

PO Box 2492
Longmont, CO 80502
June 17, 2025

Department of Natural Resources
Division of Reclamation, Mining and Safety
Attention: Ben E. Hammar
ben.hammar@state.co.us

RE: CDPHE Objection and Petition for Hearing: Rocky Flats Pit - File No.
M-1987-113, BURNGO Colorado, LLC, Amendment (AM-2) Request for an
Amendment dated June 5, 2025.

Pursuant to 34-32.5 § 114 C.R.S., the undersigned is an aggrieved person with the following written objections to the above referenced BURNGO Colorado, LLC Amendment from Rangeland to lake area. The CDPHE objections dated June 5, 2025, with additional information, and request for Hearing are shared by the undersigned.

The undersigned is an aggrieved person, who will suffer a harm or potential harm if BURNGO Colorado, LLC is permitted to install a lake area on or near the vicinity of the Rocky Flats National Wildlife Refuge, Rocky Flats Superfund Site.

Your aggrieved person was a Federal Bureau of Investigation (FBI) Special Agent from 1984-2004 authorized by federal law to investigate crimes against the United State of America (18 USC § 3052). Petitioner was the FBI case agent assigned to the criminal investigation of US Department of Energy (USDOE) and Rockwell International, USDOE contractor, at the former Rocky Flats Nuclear Weapons Plant from 1987-1992 who served a criminal search warrant on June 6, 1989 that led to the shuttering of Rocky Flats; subpoenaed and testified before a US House of Representatives Oversight and Investigations Subcommittee regarding the Rocky Flats prosecution in 1992; testified as a subject-matter expert witness in the Marilyn Cook, et al, Plaintiffs vs. Dow Chemical and Rockwell International, Defendants, Denver federal civil case, number 90-cv-00181 (JLK) in 2005 (Cook Case) regarding Rocky Flats contamination.

Undersigned is currently an "engaged stakeholder" defined by the Rocky Flats Legacy Management Agreement of 2007 (RFLMA). (Id., at 7.0 Public Participation). The RFLMA is a tri-party agreement between CDPHE, USDOE and USEPA regarding the ongoing CERCLA Maintenance and Operations of the Rocky Flats Superfund Site, the approximately 1,300 acres inside and completely surrounded by the Rocky Flats National Wildlife Refuge.

Undersigned was recognized "... done enough to establish [legal] standing ..." by the United States Court of Appeals for the Tenth Circuit, docket number 21-1310, dated July 19, 2022 in the matter of Rocky Mountain Peace and Justice Center, et al, Appellant v. United States Fish and Wildlife Service, et al, Defendants - Appellees, Denver US District Court case number 1:18-CV-01017-PAB, a National Environmental Policy Act (NEPA) case concerning the Rocky Flats National Wildlife Refuge and Rocky Mountain Greenway. (Id., p. 27).

The undersigned holds a Masters in Advanced Studies (MAS) from the University of California (UCI), Irvine, California in Criminology, Law and Society (CLS). The entirety of this communication is derived from personal opinion based upon research, analysis and synthesis of official government documents in the public domain without compromising US Classified Information, Special Federal Grand Jury secrecy rules, FBI sources and techniques and US Privacy Act.

Potential Nuisance and Trespass

In the attached CDPHE objection letter dated June 5, 2025 the letter states that the Church pit is upgradient of the Rocky Flats Superfund Site (1989-Present) and within the the now delisted Rocky Flats Peripheral Operable Unit or POU (1989-2007). now known as the Rocky Flats National Wildlife Refuge (RFNWR) and Jefferson Parkway right-of-way administered by US Fish and Wildlife Service (USFWS) and Jefferson Parkway Public Highway Authority (JPPHA). The BURNCO Colorado, LLC application is without acknowledging a USFWS permit to operate a mine or lake area on the RFNWR. In fact, the Rocky Flats National Wildlife Refuge Act of 2001 (P. Law 107-107) expressly provides that the RFNWR remain under federal ownership, including minerals, within the boundaries of Rocky Flats shall be retained by the United States. (Id., at § 3174 (a)). The RFNWR Act also affirmatively prohibits annexation of the RFNWR. (Id., § 3174 (d)). The State of Colorado has no authority to permit BURNCO Colorado, LLC for mining or reclamation on Rocky Flats without federal authority.

Rocky Flats West Spray Field

The Burnco Colorado, LLC, Rocky Flats Pit Site Map reclamation to a proposed lake area could adversely impact the former Rocky Flats legacy West Spray Field, Operable Unit 11, Individual Hazardous Substance Site (IHSS) 168 by recharging Rocky Flats regulated Mixed Waste contaminants to surface or ground water. The West Spray Field was a trans-evaporation operation of Rocky Flats radioactive and hazardous contaminants (regulated Mixed Wastes) from the Solar Evaporation Ponds in the early 1980s. The Rocky Flats Solar Evaporation Ponds, Operable Unit 4, IHSS 101, were unlined ponds (207C, 207A and 207B series) that stored low-level radioactive and hazardous wastes from 1953 until

closed by CDPHE in 1985. However, Rockwell International at Rocky Flats defied CDPHE authority and continued to utilize the Solar Evaporation Ponds, conduct that Rockwell International ultimately pled guilty to in 1992 in Denver U.S. District Court, case number 92-CR-107.

The West Spray Field liquid effluent was to evaporate or bypass to Rock Creek however the aqueous solids could remain in the ground available for recharge by a BURNCO Colorado, LLC lake area. In 1997 US Geological Survey confirmed residual Rocky Flats contamination (including weapons-grade plutonium-239, Americium-241, Tritium, and Uranium-238) in their "Surface-Water Quantity and Quality Data, Rocky Flats Environmental Technology Site Near Denver, Colorado, Water Year 1996."

Rocky Flats Original Landfill (OLF)

The undersigned does not agree with CDPHE that the OLF contents are 'unknown nonradioactive hazardous chemical wastes during production at the site' (Rocky Flats) from 1952-1989.

The Original Landfill (OLF), IHSS 115 is a 20-acre area located on a south-facing slope on the northern side of Woman Creek bank, south of the Industrial Area of Rocky Flats. The November 8, 2004 Kaiser Hill, contractor of USDOE at Rocky Flats, "Industrial Area and Buffer Zone Sampling and Analysis Plan, Modification 1" report describes that two-million cubic-feet of miscellaneous Site wastes are buried at the OLF, to include solvents, pesticides, beryllium and/or uranium wastes, ash containing 20 kilograms of depleted uranium was also buried in the OLF. (Id., p. 24). Frankly, USDOE Rocky Flats record keeping was and is unreliable. On November 5, 1971 Science magazine published Deborah Shapley's "Rocky Flats: Credibility Gap Widens on Plutonium Plant Safety" report. James F. Willging, Director of Research and Ecology for Dow Chemical at Rocky Flats responded to questions concerning buried waste trenches: "Willging admits that on these [buried waste trenches], as well, company records may prove equally "vague." (Id. at p. 571). The lack of Rocky Flats waste documentation saga continued in the 1990s when the State of Mexico required the USDOE Idaho National Laboratory to re-characterize Rocky Flats waste stored in Idaho prior to disposal at the Waste Isolation Pilot Plant near Carlsbad, NM. I am not convinced that all Rocky Flats chemicals utilized as a Resource Conservation and Recovery Act feedstock for manufacturing have been fully identified.

In April 1986 USDOE published its "Comprehensive Environmental Assessment and Response Program, Phase 1: Installation Assessment Rocky Flats Plant" report to counter USEPA's determination to place Rocky Flats on the

Superfund National Priorities List (NPL) in 1984, determined by the Hazard Ranking System (HRS). USDOE documented that the OLF Total Migration Mode factors scored 15 chemicals and 5 radionuclides. (Id. at Appendix B, Page B-4).

In his "The Past 30 Years At Rocky Flats Plant: A summary of experiences and observations at Rocky Flats Plant over the past 30 years with emphasis on health and safety" report, Edward A. Putzier, Health Services Manager, Rockwell International, Energy Systems Group, Rocky Flats Plant, November 1982 was performed under United States Department of Energy Contract DE-AC04-76DPO-3533. Putzier recalled, documented and paraphrased that Rocky Flats, Building 774 aqueous portion of the liquid waste, primarily enriched uranium with a count of less than 1,600 disintegrations per minute were transferred to the A-Series ponds on North Walnut Creek that contaminated Broomfield's drinking water supply at Great Western Reservoir; sometime after the [1957] fire plutonium residue was minimized by rerouting the Building 774 effluent into the sanitary system and the sanitary process decontaminated the plutonium waste stream, the contaminated sewage sludge was disposed of in the [Original] Landfill; and, the 1969 fire plutonium residue was also rerouted to Building 774 into the sanitary system however the sewage sludge was drummed and shipped as contaminated waste. (Id., at p. 68).

Words to the Wise

"Plutonium has a half-life of 24,000 years. The half-life of memory, by contrast, is a much briefer thing. The contamination at Rocky Flats will long outlive our efforts to control or even remember it." (Hannah Nordhaus, Historian).

Please view Jeff Gipe's "Half-Life of Memory: America's Forgotten Atomic Bomb Factory" documentary online with Rocky Mountain PBS at <https://www.pbs.org/video/ceff-2025-half-life-of-memory-atomic-bomb-54y358>.

Sincerely,

Jon S. Lipsky, MAS and FBI Retired

EC: Brian Walker, CDPHE
Tracie White, CDPHE
Colleen Brisnehan, CDPHE
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Bill Fisher, City of Golden
Andy Kerr, Jefferson County
Rich Kondo, City of Northglenn
Bob McCool, Town of Superior
Jan Kulmann, City of Thornton
Nancy McNally, City of Westminster
Jeanette Hillery, League of Women Voters
Murph Widdowfield, Rocky Flats Cold War Museum
Roman Kohler, Rocky Flats Homesteaders
Kim Griffiths, Candelas Community

June 5, 2025

Department of Natural Resources
Division of Reclamation, Mining and Safety
Ben E. Hammar
ben.hammar@state.co.us

RE: Objection and Petition for Hearing: Rocky Flats Pit - File No. M-1987-113, BURNCO Colorado, LLC, Amendment (AM-2) Request for an Amendment

Dear Ben Hammar,

Pursuant to Section 34-32.5-114, C.R.S., the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the Division) objects to, and requests a hearing on, the application to modify the reclamation plan for permit number M-1987-113 dated April 16, 2025 (the Application) for the Rocky Flats Pit.

The mining operation is on federal property that the Department of Energy previously acquired to make components for nuclear weapons. Those operations, and the contamination caused by those operations, resulted in the property being regulated as a hazardous waste facility and designated as a Superfund site. The Department of Energy's cleanup efforts resulted in a "Central Operable Unit" or "COU," where the weapons production operations occurred and a "Peripheral Operable Unit" or "POU" that serves as a buffer zone area. The Division is responsible for regulating the COU and the mining operation is located on the POU (see Attachment 1 - Boundaries of the Peripheral and Central Operable Units - CAD/ROD).

The Church pit is located west and upgradient from the COU. It is located within the POU buffer area. The Application proposes joining the Church Pit operated by the Lakewood Brick and Tile Company and the Rocky Flats Pit operated by BURNCO Colorado, LLC to reclaim the excavation area as a water storage reservoir rather than as rangeland. Based on historical sites studies, the Division believes that creating a surface water reservoir for developed water storage upgradient of the COU would substantially increase groundwater recharge to the Upper Hydrostratigraphic Unit (UHSU) in several drainage areas across the site. This could create several problems.

First, the "Original Landfill," or "OLF" is an unlined, historic landfill located along the hillside directly downgradient from the proposed surface water reservoir. The OLF received general plant wastes and unknown nonradioactive hazardous chemical wastes during production at the site.

From 2013 to 2015, substantial groundwater recharge volumes caused by increased precipitation resulted in subsidence and failure of components of the OLF (see attached Contact Records 2013-02, 2013-03, 2014-09, 2015-03, 2015-06, 2016-03, 2016-04, 2017-01, 2018-01, 2018-02, 2019-02, and associated notifications). In summary, increased groundwater flow resulted in subsidence, cracking, and failure of engineered features at the OLF. DOE successfully characterized hydrological conditions of the area, which ultimately confirmed that the uppermost stratigraphic units in the UHSU, where the OLF is constructed, are poorly cohesive and susceptible to failure in the presence of increased groundwater. Additionally, the uppermost member of the Lower Hydrostratigraphic Unit (LHSU) that underlies the OLF is comprised of a thick sequence of shale, which serves as a preferential failure plane for rotational failure (see Attachment 2 - Geological Cross-Section and Stratigraphic Column - Rocky Flats RI/FS/CRA). DOE then performed interim stabilization measures to dewater the area prior to implementing permanent measures to stabilize the OLF. DOE stabilized the OLF by anchoring the landfill into the bedrock with 263 reinforced concrete anchors and adding dewatering features. DOE's efforts have been effective, however, increased groundwater recharge from the proposed water storage

activities presents a risk to destabilize this area and cause the engineered components to fail (see Attachment 3 - Annual Report of Site Surveillance and Maintenance Activities (CY2024) - Potentiometric Surface Maps).

Second, increased groundwater recharge and groundwater flow could liberate contaminants that remain within the site and could worsen the migration of contaminant plumes that have been delineated within the COU. As demonstrated in the Rocky Flats Legacy Management Agreement - Composite Plume Map (Attachment 4), the mining operations are upgradient from several known groundwater plumes at the COU. Increasing groundwater recharge and groundwater flow from the proposed water storage reservoirs could increase mass flux and mass discharge of the contaminant plumes, resulting in impacts to surface water.

Furthermore, components of the remedy established in the Corrective Action Decision/Record of Decision and the Rocky Flats Legacy Management Agreement to monitor the contaminant plumes at the site are based upon our understanding of the nature, extent, and fate and transport characteristics of the contaminant plumes under current hydrological conditions. Increased groundwater recharge may alter hydrological conditions to an extent that the monitoring network established by the remedy is ineffective to monitor the condition of the plumes.

The Application materials state that the mining operation is “west of the Rocky Flats National Wildlife Refuge” but fail to disclose the downgradient DOE facility. The Application fails to acknowledge or address any potential impacts to the adjacent landfill, the adjacent groundwater contamination plumes, or the environmental remediation efforts. The Application proposes to line the reservoir with the “intent” to minimize disturbances to the prevailing hydrologic balance to the surrounding area. The Division does not believe that simply lining the proposed water storage reservoirs will alleviate these concerns. All liners will eventually leak, and DOE staff have indicated that groundwater changes at the mining areas cause groundwater changes within the COU. Recharging the groundwater directly upgradient from a closed landfill and residual radioactive and nonradioactive contamination within the COU would jeopardize a remedy designed to protect human health and the environment.

EPA Region 8 was consulted and concurred with the contents of this letter. Please contact me via email at brian.walker@state.co.us with any questions that you may have regarding this correspondence.

Sincerely,

Brian Walker
Environmental Protection Specialist
Hazardous Waste Corrective Action Unit
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

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Laura Hubbard, City of Broomfield
Diana Trejo Calzada, City of Broomfield
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