

CCASE:

SOL (MSHA) V. CAROLINA STALITE

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

September 12, 1984

SECRETARY OF LABOR, Docket Nos. BARB 79-319-PM

MINE SAFETY AND HEALTH SE 79-56-M

ADMINISTRATION (MSHA) SE 79-91-M

SE 79-92-M

v. SE 79-93-M

SE 79-94-M

CAROLINA STALITE COMPANY SE 79-95-M

SE 79-85-M

SE 79-87-M

SECRETARY OF LABOR SE 79-114-M

MINE SAFETY AND HEALTH SE 80-35-M

ADMINISTRATION (MSHA) SE 80-37-M

SE 80-44-M

v.

Docket Nos. SE 80-21-M

CAROLINA STALITE COMPANY SE 80-61-M

SE 80-73-M

SE 80-79-M

SE 81-6-M

ORDER

On May 15, 1984, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, reversing the Commission's decisions in *Carolina Stalite Co.*, 4 FMSHRC 423 (March 1982) (Docket Nos. BARB 79-319-PM, etc.), and *Carolina Stalite Co.*, 4 FMSHRC 910 (May 1982)(ALJ)(Docket Nos. SE 80-21-M, etc.), and holding that Carolina Stalite's facility is a "mine" subject to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982). The Court remanded the cases for further proceedings consistent with its opinion. The Court issued the certified copy of its judgment on August 22, 1984.

In accordance with the Court's opinion, the administrative law judge's decision in Docket Nos. BARB 79-319-PM, etc., reported at 2 FMSHRC 3508 (December 1980), assessing civil penalties totalling \$14,542.00, is reinstated as the final order of the Commission. Docket Nos. SE 80-21-M, etc. are remanded to the administrative law judge originally assigned for further proceedings including the assessment of appropriate civil penalties.

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We additionally address an apparent misperception of Commission case law that is reflected in the Court's opinion. The Court stated, "The Commission construed the statute ... to require a company actually to extract a mineral before being subject to Mine Act jurisdiction." 734 F.2d at 1551. We emphasize that no such restriction was intended by our decision in this matter. See *Alexander Brothers, Inc.*, 4 FMSHRC 541, 543-44 & nn.8 & 9 (April 1982), in which we held that a connection with the extractor was not required for a facility to be subject to the 1969 Coal Act. Such a connection is also not required for coverage under the Mine Act. 1/ L. Clair Nelson, Commissioner

1/ The terms of office of our former colleagues, Commissioners Frank F. Jestrab and A. E. Lawson, expired at the end of day on August 30, 1984. Pursuant to section 113(c) of the Mine Act, 30 U.S.C. § 823(c), we have designated ourselves as a panel of three members to exercise "all of the powers of the Commission," including the issuance of orders and decisions in proceedings before this Commission.