

STATE OF NEW MEXICO
MINING COMMISSION

95-01

In the Matter of Petition)
for Review of Notice of)
Violation: N95-1-3,)
United Nuclear Corporation)

DECISION AND ORDER

This matter came before the New Mexico Mining Commission ("Commission") at a public hearing on April 3, 1996. The Commission deliberated on this matter on April 3, 1996 and reached the following decision.

THE COMMISSION FINDS THAT:

1. The Northeast Church Rock Mine is located in Section 35, Township 16 North, Range 16 West, McKinley County, New Mexico.
2. United Nuclear Corporation ("United Nuclear") produced uranium ore from the Northeast Church Rock Mine for more than two years between 1970 and 1983.
3. The mineral lease under which United Nuclear operated the Northeast Church Rock Mine expired on December 31, 1993.
4. United Nuclear had right of access to the mine site on June 18, 1993 when the New Mexico Mining Act ("Act") became effective.
5. United Nuclear has not been denied right of access to the Northeast Church Rock Mine by the surface or mineral owners for purposes of reclaiming the mine.
6. The extraction of uranium ore from the Northeast Church Rock Mine was not regulated by the Nuclear Regulatory Commission.
7. United Nuclear submitted owner/operator information to the Mining and Minerals Division ("MMD") dated July 16, 1993 for the Northeast Church Rock Mine in accordance with NMSA 1978, § 69-36-5(D) (Repl. Pamp. 1993).
8. United Nuclear sent MMD a withdrawal of its owner/operator notification for the Northeast Church Rock Mine by letter dated June 29, 1994.

9. United Nuclear did not submit a site assessment to MMD for the Northeast Church Rock Mine on or before June 30, 1994 in accordance with NMSA 1978, § 69-36-5 (Repl. Pamp. 1993).
10. United Nuclear did not submit a permit application to MMD for the Northeast Church Rock Mine by December 31, 1994 in accordance with Subpart 5 of the New Mexico Mining Act Rules ("Rules").
11. The Director of MMD informed United Nuclear it would be required to permit the Northeast Church Rock Mine in a letter dated November 15, 1994.
12. The Director of MMD issued Notice of Violation N95-1-3 to United Nuclear on April 20, 1995 for failing to submit a site assessment or permit application for the Northeast Church Rock Mine.
13. United Nuclear Corporation filed a petition with the Commission on September 8, 1995 seeking review of the July 12, 1995 order of the Director of MMD upholding Notice of Violation N95-1-3 and the penalty assessment of \$5,000.00.

THE COMMISSION CONCLUDES THAT:

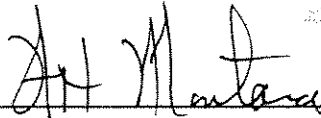
1. The Commission has jurisdiction to review the notice of violation issued by the Director of MMD. NMSA 1978, § 69-36-15(A) (Repl. Pamp. 1993).
2. The Commission followed the requirements of the Act to hold a hearing and to consider evidence in support of, and to challenge, the action of the Director. NMSA 1978, § 69-36-15 (Repl. Pamp. 1993).
3. The Act applies retroactively to mines which produced marketable minerals for at least two years between 1970 and the effective date of the Act, but which were no longer operating on the effective date of the Act.
4. The Northeast Church Rock Mine is an existing mining operation pursuant to NMSA 1978, § 69-36-3(E) (Repl. Pamp. 1993).
5. The Act requires the Northeast Church Rock Mine to be permitted as an existing mining operation.
6. United Nuclear must submit a site assessment and permit application to MMD for the Northeast Church Rock Mine.
7. United Nuclear did not comply with the Act and Rules by submitting a site assessment or permit application for the Northeast Church Rock Mine.

8. Notice of Violation N95-1-3 issued by the Director of MMD on April 20, 1995 to United Nuclear sufficiently charges United Nuclear with violating the Act and Rules.
9. The uranium ore extracted from the Northeast Church Rock Mine is a mineral subject to the requirements of the Act.
10. In order for uranium mining to be excluded from the Act, both the definition of "mineral" and the definition of "mining" in the Act must be considered. The definition of "mineral," NMSA 1978, § 69-36-3(G) (Repl. Pamp. 1993), excludes "commodities, byproduct materials and wastes that are regulated by the nuclear regulatory commission." The definition of "mining," NMSA 1978, § 69-36-3(H) (Repl. Pamp. 1993), excludes "the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the nuclear regulatory commission." The definitions clearly indicate commodities regulated by the Nuclear Regulatory Commission are not totally excluded from the Act unless the specific activities related to the commodities are actually regulated by the Nuclear Regulatory Commission. In this case, the extraction of uranium ore at the Northeast Church Rock Mine was not actually regulated by the Nuclear Regulatory Commission and is not excluded from the Act.

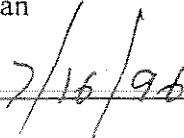
THE COMMISSION ORDERS THAT:

The Notice of Violation N95-1-3 issued to United Nuclear by MMD is affirmed. The penalty assessment of \$5,000.00 is remanded to MMD for reconsideration.

NEW MEXICO MINING COMMISSION



Art Montana
Chairman



Date