



## REGULATORS RESPONSE TO COVID-19: VOLUME 6

Friends and Colleagues:

For nearly two months now, we have been engaged in a battle to stop the spread of the COVID-19 virus. We have taken measures to protect our families, our communities, and businesses. The struggle has not just been to combat the virus, but also the effects our protectionary measures have had on our daily lives.

While we are not yet out of the woods, now is the time to begin to assess our response to this crisis and to plan for confronting a future outbreak. Health officials are predicting another round of the virus could possibly come in the fall and winter months and could potentially be worse than the current crisis. It would be to our benefit to prepare for that possibility now rather than when it arrives. As the saying goes, the best time to cut wood for the winter is in the spring.

Before we look ahead towards another possible emergency, a quick look at where we are and where we started.

A part of a tribal gaming regulatory agency's (TGRA) responsibilities is to ensure the environmental, public health and safety (EPH&S) of a gaming facility. This means TGRAs must look beyond the gaming machines and tables on the casino floor and examine what is happening in other public and non-public areas; areas that are largely unseen even though they may be on full display.

The organic documents on which gaming is based – the Indian Gaming Regulatory Act, Tribal-State Compacts, & tribal gaming ordinances – all contain a provision like the one mentioned above. At the risk of being redundant, according to the IGRA:

“the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety” (IGRA; 2710(B)(2)(E))

The requirement is evident, but the extent to which a TGRA must go to meet this obligation is not as distinct. The National Indian Gaming Commission (NIGC) attempted to provide more substance to this requirement in 2001 when it authorized a Tribal Advisory Committee to develop standards that would be applicable at all tribal gaming facilities. The goal of this effort changed when the NIGC realized the requirement was generalized for a reason: there is no “one-size fits all” approach that can realistically be employed nation-wide. Each tribe would have to develop its own individual methods for satisfying this

requirement. Nevertheless, the NIGC issued an interpretive rule in 2002 to give tribes an idea of what areas the agency believed must be addressed by each TGRA.

<https://www.federalregister.gov/documents/2002/07/12/02-17151/environment-public-health-and-safety>

The NIGC listed first in its list of five (5) EPH&S categories the need for standards to be designed and/or adopted by the TGRA to address emergency preparedness. Much like the statutory language, the term “emergency preparedness” will mean different things to different tribes. Not everyone will have a plan to deal with tornados or earthquakes; however, we each have plans to contend with fires, power outages, and other emergencies. So, too, should we all have a plan to deal with a public health emergency like an epidemic or a pandemic. This current crisis has shed light on this fact.

The following 12 basic points may be used to create and/or assess an emergency preparedness policy as well as to address a situation like the one in which we presently find ourselves.

1. Develop a Public Health Crisis Plan (“the plan”) as a part of your overall Emergency Preparedness Plan. Work with subject matter experts within the tribe or engage the services of external experts to craft a plan appropriate for you and your unique circumstances.
2. Pre-designate an incident response team (from all appropriate segments of the tribe; tribal departments, gaming operations management, TGRA) and identify critical functions and essential personnel. Establish priorities in addressing the needs of the operation based on the factors being presented.
3. Inform and train employees on the plan as well as any adjustments that may be made due to circumstances or new standards/regulations.
4. Monitor the situation and coordinate with the subject matter experts on an appropriate course of action, adjusting course, as necessary. It is also important to document and track information and actions at the time.
5. Establish strong lines of communication with all levels of participants – tribal leadership, external agencies, vendors, the general public, and employees. Keeping everyone appropriately informed will help prevent unnecessary confusion and conflict.
6. Consider your Information Technology options and resources and apply solutions relevant to the situation. Resources should be allocated based on the critical functions and essential personnel stated in the plan.

7. Make provisions for employees beyond the public health measures. Mental health is greatly impacted during emergencies and is a service that provides crucial support for those need to cope with stress or loss. Having an Employee Assistance Program is one such good example.
8. Encourage financial preparedness for employees. Many tribal casinos, through their own financial preparedness, were able to keep employees on the payroll for a time to cushion the financial impact on employees. In the event of employees are to be furloughed or laid-off, employees' financial needs will become more pressing. Alternatively, providing information on and/or assistance with accessing other resources (e.g. unemployment, tribal programs) could help relieve the employees' financial stress.
9. Determine the re-certification requirements a casino must meet prior to re-opening, as operations resume, and as the emergency diminishes.
10. Schedule a regular review of each aspect of the Emergency Preparedness Plan. This will help ensure you are able to respond to situations using the most current information and best practices available.
11. Support for safety programs must come from all levels at all times. While we may be able to plan for emergencies, we cannot always predict them. Only through steady resolve will we be able to respond to unforeseen events in a way that actively protects the environmental, public health and safety of our gaming environment.
12. Perform a post-emergency assessment. By examining the actions taken and their effectiveness we can find ways to improve our ability to respond better to future events.

The following websites will provide more specific information and measures that can be taken to address public health needs. In addition, we must look to our own tribal experts to provide information and guidance on matters closer to home.

<https://www.cdc.gov/nonpharmaceutical-interventions/tools-resources/planning-guidance-checklists.html>

[https://www.osha.gov/Publications/OSHA\\_pandemic\\_health.pdf](https://www.osha.gov/Publications/OSHA_pandemic_health.pdf)

Some will note that not all the above points are regulatory-centric. They have been provided in the spirit of protecting one of our most valuable resources: our employees. It is important to remember that our employees – gaming operations and TGRA – not only make the casino operations possible, they are often our tribal members, family, and friends and are deserving of every protection we can provide.

Environmental, public health and safety activities, at times, have been placed secondary to the casino's primary mission of generating revenue. The current crisis demonstrates that keeping our employees and our patrons safe and healthy is equally as important – if not more so – as our efforts to increase the bottom line. By paying proper attention to these activities, we not only meet our statutory obligations but also help ensure the protection of the tribe's most valuable economic development resource.

Respectfully,

Jamie Hummingbird, Chairman  
National Tribal Gaming Commissioners & Regulators

*The information contained in this message are solely my views on the current situation and do not necessarily reflect those of the Cherokee Nation, the Cherokee Nation Gaming Commission, the NTGCR Board or its membership.*