

FINAL ORDER

BEFORE THE WELD COUNTY 1041 WOGLA HEARING OFFICER

Docket Number 1041WOGLA20-0090

1041 WOGLA Hearing Officer Curt Moore heard this matter on March 25, 2021 at the Weld County Oil & Gas Energy Hearing Room, 1301 N 17th Ave, Greeley, CO 80631 and through a remotely held audio and video connection led by the Oil & Gas Energy Department Director upon application for a 1041 WOGLA Permit located in the SENE of Section 12, Township 3 North, Range 67 West, 6th P.M., Weld County, Colorado. Present for the hearing were Dwight Mallory, Permit and Enforcement Specialist, Weld County; Elisa Kunkel, Oil & Gas Energy Technician, Weld County; Stephanie Frederick, Oil & Gas Energy Technician, Weld County; Jason Maxey, Oil & Gas Energy Department Director, Weld County; Gabe Kalousek, Assistant County Attorney, Weld County; Taylor Robinson, Weld County Department of Public Health and Environment, Weld County; Shayelyn Marshall, Regulatory Analyst, Kerr-McGee Oil & Gas Onshore LP; Andy Lytle, Regulatory Manager, Kerr-McGee Oil & Gas Onshore LP; Tom Crouch, Landman, Kerr-McGee Oil & Gas Onshore LP; and Justin Nelson, Mitigation Foreman, Kerr-McGee Oil & Gas Onshore LP. Having heard the testimony presented and considering documents submitted for review, including the application, the Hearing Officer makes the following Findings of Fact and Order:

Findings of Fact and Law

The Hearing Officer makes the following findings of fact:

1. Kerr-McGee Oil & Gas Onshore LP ("Kerr-McGee" or "Applicant") as Applicant for the above referenced Docket delivered its 1041 WOGLA Permit Application ("Application" or "Permit") dated December 17, 2020 to the Weld County Oil & Gas Energy Director ("Director" or "Staff").
2. Upon review of the Application, Amanda Petzold, Permit and Enforcement Specialist, Weld County, found the Application to be complete and forwarded the Application to the Hearing Officer for the purpose of scheduling a hearing pursuant to the Weld County 1041 Regulations ("WCC" or "Code").
3. At the scheduled Hearing on February 25, 2021, the Hearing Officer took testimony for this Application from the Staff and the Applicant.
4. At the conclusion of the February 25, 2020 Hearing the Hearing Officer found the Application and testimony insufficient to render a decision to approve or deny the Permit.
5. The Hearing Officer delivered a Continuance Order dated March 2, 2021.

6. The Continuance Order cited three (3) orders to the Applicant (the "Applicant Orders"). The cited Applicant Orders in the Continuance Order were:
 - a. It is ordered that the Applicant shall perform an ambient/baseline sound study at the Application Site.
 - b. It is ordered that the Applicant shall deliver the results of the sound study to Staff not later than March 18, 2021.
 - c. It is ordered that the Applicant shall return to the March 25, 2021 Hearing and present evidence including their recommendation for the Noise Level requirements for this Application to the Hearing Officer at the March 25, 2021 Hearing.
7. The Continuance Order cited one (1) order to the Staff (the "Staff Order"). The cited Staff Order in the Continuance Order was:
 - a. It is ordered that Staff shall consider the sound study and shall present evidence including their recommendation for the Noise Level requirements for this Application to the Hearing Officer at the March 25, 2021 Hearing.
8. The Continuance Order included a termination date of March 25, 2021, in the event that the Applicant failed to appear. The Continuance Order provided that if terminated a Final Order denying the Application would be issued by the Hearing Officer.
9. The Continuance Order cited certain Findings of Facts and Law. The Findings of Fact and Law in the Continuance Order were:
 - a. At the scheduled Hearing on February 25, 2021, Ms. Petzold gave testimony that the Application was viewed as complete and further testified that the Application was found to be in compliance with the Code including the Application Requirements described within Sec. 21-5-320 of the Code and the Development Standards within Division 4 of Article 5 ("Development Standards") of the Code.
 - b. Ms. Petzold further testified that:
 - i. Certain Conditions of Approval ("COA's") and Best Management Practices ("BMP's") are outlined within the Staff Report and within the Application.
 - ii. The proposed OGL is located within the Near-Urban Planning Area of the Code as depicted upon Appendix 21-B of the Code. Staff concluded that one Building Unit is located within the WOGLA Notice Zone and Staff understands that this Building Unit is owned by the surface owner upon whose lands the Oil & Gas Location ("OGL") is proposed to be located. Staff further concluded that there are no High Occupancy Building Units, Designated Outdoor Activity Areas, School Facilities or Child Care Facilities (all as defined within the Code) located within one (1) mile of the proposed OGL.
 - iii. A Pre-Application Meeting was conducted on October 27, 2020 and was attended by representatives of the Staff and representatives of the Applicant. Invitees to the Pre-Application Meeting that did not attend this meeting included representatives of the Colorado Oil & Gas Conservation



Commission (the "COGCC") and members of Colorado Parks and Wildlife ("CPW").

- iv. At the Pre-Application Meeting, Staff and the Applicant considered five (5) alternative locations within the COGCC drilling and spacing unit and concluded that the alternative locations would either be in close proximity to certain building units or would be located within a floodplain. Upon consideration of the alternative locations and the application site (the "Application Site") the parties concluded that the Application Site was superior to the alternative locations in terms of best protecting public health, safety, welfare, environment, and wildlife.
 - v. Four (4) property owners and one (1) building unit owner received both Pre-Application Notice and Notice of Hearing for the Application pursuant to Weld County Code Ordinance 2020-12. Staff received no Applications for Intervention pursuant to the Code for this Application.
 - vi. The Applicant has entered into a surface use agreement with the surface owner.
 - vii. Staff referred the Application to various entities as outlined in the Staff Report. Staff has included various conditions of approval in the Staff Report based on the referral responses. The Applicant has received copies of the responses that were received by Staff.
 - viii. The Applicant has secured an approved Access Permit from the Weld County Department of Public Works ("WCDPW") for this Application.
 - ix. WCDPW has received and accepted a cash-in-lieu payment from the Applicant which serves to substitute for an approved Road Maintenance Agreement for this Application.
 - x. Subsequent to the date of the Staff Report, the Applicants Preliminary Drainage Report has been reviewed and found to be satisfactory to WCDPW. Ms. Petzold recommended that Prior to Recording COA 1.a. referenced in the Staff Report be deleted.
 - xi. The Weld County Office of Emergency Management has approved the Applicants Emergency Action Plan and Tactical Response Plan for this Application.
 - xii. Staff determined the Application Site to be within Lighting Zone ("LZ-1") pursuant to Sec. 21-5-405 of the Code. The Applicant's photometric plan has been reviewed by Staff and was found to be in compliance with the Code.
 - xiii. Staff found that the BMP's described in the Application will adequately mitigate any impacts from noise and lights generated at this OGL.
- c. Ms. Petzold concluded her testimony with a recommendation to the Hearing Officer that the Application should be conditionally approved with the COA's (as amended) described in the Staff Report.



- d. Upon examination by the Hearing Officer Ms. Petzold testified that:
 - i. Staff received no response from any of the parties that received Pre-Application and Notice of Hearing for this Application pursuant to the Code.
 - ii. None of the wells described in this Application are within 150' of a property line.
 - iii. The Application does not present any conflicts with respect to compatibility with adjacent or nearby land uses.
- e. Ms. Marshall testified that:
 - i. The Applicant has consulted with the surface owner and the surface owner's tenant (the "Tenant") with respect to the siting of and access to the proposed Application Site and the surface owner and Tenant collectively do not object to the oil and gas location ("OGL") proximity to the building unit. The Applicant has further received a waiver from the Tenant of the OGL being located within five hundred (500) to six hundred (600) feet from the building unit where the Tenant resides.
 - ii. Five (5) alternative sites were considered by the Applicant and were found to be inferior to the Application Site primarily due to proximity to building units or being located partially or entirely within a floodplain. Additionally, alternative sites noted as #1-3 would have doubled the number of wells drilled which would have substantially increased the surface impacts compared to the Application Site. In the estimation of the Applicant, the Application Site provides the least impact to public health, safety, welfare, environment and wildlife when compared to the other alternatives that the Applicant considered while developing the Application.
 - iii. The haul route has been designed to restrict traffic from traveling through the Town of Platteville. The Applicant will advise the various parties accessing this location to not travel through the Town of Platteville and will note that restriction on the haul route sign(s) that will be on the OGL.
 - iv. The Applicant will source and deliver fresh water to the location for the completion operations via temporary pipelines which will significantly reduce the impacts associated with truck traffic at this location.
 - v. The Applicant will connect the proposed production facility to crude oil gathering infrastructure and shall transport crude oil via pipelines at first production which will significantly reduce the impacts associated with truck traffic at this location.
 - vi. Automation will be installed and monitored at this site which will provide notice of facility upset conditions with remote shut-in capabilities.
 - vii. Sound walls will be installed on the north and south sides of the OGL to mitigate impacts to nearby building units. The sound walls will also reduce

- lighting impacts to nearby building units during the construction phase of the project.
- viii. A “quiet” frac fleet will be used at this location to mitigate impacts to nearby building units.
 - ix. A sound survey will be conducted prior to construction at this location to establish ambient/baseline sound. The results of the sound survey will be shared with Staff and will provide data that can be used to assess the need for additional sound mitigation that may be required at this location.
 - x. The Applicant will design and install continuous air monitoring at this site. Air monitoring will be conducted from the Construction Phase through six (6) months of the Production Phase of the project. The Applicant will share the design of the air monitoring program and the data collected with the Weld County Department of Public Health and Environment if requested.
 - xi. The site will be powered by electricity which will reduce noise and air emission impacts.
 - xii. The Applicant intends to drill and complete all of the wells referenced in the Application at one time rather than executing a phased development requiring multiple entries to the OGL for drilling and completion operations.
 - xiii. The Applicant shall connect the proposed facility to nearby gas gathering systems and shall transport natural gas via pipelines at first production. The Applicant will not flare gas at this location.
 - xiv. As many as eighteen (18) existing oil & gas wells may be plugged and abandoned as part of the execution of this project. The Applicant estimates one and a half (1.5) acres of surface will be returned to its prior use for each well plugged and abandoned.
 - xv. The Applicant will control dust on the proposed site and private access roads with gravel or road base and through the use of speed restrictions, regular road maintenance, traffic restrictions during periods of high wind, silica dust controls when handling sand used in hydraulic fracturing operations, and through the application of fresh water or other dust suppression as needed.
 - xvi. The Applicant will install fencing around the wells and production facilities and will install locked gates to control unauthorized public entry.
 - xvii. The location will be constructed with secondary containment with impervious lining to protect soil and water resources from leaks and spills during the drilling, completion and production phases. Flowlines will be monitored for changes in pressure and tested annually for integrity. A Leak Detection and Repair (“LDAR”) program along with an audio, visual, olfactory (“AVO”) program is planned for this location as part of an overall leak and spill detection program. The data collected from the AVO, LDAR



and flowline testing programs would be made available to the Weld County Department of Public Health and Environment if requested.

- xviii. The lighting during drilling and completion operations will be pointed downwards to mitigate light pollution. If necessary, the Applicant will take action to mitigate truck lights to mitigate impacts to nearby building units.
- xix. The Applicant will design and implement a waste management plan for this location that complies with the Colorado Department of Public Health and Environment ("CDPHE") referral comments.
- xx. The Applicant has a fieldwide Stormwater Management Permit that will include the site proposed in this Application and complies with the Colorado Water Quality Control Commission regulations.
- xxi. The equipment installed at this site will have all required air emission permits required and referenced in the CDPHE referral comments.
- xxii. The Applicant will use an odor neutralizer at this location to mitigate impacts to nearby building units.

- f. She has reviewed and agreed to be bound to the Development Standards within the Code; the COA's (as amended) within the Staff Report; and BMP's within the Application; and the Development Standards and Conditions within the referral agency comments received from the Weld County Department of Public Works less and excluding Development Standard 6. which references a Road Maintenance Agreement which is not applicable in this Application.

10. At the scheduled Hearing on March 25, 2021, Mr. Mallory testified that:

- a. The Applicant complied with the Applicant Orders cited in the Continuance Order.
- b. In addition to the ambient sound survey (the "Sound Survey") the Applicant provided a Noise Modelling Report ("NMR1") to Staff which was also received prior to March 18, 2021.
- c. Following discussions between Staff and the Applicant on March 23, 2021, the Applicant provided a second Noise Modelling Report ("NMR2") to Staff.
- d. NMR2 included additional sound mitigation in the form of additional sound wall mitigation on the east side of the proposed OGL.
- e. With respect to the Staff Order a revised referral response (the "Revised Referral") from the WCDPHE was delivered to the Hearing Officer and the Applicant and requested to be entered into evidence as Exhibit #1.
- f. Within the Revised Referral, the Weld County Department of Public Health and Environment ("WCDPHE") effectively revised its recommendation for allowable noise in this Application. The revised allowable noise levels were adjusted to Noise Level NL-3 at a distance three hundred and fifty (350) feet from the OGL during the Construction Phase and Noise Level NL-2 at the building unit (the "Building Unit") located five hundred and one (501) feet from the OGL during the Construction Phase. WCDPHE maintains its recommendation of Noise Level NL-1 during the Production Phase for this Application.

11. Mr. Robinson testified that:
 - a. The NMR2 established that the Applicant could not meet Noise Level NL-1 during the Construction Phase. When compared to NMR1 the additional sound mitigation within NMR2 did not substantively improve the noise at the survey receptor nearest the building unit and WCDPHE concluded that NL-3 was the appropriate Noise Level at the receptor located three hundred and fifty (350) feet from the OGL. Mr. Robinson further testified and reiterated that WCDPHE recommends Noise Level NL-2 at the Building Unit which is approximately one hundred and fifty-one (151) feet beyond the receptor.
 - b. The results of the Sound Survey did not guide WCDPHE to consider the Cumulative Noise provisions referenced in Section 21-5-435 of the Code as part of the Revised Referral.
 - c. WCDPHE remains unmoved by the waivers (the "Waivers") that the Applicant has produced and delivered to Staff.
12. Mr. Lytle testified that the Applicant does not object to the Revised Referral being accepted into the Application as evidence.
13. Mr. Lytle testified that the Applicant is seeking a Noise Level NL-3 requirement during the Construction Phase of this Application with measurement of noise at the receptor located three hundred and fifty (350) feet from the OGL.
14. Mr. Nelson testified that establishing two (2) compliance points with one point being at the receptor three hundred and fifty (350) feet from the OGL and another point at the Building Unit located five hundred and one (501) feet from the OGL creates an inconsistent and unreasonable burden upon the Applicant.
15. Mr. Nelson and Mr. Lytle moved for Noise Level NL-3 during the Construction Phase for this Application.
16. Ms. Marshall testified that the Waivers are from the surface owners and the tenants of the Building Unit.
17. Mr. Crouch testified that the surface owners and the tenants of the Building Unit have, through their execution of the Setback Waiver and Informed Consent documents with the Applicant, evidenced their effective waiver of noise impacts in this Application.
18. Mr. Robinson testified that he remains unmoved by the Waivers and reiterated his recommendation relative to allowable Noise Levels cited in the Revised Referral.
19. Mr. Mallory testified that he supports Mr. Robinson's recommendation relative to the recommended Noise Levels cited in the Revised Referral.
20. Mr. Nelson and Mr. Lytle testified that noise will be continuously monitored at this OGL and that the Applicant will actively engage any noise complaints that may be received at this site and will consider additional best management practices to mitigate noise impacts based on complaints that the Applicant receives.
21. Director Maxey testified that he supports the Staff recommendation relative to the recommended Noise Levels cited in the Revised Referral.



22. Upon review of the Application, the Staff Report, the evidence submitted by the Applicant and Staff pursuant to the Continuance Order, and upon taking testimony from Ms. Petzold, Mr. Mallory, Mr. Robinson, Director Maxey, Ms. Marshall, Mr. Lytle, Mr. Nelson, Mr. Crouch and Mr. Simmons the Hearing Officer found the Application to be complete.
23. Based on the facts stated in the Application, having received no applications for intervention, and based on the testimony presented to the Hearing Officer at the March 25, 2021 Hearing, the Hearing Officer found that a final order ("Final Order") to approve the Application should be entered.

FINAL ORDER

NOW, THEREFORE, IT IS ORDERED, that

1. Kerr-McGee 's 1041 WOGLA Permit heard under Docket Number 1041WOGLA20-0090 and located in the SENE of Section 12, Township 3 North, Range 67 West, 6th P.M., Weld County, Colorado, is hereby approved.
2. Kerr-McGee is hereby bound to the Development Standards within the Code; the COA's within the Staff Report (as amended); the BMP's within the Application; and the Development Standards and Conditions within the referral agency comments received from the Weld County Department of Public Health and Environment and the Weld County Department of Public Works the contents of which can be located at <https://accela-aca.co.weld.co.us/citizenaccess/>.
3. It is ordered that Prior to Recording COA 1.a. referenced in the Staff Report is hereby deleted.
4. It is ordered that the Kerr-McGee will advise the various parties accessing this location to not travel through the Town of Platteville and will note that restriction on the haul route sign(s) that will be located on the OGL.
5. It is ordered that Kerr-McGee will source and deliver fresh water to the location for the completion operations via temporary pipelines.
6. It is ordered that Kerr-McGee will connect the production facility to crude oil gathering infrastructure and shall transport crude oil from this facility via pipelines at first production.
7. It is ordered that automation will be installed and monitored at this site which will provide notice of facility upset conditions with remote shut-in capabilities.
8. It is ordered that sound walls will be installed on all sides of the OGL.
9. It is ordered that a quiet frac fleet will be used at this location.
10. It is ordered that Kerr-McGee will design and install continuous air monitoring at this site, the air monitoring will be conducted from the Construction Phase through six (6) months of the Production Phase of the project, and Kerr-McGee will share the design of the air monitoring program and the data collected with the Weld County Department of Public Health and Environment if requested.
11. It is ordered that the site will be powered by electricity during the Production Phase.



12. It is ordered that Kerr-McGee shall connect the production facility to gas gathering systems, shall transport natural gas via pipelines at first production, and will not flare gas at this location.
13. It is ordered that Kerr-McGee will control dust on the proposed site and private access roads including through the application of fresh water or other dust suppression agents.
14. It is ordered that Kerr-McGee will install fencing around the wells and production facilities and will install locked gates to control unauthorized public entry during the Production Phase.
15. It is ordered that the data collected from the Applicant's AVO, LDAR and flowline testing programs will be made available to the Weld County Department of Public Health and Environment if requested.
16. It is ordered that the Applicant will mitigate, if necessary, the impact of truck lights to nearby building units.
17. It is ordered that Kerr-McGee will use an odor neutralizer at this location to mitigate impacts to nearby building units.
18. It is ordered that the Revised Referral delivered to the Hearing Officer at the March 25, 2021 Hearing is accepted into the Application as evidence.
19. It is ordered that Kerr-McGee will comply with Noise Level NL-3 during the Construction Phase and Noise Level NL-1 during the Production Phase for this Permit. Compliance with the ordered Noise Levels will be pursuant and subject to Section 21-5-435B.1.a. of the Code.
20. It is ordered that Kerr-McGee will actively engage any noise complaints received at this site and will consider additional best management practices to mitigate noise impacts to nearby building unit owners and/or tenants.

IT IS FURTHER ORDERED, that this Final Order will be recorded in the records of the Weld County Clerk and Recorder. Additionally, a notice describing generally the type and intensity of USE approved, the specific parcel or parcels of property affected and stating that a VESTED PROPERTY RIGHT has been created shall be published once, not more than fourteen (14) days after approval of the 1041 WOGLA Permit. The Permit shall be effective upon recording and publication.

Weld County Oil & Gas Energy

By: 
Curt Moore, Hearing Officer

Dated: March 30, 2021