahoma
P.O. Box 1498 (½ mile E of junction 59 & 270)
Wewoka, OK 74884

1. Notice. Under the authority of 25 U.S.C. § 2713 (a), of the Indian Gaming Regulatory Act (IGRA), and the regulations of the National Indian Gaming Commission (Commission) at 25 C.F.R. § 575, the Chairman of the Commission hereby provides notice of his intent to assess a civil fine against the Seminole Nation of Oklahoma, located in Wewoka, Oklahoma (Respondent), for violations of IGRA and regulations of the Commission, as set forth in detail in Notice of Violation No. NOV-00-10 and Closure Order No. CO-00-10, issued on September 12, 2000, and appealed on October 10, 2000. NOV-00-10 and CO-00-10 require that Respondent cease and desist from all gaming activity in all four of its gaming facilities. The Commission, after considering Respondent's appeal, affirmed NOV-00-10 and ordered CO-00-10 be made permanent in its Decision and Order of May 7, 2002.
2. Authority. Pursuant to 25 U.S.C. § 2713 (a) and 25 C.F.R. § 575.4, the Chairman of the Commission may assess a civil fine, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4 (a)(2).
3. Submission. The Commission regulations at 25 C.F.R. § 575.5 provide that, within fifteen (15) days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine. Respondent did not submit any information under 25 C.F.R. § 575.5 about the violation set forth in NOV-00-10 and CO-00-10 in the prescribed time period. However, Respondent's counsel did submit a letter dated May 31, 2002, indicating that Respondent was no longer offering for play any of the games "specifically named" in NOV-00-10. His statement was reiterated in a letter dated June 11, 2002. These letters have been considered in assessing a civil fine.

4. Circumstances of the Violation.

A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Wewoka, Oklahoma. Respondent engages in gaming operations on tribal lands at several locations in Oklahoma, and does not have a compact with the State of Oklahoma that would allow Respondent to operate Class III gambling devices.

B. During visits to Respondent's gaming operations on March 1, 2000, representatives of the Commission observed the operation of several "Red Hot Respin" video gambling devices at three facilities, including the Wewoka Trading Post, the Rivermist Gaming Center, and the Seminole Nation Travel Plaza. The "Red Hot Respin" device is a Class III gambling device.

C. On March 14, 2000, representatives of the Commission issued three Potential Notices of Violation (PNOV) concerning the operation of these gambling devices and requested that play of these gambling devices cease at all facilities. The purpose of a PNOV is to make Respondent aware of the violation and to provide an opportunity for voluntary compliance. On April 19, 2000, Respondent and its attorney met with Commission officials to discuss the criteria for Class III gambling devices. The Commission staff members provided documentation and a detailed explanation as to why the Commission considers "Red Hot Respin" to be a Class III gambling device.

D. During a visit to Respondent's gaming operations at the Rivermist Gaming Center on May 11, 2000, representatives of the Commission observed "Red Hot Respin" being offered for play. The Chairman issued NOV-00-06 and CO-00-06 on May 30, 2000, requiring Respondent to cease operating this game and other such gambling devices. In June and July 2000, during a series of unannounced site visits to Respondent's gaming facilities, a representative of the Commission observed games identical to "Red Hot Respin" being offered for play, including Buffalo Nickels, Sovereign Sevens, Lucky Break, and Red Hot and Blue.

E. On August 17, 2000, the Chairman issued CFA-00-06 asserting a civil fine against Respondent for operation of the aforementioned Class III gaming devices in the absence of a compact with the State of Oklahoma. The amount of \$400,000 for the civil fine assessment was based on the continuing nature of the violation and treated each day in the period March 14 through August 17, 2000, inclusive, as a separate violation. Further treating each subsequent day as a separate violation, the Chairman specified an additional fine at the rate of \$2,000 for each day that operation of the gaming devices continued after August 17, 2000.

F. On August 31, 2000, a representative of the Commission observed the continuing operation of the same thirty-two (32) "Red Hot Respin"-type machines and the same twelve (12) "Buffalo Nickels" gambling devices referenced above. In addition, the representative of the Commission observed twenty-two (22) of the following types of newly-installed Class III gambling devices being offered for play in three of Respondent's gaming facilities: "Rainbow Reels," a five-line game; Fantasy Fives," a

five-line game; "Pot O Gold" which offers four games, "Triple Sevens," "Gold Row Bonus," "Spinball Bonus," "Respin Sevens," and "Lucky Cherries" which offers four games, "Pirate's Gold," "Klondike," "Funny Fruit," "Reel Fortune." On September 5, 2000, a representative of the Commission observed that an additional fourteen (14) newly-installed Class III gambling devices were being offered for play in one of Respondent's gaming facilities.

G. On September 12, 2000, the Chairman issued Notice of Violation No. NOV-00-10 and Closure Order No. CO-00-10, appealed by Respondent on October 10, 2000. NOV-00-10 provides a listing of several gaming devices, including those previously listed in NOV-00-06, play of which constituted unlawful Class III gaming because Respondent did not have a compact with the State of Oklahoma that included operation of these gaming devices. CO-00-10 required that Respondent cease and desist from all gaming activity in all four of its gaming facilities. Respondent did not comply with the closure order.

H. At the request of the Chairman, the United States Attorney for the Eastern District of Oklahoma moved for an Injunction to enforce Closure Order 00-06 and Closure Order 00-10 on January 19, 2001. However, in an Order dated February 27, 2001, the United States District Court (Judge Burrage) denied the motion and dismissed the case, concluding in part that the Chairman had exceeded his authority in ordering the closure of the entire gaming facility and that the due process rights of the Tribe had not been considered in issuing what, in the Court's view, was an overly broad temporary closure order. (The District Court's decision is now on appeal to the United States Court of Appeals for the Tenth Circuit. This appeal is based in part on the Court's misunderstanding of the need for a hearing before the Order of Temporary Closure issued by the Chairman may be effective.)

I. Following an administrative appeal process during which Respondent presented witness testimony and documentary evidence and raised numerous legal arguments, the Commission as a whole, in its Decision and Order of May 7, 2002, found play of the gaming devices at issue to be class III gaming operated in violation of the requirement that such gaming be conducted under a tribal-state compact. The Commission thereby affirmed NOV-00-10 and made permanent CO-00-10 requiring Respondent to cease and desist from all gaming activity in all of its facilities.

J. Respondent advised through its counsel in a letter dated May 31, 2002, that it no longer offered for play the gaming devices specifically named in NOV-00-10. However, Respondent persists in engaging in gaming activity at all four of its facilities, in violation of CO-00-10 and in disregard of the Commission's Decision and Order.

5. Under 25 C.F.R. § 575.3, the Chairman shall review each notice of violation and order of temporary closure to determine whether a civil fine will be assessed, 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. The Chairman now asserts a civil fine issued against Respondent as a result of the play of additional Class III gaming devices that were the subject of NOV-00-10, as a result of the

additional economic benefit derived from the play of the devices listed in NOV-00-10 through the date Respondent indicates the games listed in NOV-00-10 were no longer offered for play, and as a result of conducting gaming activities in violation of CO-00-10. In arriving at a proposed civil fine, the Chairman has considered the five factors set forth in 25 C.F.R. § 575.4, as follows:

- A. Economic benefit of noncompliance. Respondent has obtained an economic benefit from the continued operation of the Class III gambling devices listed in NOV-00-10 in the absence of a compact with the State of Oklahoma. The magnitude of the economic benefit is indicated by financial information provided to the Commission by Respondent on July 26, 2000. This financial information described revenues generated by thirty-two (32) Class III gambling devices for an unspecified period. Two months later, the number of Class III gambling devices offered by Respondent had increased nearly four-fold to approximately 130 gambling devices. Commission field investigators subsequently determined that one facility alone offered 235 devices. Respondent provided Commission investigators with more recent financial information in July 2002 indicating greater financial benefits from play of the devices than had been previously disclosed. This economic benefit to Respondent exceeds the economic benefit that was understood as accruing to Respondent at the time CFA-00-06 was issued based only on the play of gaming devices listed therein. Because of the continuing nature of the violations, each day these devices were played illegally will be treated as a separate violation.
- B. Seriousness of the violations. The operation of Class III gambling devices without a tribal-state compact is a violation of both the civil and criminal provisions of the IGRA (25 U.S.C. § 2710 and 18 U.S.C. § 1166), as well as the regulations of the Commission. By virtue of its inclusion as a criminal matter, Congress deemed this to be a serious violation. Respondent offers for play in its gaming facilities several Class III gambling devices that may be operated only under a tribal-state compact. Respondent and the State of Oklahoma, however, have not entered a compact allowing the operation of these Class III gambling devices. Moreover, Respondent's actions give Respondent an unfair competitive advantage over other tribes that have elected not to operate illegal gambling devices in their facilities. Accordingly, the violations are serious.
- C. History of violations. The Chairman has issued prior notices of violation to Respondent for operating Class III gambling devices in the absence of a tribal-state compact and for failure to conduct background investigations and submit required documents to the Commission. The Chairman has issued the following Notices of Violation, Closure Orders, and Civil Fines to Respondent:
 - i. Notice of Violation No. NOV-98-01 and Order of Temporary Closure No. CO-98-01, January 13, 1998, for operating "Reels of Skill," a Class III gambling device, in the absence of a tribal-state compact. The Chairman agreed to defer the closure order to allow Respondent to continue to operate the game until the issuance of a final Commission decision.

Respondent appealed. Following an administrative hearing, the Presiding Official issued a decision on June 29, 1998, finding that the Chairman appropriately issued NOV-98-01 and CO-98-01 and recommending that the Commission uphold them. The Commission subsequently issued a Notice of Decision and Order on July 24, 1998, finding that "Reels of Skill" was a Class III gambling device and that its operation by Respondent was a violation of IGRA.

- ii. Notice of Violation No. NOV-99-03, March 2, 1999, for failure to conduct background investigations on primary management officials and key employees and to submit employee applications, investigative reports, and suitability determinations to the Commission. Proposed Civil Fine Assessment No. NOV-99-03, in the amount of \$4500, was issued on April 1, 1999, for the violations identified in NOV-99-03. On June 3, 1999, the Commission issued a final decision upholding the Chairman's civil fine but reducing it in light of the good faith efforts of the Nation for actions taken to achieve compliance.
- iii. Notice of Violation No. NOV-00-06 and Closure Order No. CO-00-06, May 30, 2000, for operating "Red Hot Respin," a Class III gambling device, in the absence of a tribal-state compact. Following the conclusion of an administrative appeal process during which Respondent presented witness testimony and documentary evidence and raised numerous legal arguments, the Commission as a whole, in its Decision and Order of May 7, 2002, affirmed NOV-00-06 and ordered that CO-00-06 be made permanent. (Note: NOV-00-06 was resolved by the same Commission decision that addressed the games underlying NOV-00-10.)

D. Negligence or willfulness. Respondent's violation in this case was willful and intentional and not the result of negligence. As noted above, Respondent has offered "Red Hot Respin" or "other such gambling devices" in its gaming facilities since at least March 1, 2000, when a Commission official observed "Red Hot Respin" gambling devices in operation at the Wewoka Trading Post, the Seminole Nation Rivermist, and the Seminole Nation Travel Plaza. Three PNOVs were issued on March 14, 2000, concerning the operation of these gambling devices and requesting that play of these machines cease at all facilities. Representatives of the Commission met with Respondent's attorney and other tribal officials on April 19, 2000, and reiterated that these machines are Class III gambling devices. Nevertheless, Commission representatives observed Class III gambling devices being offered for play at the Rivermist facility on May 11, 2000, and Respondent subsequently has continued to offer similar Class III gambling devices at all of its facilities and has installed additional Class III gambling devices, observed as recently as June 2002. That Respondent knowingly disregarded these notices and continued to offer these gambling devices for play demonstrates that this is a willful violation. The underlying notice of violation to this proposed civil fine assessment addresses play of certain gaming devices listed therein, and requires compliance by demanding Respondent

cease "all gaming activity in all four of its facilities." While Respondent may claim based on the Order of the U.S. District Court for the Eastern District of Oklahoma, issued on February 27, 2001, that the Chairman's Temporary Closure Order is overbroad as to all of its gaming activities, such claim would not extend to the specific gaming devices that were the subject of the notice of violation. This proposed civil fine assessment is a financial penalty for the play of the class III gaming devices indicated and/or continued operation of gaming activities after the Commission made the Closure Order permanent. The District Court Order found no difficulty with the issuance of a closure order for the particular games at issue. At a minimum, Respondent was required to cease and desist in the play of these devices, a point conceded by Respondent in its appellate brief filed in the United States' appeal of the Order issued by United States District Court for the Eastern District of Oklahoma described above. Reliance on a perceived requirement for a hearing before the Chairman's Order of Temporary Closure Order could be considered effective would also be incorrect. As the decision on appeal of the District Court Order is expected to indicate, the due process requirement for a hearing is met when the hearing is held as a part of the administrative appeal process to determine whether such a closure order should be made permanent, and this hearing need not be held before the order of temporary closure can be considered effective. In any event, neither the analysis by the District Court nor the decision would support Respondent's disregard of the Commission Decision and Order of May 7, 2002.

- E. Good faith. Respondent's violation of law has been open and flagrant. Under Commission regulations, the Chairman may reduce the amount of civil fine based upon the degree of good faith exhibited by Respondent in achieving rapid compliance after notice of a violation. However, Respondent has continued to offer Class III gambling devices for play despite the issuance of multiple Notices of Violation, Closure Orders, and Proposed Civil Fine Assessments. For example, Respondent advised the Commission through counsel on May 31, 2002, that it no longer offered for play the games specifically named in NOV/CO-00-10, but it would not comply with the Chairman's order, upheld by the Commission and served on counsel for Respondent on May 7, 2002, to cease and desist from all gaming activity in all of its facilities. While Respondent may no longer offer for play the games under the names specifically named in paragraph 4-F above, Respondent continues to offer for play either the same games under a different name or games that are functionally identical to those games, including the "Skill Cherry" games (Magical Jack, Triple Jack, Rose N Jack), the "Infinity" games (Sparkling 7's, Treasures, 7's A Winner, Fantasy Fortune), and the "Wildfire" games (Wildfire, Wild Nuggets, White Diamonds, American Dream, Buck Wild, Native American Gold, Buffalo Bills, Diamond Treasures, Green Backs, Jackpot Junction, Liberty Dollars, Hot Tamales, Double Sevens, Volcanic Rocks, Aquatic Riches, Tribal Treasure, and Triple Crown). These Class III games differ only superficially from the games specifically named in NOV/CO-00-10, the differences being in the name of the game or in the design of the faceplate and cosmetic characteristics. Respondent continues to defy the Commission with its actions and cannot be said to have exerted even a modicum of good faith effort to

achieve compliance with IGRA and the regulations of the Commission subsequent to the Commission decision of May 7, 2002.

6. Assessment. WHEREFORE, the Chairman, after reviewing associated financial documents and balancing the above factors, has determined that a fine in the amount of \$6,030,000 is assessed on Respondent for operation of illegal gambling devices for the period beginning on September 12, 2000, the date NOV-00-10 was issued, and continuing through May 7, 2002, the date of the Commission Decision affirming the Notice of Violation and Closure Order, a total of 603 days. This sum represents an initial fine of \$10,000 and treats each subsequent day of illegal activity as a separate violation for which an additional fine at the rate of \$10,000 per day is assessed. Respondent will be further assessed a fine in the amount of \$20,000, beginning May 8, 2002, for each day that Respondent continues operation of gaming activities in violation of the Commission's Decision of May 7, 2002, including gaming activity with devices that are functionally the same as those identified in NOV-00-10. The fine assessed against Respondent for the period beginning May 8, 2002, through the current date is \$1,960,000. The total civil fine assessment for the period beginning September 12, 2000, through the current date is \$7,990,000. Further treating each subsequent day as a separate violation, Respondent will be assessed a fine at the rate of \$20,000 per day for each day that Respondent continues such gaming activities following the current date.
7. Appeal Rights. Pursuant to 25 C.F.R. § 577.3, within thirty (30) days after service of this Notice of Proposed Civil Fine Assessment, Respondent may appeal the proposed fine to the full Commission by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that sets forth 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, and 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.

Dated this 13th day of August 2002.



Montie R. Deer
Chairman

CERTIFICATE OF SERVICE

I certify that this **NOTICE OF PROPOSED CIVIL FINE ASSESSMENT CFA-00-10**
has been sent by facsimile and Fed Ex this 13^m day of August 2002, to:

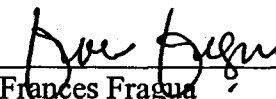
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