

**BEFORE THE OKLAHOMA DEPARTMENT OF MINES
STATE OF OKLAHOMA**

IN RE: The matter of application of Farrell Cooper Mining Company Inc., for a) **PREN 19-05 IC**
permit renewal of a surface mining and reclamation operations, in an) **Permit 14/19-4279**
existing area of 601.4 acres, more or less, in Sections 27 and 34,)
Township 10 North, Range, 21 East in Haskell County, State of Oklahoma)

FINDINGS OF THE INFORMAL CONFERENCE OFFICER

The Informal Conference (conference) on Farrell-Cooper Mining Company, Inc., (Applicant/Farrell-Cooper) application for a permit renewal of surface mining and reclamation permit 14/19-4279 was held on June 6, 2019, at the Kiamichi Technology Centers, 1410 Old Military Road, Stigler, OK, beginning at 11:00 a.m. The record closed at the end of the conference.

I. SUMMARY OF THE INITIATION PROCEEDINGS:

- a. Farrell-Cooper Mining Company, Inc., submitted an permit renewal application for their coal mining permit #14/19-4279 to the Department of Mines (ODM) on February 1, 2019.
- b. Renewal notice was given by the Applicant on February 7th, 14th, 21st, and 28th as published in the Stigler News Sentinel.
- c. Pursuant to this notice, on March 4, 2019, Mr. Foster Johnson requested an informal conference on the permit renewal application for permit 14/15-4279.
- d. ODM's Legal Division issued a Notice and Order Setting Informal Conference (Notice and Order) for May 3, 2019, to all parties on April 10, 2019.
- e. A Notice and Order was e-mailed to Stigler News-Sentinel to be published April 18, 2019 and April 25, 2019.
- f. On May 3, 2019, the conference was opened, State Exhibits entered, the witness' sworn. The conference record was turned over to Mr. Foster Johnson. Mr. Johnson stated that the Notice and Order published in the Stigler News-Sentinel was misleading. The Notice was "to the applicant for a Permit Application to engage in surface mining...and to all proper objectors to the application for mining limestone and other minerals in Sections 27, 33, and 34...LeFlore County." Mr. Johnson added:
 - 1. The permit renewal is not for a limestone permit,
 - 2. Permit 14/19-4279 is not located in Section 33, and
 - 3. Permit 14/15-4279 is not located in LeFlore County.

Mr. Henry Roye, a landowner in Section 33, stated that he was present to point out an error he saw in the Notice and Order publication. Mr. Roye said that he agreed that the notice was misleading because he owns land in Section 33 and knows that Farrell-Cooper's mining permit 14/19-4279 is not located in Section 33 and that the mine is not a limestone mine.

g. In response to the misleading error in the Notice and Order Setting the Informal Conference that was published by ODM in the Stigler News-Sentinel the informal conference on May 3, 2019, was cancelled.

h. The ODM Legal Division rescheduled the informal conference, PREN 19-05 IC, for June 6, 2019, starting at 11:00 a.m., at the Kiamichi Technology Center in Stigler, OK. A new Notice and Order Setting Informal Conference was mailed to all parties and was submitted to the Stigler News-Sentinel for publication on May 23, 2019 and May 30, 2019.

II. SUMMARY OF THE TESTIMONY PRESENTED:

a. The Conference opened at 11:00 a.m., State Exhibits relating to the June 6, 2019, conference were entered, and the witnesses sworn.

b. Parties attending the Conference on June 6, 2019, announced as follows:

1. Mr. Foster Johnson, Objector/Landowner; written request submitted to ODM.
2. Mr. Michael Reed, Farrell-Cooper Mining Co., Inc.
3. Mr. Travis Anderson, Farrell-Cooper Mining Co., Inc.
4. Mr. Justin Maxey, ODM, Inspector

Parties attending May 3, 2019, but not present on June 6, 2019, were:

5. Mrs. Lawana Johnson Landowner
6. Henry Roye Landowner

c. Exhibits:

May 3, 2019 (State):

1. Affidavit of Publication (Renewal Application)
2. Request for Informal Hearing from Mr. Foster Johnson
3. E-Mail Confirmation to Stacy Woody, Coal Permit Manager from OKC
- 3(a) E-Mail forwarding Request of Hearing to Legal Division in OKC
4. Notice And Order Referring And Setting Informal Conference
5. Request for Order and Notice Publication to Stigler News-Sentinel from OKC Legal Division with publication Notice attached
6. Copy of OAC 460:20-17-4. Permit Renewals
7. Copy of OAC 460:20-19-1. Administrative And Judicial Review of Decisions

Copy of the April 25, 2019, Stigler News-Sentinel, publication notice printed after oral statements to show notice error, not offered as an Exhibit.

June 6, 2019 (State):

1. Informal Hearing request, renumbered copy from State Exhibit #2 of 5/3/2019
2. Notice And Order Referring and Setting Informal Conference for 6/6/2019
3. Copy Of OAC 460:20-17-4. Permit Renewals

Objector's Exhibit:

1. OBJ Exhibit #1: Written objection statement

c. The record was turned over to the objector, Mr. Foster Johnson, who read his written statement for the record. The statement was accepted and entered into the record as OBJ Exhibit #1. Mr. Johnson's statement contained the following points:

1. The water pumped out of existing pits needs close monitoring for dissolved solids or salts. The monitoring frequency should be increased when the pumped water is closer to the bottom of the pits because it is more polluted.
2. Pumping water from a pit into a settling pond does not settle out the dissolved solids or salts because they are already in suspension.
3. Pumping water from the pit should be stopped when the dissolved solids or salts go above the surrounding stream levels not influenced by the pit water. Pit water from another area pit should not be used as a comparison.
4. Bottom feeders in the streams, such as crawfish, and other animals, who might be adversely affected by the higher dissolved solids or salt concentration of the pumped pit water, need to be protected.
5. When attention was called to water, with high dissolved solids or salts, pumped from another Farrell-Cooper mine, located less than a mile from this permit, ODM tested the water and required the pit pumping to stop. ODM should review these water tests and the ceasing directive in relation to monitoring pumping on permit # 4279.

f. The Objector rested after reading his written statement into the record. The written statement was submitted and entered as an exhibit.

g. The record was turned over to the permit renewal Applicant, Farrell-Cooper Mining Company, Inc., who declined to comment and rested.

h. No other documents or statements were submitted and the conference record was closed.

III. SUMMARY OF ISSUES PRESENTED AND APPLICABLE REGULATIONS:

a. Whether or not the testimony, statements and evidence presented at the Informal Conference demonstrated that Farrell-Cooper's permit renewal application, for permit 14/19-4279, met the general requirements for a permit renewal within OAC 460:20-17-4?

1. The general requirements for a permit renewal and its right to successive renewal are contained within 460:20-17-4, which states:
 - (a) General. A valid permit, issued pursuant to an approved regulatory program, shall carry with it a right of successive renewal, with the approved boundaries of an existing permit, upon the expiration of the term of the permit.

- b. Whether or not the statements and/or evidence presented at the time of the informal conference indicated that the permit renewal application was complete and accurate within the scope of 460:20-17-4(c) (1) Criteria for approval, to enable a determination of approval or denial of the renewal application for Farrell-Cooper Mining Company, Inc., permit 14/19-4279?

- c. Whether or not at the time of the informal conference the statements and/or evidence presented indicated that the renewal Objector met the burden of proof for denial of the successive right of renewal of Farrell-Cooper Mining Company Inc., permit 14/19-4279, as required in 460:20-17-4(c) (2) Burden of Proof?

THESE FINDINGS OF THE INFORMAL CONFERENCE OFFICER will be submitted to the Oklahoma Department of Mines Coal Program Administrator, Ms. Rhonda Dossett, who after review will issue a Notice of Departmental Recommendation.

Dated this 5th day of July, 2019.

Catherine Frank, Informal Conference Officer
Oklahoma Department of Mines
Tulsa Field Office
4845 South Sheridan, Suite 514
Tulsa, OK 74145-5719
918/295-3999
918/295-3996

CERTIFICATE OF MAILING

This is to certify that on the _____ day of July, 2019, I mailed a true and correct copy of the above and forgoing Findings of the Informal Conference Officer to:

Mr. Foster Johnson
20561 E. Tamaha Road
Stigler, OK 74462

Mr. Michael Reed
6001 South Zero Street
Fort Smith, AR 72917

Mr. Travis Anderson
Farrell-Cooper Mining Co., Inc.
P.O. Box 11050
Fort Smith, AR 72917

Mr. Robert Cooper
P.O. Box 11050
Fort Smith, AR 72917

Mrs. Lawana Johnson
20561 E. Tamaha Road
Stigler, OK 74462

Mr. Henry Roye
801 N .W. 3rd
Stigler, OK 74462

Rhonda Dossett, Coal Program Director
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Hand Delivered

Inspector Justin Maxey
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