

To: Hearing Officer  
From: Charles Ciecko  
3630 SE Hosner Ter.  
Gresham, Or. 97080  
Subject: Testimony Responding to Ex. S.34 "Response to Comments-  
Contaminated Soils" Dennis Terzian, PBS, May5, 2025  
LUBA Remand Case T-3 2022-16220  
Date: May 18, 2025

### Executive Summary

1. The only Ecological Risk Assessment (ERA) regarding the placement of contaminated soil was completed for the Gramor property. The conclusions of this ERA were voided when contaminated soils were not placed/blended as specified in the ERA and BUD conditions. There is no evidence to document that the contaminated soils have ever been blended as required in the BUD.
2. There was no ERA completed for the placement of contaminated soils at either the filtration plant site or along rural road ROWs.
3. PWB attempts to shift responsibility for soil placement compliance on T&K Sester Farms through a "compliance agreement" that was never permitted/approved by DEQ in the BUD.
4. None of the parties ever made a credible effort to determine if PWB's contaminated soils had been mobilized by wind or winter rain events onto adjacent private properties or into "waters of the state" including Johnson Cr. (Multnomah County); wetlands/tributary to Noyer Creek. (Clackamas County) or the drainage swale adjacent to Hiwy. 212 (Clackamas County).
5. Both DEQ and PWB make conclusory statements that lack substantive evidence in the record.
  - DEQ: *The proposed placement and reuse of contaminated soils is not anticipated to adversely affect any plant or wildlife species.*
  - PWB: *Waiting until a time period of dryer weather to complete mixing could be viewed as equally protective by minimizing the movement of soil facilitated by rainfall or surface water flow.*
6. There was no inventory of any of the approved disposal sites for the contaminated soils to document the natural resources present prior the massive site disturbances caused by stripping/stockpiling/burial of these contaminants.

The applicant, PWB, bears the burden of proof that their proposed use will not adversely impact natural resources. In regards to the 190,000 cu.yds. of pesticide contaminated soils generated from their project site, PWB fails to meet the criteria. This project should be denied.

## Introduction

This testimony is submitted in response to Ex. S.34 prepared by Dennis Terzian, PBS Consultants. It is divided into two sections: Section 1 outlines facts with no response in Ex. S.34. Section 2 provides response to assertions contained in Ex. S.34.

## Section 1 Unrefuted Facts

- These soils are contaminated with DDT, DDE and Dieldrin at concentrations that are 5x-8x above the DEQ standard for use as clean fill.
- PWB was aware of the existence of pesticide contaminated soils in 2019, well before their land use application was submitted to Multnomah County but never disclosed. (see Ex. N.53 pg.34) source: DEQ project page for BUD-20240906; "Clean fill Determination Report- Bull Run Filtration Facility", January, 2024, PBS Project 24433.000, Appendix E, "Table 2 Summary of Shallow Soil Analytical Results- Pesticides", Assessment Associates, Inc., AAI Project No. 1714
- As amended by PWB, the current volume of contaminated soils listed in DEQ BUD 20240402/BUD 20240906 is 190,000 cu. yds.
- There is no evidence to support any conclusion that contaminated soils had been eroding from the filtration site prior to PWB's massive site disturbance (i.e.. sediment samples taken from Johnson Creek prior to the commencement of excavation). (Ex. S.20, pg.2)
- There's no evidence to support any conclusion that migration has not occurred since excavation and stockpiling began (Ex. S.20, pg. 2). In fact, evidence contained in Ex. S.20 (pg.3/4) documents mobilization of both dust and sediments since excavation and stockpiling began.
- After contaminated soil transport began in December, 2024 and serious concerns raised regarding the likelihood of mobilization of contaminated sediments at the Gramor property in Clackamas County, no effort was

undertaken to sample significant stormwater runoff for the presence of contaminants (Ex.S.20, pgs.2/3).

- Serious damage to “waters of the state” occurred at Sester Farms Oxbow property to prepare the 10+ acre site for +/-1.8 million cubic. yds. of excavation spoils from the PWB project. (Ex.N.43 pgs. 35/36)

## Section 2 Responses to Ex. S.34 Assertions:

- Ex. S.34, pg. 2 states: “As well, the reuse of this soil on the Gramor property was determined in studies completed by the property owner to be unlikely to affect ecological receptors, which DEQ concurred with in the Beneficial Use of Solid Waste Determination Evaluation Form for BUD#20240906 dated April 3, 2024 and updated September 6, 2025 (attached). Specifically, on Pages 4 and 5 of that document, DEQ states the following:

The proposed use of the contaminated soil from the Proposed Bull Run Filtration project as non-structural fill within the filtration facility construction area meets the beneficial use criteria of being productive and is suitable for use in construction as non-structural fill. PWB also requested that the soil be able to be used as mine reclamation fill at a DOGAMI reclamation site or as blended topsoil at a 29 acre Clackamas County farm owned by T&K Sester Family LLC located at Clackamas County Parcel No. 00603617, Map and Tax Lot 2S3E03 03302, The slightly contaminated soil can be used as described in the application and the conditions of this BUD. As shown, the concentrations for pesticides at DU-1 (surface soil) exceeds the lowest T&E eco risk-based concentration (RBC). This eco RBC pertains to ground feeding birds and mammals. The presence of threatened or endangered species that utilize the site is not confirmed or discussed in the application. As the location has been used for agricultural purposed most recently, it does not provide suitable habitat or resources for threatened or endangered species. The proposed placement and reuse of contaminated soils is not anticipated to adversely affect any plant or wildlife species.”

## Response:

The Ecological Risk Assessment (ERA) that concluded placement of the contaminated soils on the Gramor property would “be unlikely to affect

ecological receptors” was based on the understanding that the contaminated soils would be blended with virgin soils on site per a Soil Placement Plan. More specifically, a layer of contaminated soil (+/- 3 ft) was to be covered with a layer of virgin soil (+/- 1.5 ft) and tilled/ disced to blend the two layers.

source: pg.14 “Surface Soil Investigation and Screening Level Ecological Risk Assessment”, Everen NW, 10/13/2024)

In fact, that is not remotely close to what has happened. Instead, contaminated soils were haphazardly dumped into on-site pits and allegedly covered with virgin soils. The pits I observed were partially full of stormwater and the addition of contaminated soils would necessarily have to displace that stormwater (now containing suspended contaminated sediments) to flow with the site gradient off-site to adjacent properties/ drainages. This divergence from the referenced BUD voided any conclusion contained in the ERA and violated the BUD approval conditions. These conditions included among others:

“1. Upon completion of an ecological risk assessment at the proposed property, Material from the pipeline and water filtration plant shall be used to amend existing virgin topsoil for the cultivation of rotation crops of grass seed and nursery stock. Soil from the pipeline and water filtration site will be placed according to a Topsoil Placement Plan in such a way that they are above the highest ground water level and will be disced or tilled in with the virgin topsoil.

3. Material must not be stored or used near water or wetland areas in such a way that would allow discharge to groundwater or surface water.

4. Material must be stored and managed to prevent nuisance conditions or releases to the environment such as dust, runoff, objectionable odors and unsightliness.” (see Ex. S.20 pg.3/4)

The 9/06/2024 approval letter for BUD 20240906 to PWB from DEQ’s Audrey O’Brien stated:

“Failing to use the contaminated soils in accordance with the BUD approval conditions on use will subject the material to solid waste regulations and fees. If the conditions of approval cannot be met, the waste must be disposed of at a DEQ permitted landfill or DEQ approved facility.”

Initially, DEQ was unwilling to acknowledge this violation of the BUD conditions but after numerous inquiries/complaints, Audrey O'Brien, Mgr, DEQ NW Region Environmental Partnerships Section stated in an email to me dated 1/13/2025:

"The soil from the PWB location is being placed in pits that are then covered with topsoil and hydro seeded. DEQ understands that the discing and mixing of the PWB soil and the top soil at the Gramor property will be done in the spring. Currently DEQ has been told that the PWB soil is being placed and covered as quickly as possible and not exposed at the surface. The PWB soil is arriving in a fairly dry state that is placed in the holes and covered with existing top soil on site that was analyzed and found to be cleanfill. When onsite, DEQ did not observe soil from the PWB location at the surface or in the runoff coming off the site and rather observed that the turbidity observed in runoff and in the ditch is coming from the hydroseeded topsoil and from the clearing of the property prior to moving PWB soils to the site and from construction of the gravel road."

It is appropriate to note again neither DEQ, PWB or the landowner ever bothered to actually sample the stormwater flowing off the site for contaminated sediments to confirm their observation yet the stormwater situation was serious enough that DEQ issued a Pre-Enforcement Notice (12/20/2024) to T&K Sester Farms for stormwater violations and lack of any erosion control.

As of 4/30/2024 the "penalty order" for the Class I violations(most serious) has not been issued.

DEQ's assertion that they did not "*observe soil from the PWB location at the surface or in the runoff....*" is not supported by any credible evidence (i.e. soil/stormwater sampling for contaminated sediments) or is it credible for DEQ to distinguish "PWB soil" from the native soils merely by observing. DEQ's own photo documentation shows considerable stormwater flowing from the contaminated soil placement area off site to an adjacent drainage along Or. Hiwy. 212. that ultimately discharges to Deep Cr., tributary to the Clackamas River (see below). Contaminated sediments could have also been mobilized to the delineated wetland/unnamed tributary of Noyer Cr.



11: Soil placement area drain ditch on east side. View from center gravel road near entrance. Facing SE.







12: View of east side of entrance. Facing S.

*As referenced above, DEQ acknowledged the contaminated soil “exceeds the lowest T&E eco risk-based concentration (RBC). This eco RBC pertains to ground feeding birds and mammals. The presence of threatened or endangered species that utilize the site is not confirmed or discussed in the application. As the location has been used for agricultural purposed most recently, it does not provide suitable habitat or resources for threatened or endangered species. The proposed placement and reuse of contaminated soils is not anticipated to adversely affect any plant or wildlife species.”*

This statement is conclusory. It also assumes that the site would need to have evidence of use by threatened or endangered species. MCC 39.7515(2) is not restricted to adverse impacts on *threatened or endangered species*. Moreover, there is no evidence that there was consideration/evaluation of the potential for adverse impacts to ecological receptors (i.e. feeding birds and mammals) at the approved disposal sites or at the filtration site where exposed contaminated soils are being stockpiled for multiple years. An evaluation would have included a full inventory of site conditions and species present prior site stripping and contaminated soil stockpiling. The conclusions in the ERA for the Gramor property were voided when PWB’s contaminated soils were not placed or blended in a manner that was consistent with the Top Soil Placement Plan as specified in the ERA and the BUD approval conditions.

Ex.34, pg.3 states:

“In addition to the documents required by the BUD, a compliance agreement was executed on November 22, 2024, between the City of Portland and T&K Sester. Of note, the agreement required the following:

- Once T&K Sester receives the materials, the T&K Sester is the responsible party for the received materials for all purposes.
- T&K Sester will, in connection with the exercise of its rights and performance of its obligations under the agreement, comply with all applicable laws, ordinances, rules, regulations, orders or other requirements of government authorities.

As noted in the compliance agreement, once the material leaves the Filtration Facility Site, the obligation to implement the Topsoil Placement Plan is the sole responsibility of T&K Sester. Communication from Ryan



Beyer at ODA and multiple recipients including DEQ staff, DSL staff, ODA staff, Clackamas County Staff, and PWB staff on November 25, 2024, identified conditions at the Gramor Property documented on or before November 22, 2024 (prior to transport of soils from the Filtration Facility Site) that indicated concerns related to erosion and sediment deposition to Noyer Creek from the unnamed tributary that travels across the property. Pictures provided in a follow-up email from Mr. Beyer dated November 25, 2024, identified soil and water measures implemented by the property owner at the site shortly after notification of ODA's concerns "showing the immediate concerns have been addressed." Again, this determination that concerns had been addressed was prior to the transport of soils by T & K Sester from the Filtration Facility Site on December 5, 2024. Communication from the Oregon Department of Agriculture (ODA) via an email between Kevin Fenn with ODA and David Peters with PWB on December 9, 2024, indicated that ODA had determined that the activity of placement of soil at the Gramor Property was not regulated by ODA."

### Response

Several of the assertions in the quoted excerpt above require comment:

- PWB claims that because of their "compliance agreement" with T&K Sester Farms, they are "held harmless" for all mis-handling of the contaminated soils "once the material leaves the filtration site". This assertion must be rejected because: MCC 39.7515(2) does not absolve PWB of responsibility for adverse impacts to natural resources once the contamination has been removed from PWB project areas; and PWB is both the applicant and responsible party for compliance with conditions of both BUD 20240402 and BUD 20240906. Nothing in the BUDs suggest PWB has the authority to assign their responsibilities to a third party.
- PWB consultant claims that an email from Ryan Beyer, ODA dated 11/25/2024 indicated "the immediate concerns have been addressed" (i.e. erosion and sedimentation) is not consistent with the actual chain of events. A 12/10/2024 email from me to multiple recipients including DEQ and ODA stated in part: "....the BUD in no way permits the placement of

contaminated soils on this site with no erosion control measures whatsoever.”

In response, an email to me dated 12/11/2024 from Audrey O’Brien, DEQ stated: “DEQ is meeting with other regulatory agencies to identify the appropriate response.” This was a week after the transport of the contaminated soils had begun. Obviously, PWB statement that “immediate concerns have been addressed” lacks consistency with the record because on 12/20/2024, DEQ issued the Pre-Enforcement Notice for stormwater, erosion violations and failure to obtain a 1200c permit.

- PWB consultant states: “Communication from the Oregon Department of Agriculture (ODA) via an email between Kevin Fenn with ODA and David Peters with PWB on December 9, 2024, indicated that ODA had determined that the activity of placement of soil at the Gramor Property was not regulated by ODA.”

This is a gross mis-representation of Mr. Fenn’s 12/10/2024 message to David Peters, PWB. That message in its entirety stated:

“To be clear, an email sent by Ryan Beyer on December 4, 2024, the placement, mixing, or spreading of the fill material at the site on Highway 212 east of Damascus on parcel number 00603617, tax lot number 23E0303302, is not considered an agricultural activity or a common and accepted agricultural practice and will not be regulated by Oregon Department of Agriculture (ODA). **ODA does not agree that it is possible to ensure that the materials are placed and put into crop production at the end of each day. It is not the appropriate time to be seeding for successful germination. If this were regulated by ODA, we would not recommend moving or placement of soil during the rainy season.** You need to ensure that the appropriate agency(ies) are ok with this material being transported and placed on site and what measures are required to be able to do so.”

Ex.34. pg.4 states: “Not mixing the soil immediately does not in and of itself constitute a failure to comply that would trigger revocation of the BUD.

Waiting until a time period of dryer weather to complete mixing could be viewed as equally protective by minimizing the movement of soil facilitated by rainfall or surface water flow.”

## Response

This statement by PWB’s consultant is conclusory. There is no evidence in the record to support this assertion. DEQ was advised that the contaminated soils were buried with the intent to properly mix in drier weather (see full text on pg. 4 above). DEQ never approved this divergence from the BUD conditions. They were never asked by PWB to approve this divergence. There’s no evidence to confirm that the required mixing has ever occurred.

Had there been any concern about “*minimizing the movement of soil facilitated by rainfall or surface water flow*”, PWB would have followed the expert advice in ODA’s 12/10/2024 email that stated: “ODA does not agree that it is possible to ensure that the materials are placed and put into crop production at the end of each day. It is not the appropriate time to be seeding for successful germination. If this were regulated by ODA, we would not recommend moving or placement of soil during the rainy season.”

Even after DEQ issued the PEN to Sester Farms (12/20/2024) for violations of ORS 468B.050(1)(d) (failure to secure required permits to discharge wastes) and ORS 468B.025(1)(a) (causing pollution to waters of the state), the transport and placement of contaminated soils continued for 21 days before “PWB halted transportation activities” (1/10/2025).

## Summary

1. The only Ecological Risk Assessment (ERA) regarding the placement of contaminated soil was completed for the Gramor property. The conclusions of this ERA were voided when contaminated soils were not

placed/blended as specified in the ERA and BUD conditions. There is no evidence to document that the contaminated soils have ever been blended as required in the BUD.

2. There was no ERA completed for the placement of contaminated soils at either the filtration plant site or along rural road ROWs.
3. PWB attempts to shift responsibility for soil placement compliance on T&K Sester Farms through a “compliance agreement” that was never permitted/approved by DEQ in the BUD.
4. None of the parties ever made a credible effort to determine if PWB’s contaminated soils had been mobilized by wind or winter rain events onto adjacent private properties or into “waters of the state” including Johnson Cr. (Multnomah County); wetlands/tributary to Noyer Creek. (Clackamas County) or the drainage swale adjacent to Hwy. 212 (Clackamas County).
5. Both DEQ and PWB make conclusory statements that lack substantive evidence in the record.
  - DEQ: The proposed placement and reuse of contaminated soils is not anticipated to adversely affect any plant or wildlife species.”
  - PWB: Waiting until a time period of dryer weather to complete mixing could be viewed as equally protective by minimizing the movement of soil facilitated by rainfall or surface water flow.”
6. There was no inventory of any of the approved disposal sites for the contaminated soils to document the natural resources present prior the massive site disturbances caused by stripping/stockpiling/burial of these contaminants.

The applicant, PWB, bears the burden of proof that their proposed use will not adversely impact natural resources. In regards to the 190,000 cu.yds. of pesticide contaminated soils generated from their project site, PWB fails to meet the criteria. This project should be denied.



email from Audrey O'Brien, DEQ 1/13/2025

"Charlie,

Thank you for your email and follow up questions. I am answering your questions on behalf of DEQ.

DEQ's pre-enforcement notice for water quality violations at both sites has been referred to DEQ's Office of Compliance and Enforcement. Since this is an active enforcement case, DEQ cannot comment on it. Once we have an enforcement decision, we will be sure to share it with you. If you would like to learn more about DEQ's compliance and enforcement processes, here is a link to our enforcement guidance (add link) and I would be glad to discuss that with you.

<https://www.oregon.gov/deq/FilterDocs/enforcementpol2.pdf>.

DEQ's Office of Compliance and Enforcement will evaluate penalty considerations.

For the Oxbow location, DEQ is coordinating with other agencies on corrective actions. DEQ is not aware of any soil either clean fill or contaminated soil being moved from the Portland Water Bureau property to the Oxbow location in Multnomah County. Even though clean fill is not regulated by DEQ's solid waste program, clean fill cannot be placed in water without the appropriate regulatory approvals. DEQ has not approved the transfer of the contaminated soil from the Portland Water Bureau water filtration project to the Oxbow site in Multnomah County.

I have included the Top Soil plan you requested in this email as well as the contaminated media management plan for the Graymor property in Clackamas County. The soil from the PWB location is being placed in pits that are then covered with topsoil and hydro seeded. DEQ understands that the discing and mixing of the PWB soil and the top soil at the Gramor property will be done in the spring. Currently DEQ has been told that the PWB soil is being placed and covered as quickly as possible and not exposed at the surface. The PWB soil is arriving in a fairly dry state that is placed in the holes and covered with existing top soil on site that was analyzed and found to be cleanfill. When onsite, DEQ did not observe soil from the PWB location at the surface or in the runoff coming off the site and rather observed that the turbidity observed in runoff and in the ditch is coming from the hydroseeded topsoil and from the clearing of the property prior to moving PWB soils to the site and from construction of the gravel road. Trucks coming onto the site were observed tarped until arriving and dumping into holes that were then immediately covered with topsoil from the farm.

Site visit notes and pictures are attached from the visit Ryan Lewis and I made to the Gramor property on Dec. 27, 2024.

Please let me know if you have additional questions for DEQ. I am able to give you a call later today also.

Audrey O'Brien, (she/her)  
Manager

Northwest Region Environmental Partnerships Section  
Oregon Department of Environmental Quality  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
503-209-9182

email from Audrey O'Brien 12/10/2024

"Thank you Charlie for this information.

DEQ is meeting with other regulatory agencies to identify the appropriate response. The ecological risk assessment that DEQ approved is on the DEQ website page for this project:

<https://www.oregon.gov/deq/Programs/Documents/bullrun-era.pdf>

As new information is obtained, DEQ will add it to this project page.

Audrey O'Brien, (she/her)  
Manager  
Northwest Region Environmental Partnerships Section  
Oregon Department of Environmental Quality  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
503-209-9182

"From: FENN Kevin \* ODA  
Sent: Tue, 10 Dec 2024 00:46:30 +0000  
To: Peters, David  
Cc: MATZKE Andrea \* DEQ; URENO Trevor \* DEQ; OBRIEN Audrey \* DEQ; LEWIS Ryan \* DEQ; BEYER Ryan \* ODA; STAPLETON Isaak \* ODA  
Subject: Re: Bull Run Filtration Project - Soil Reuse - Damascus Property David,

To be clear, an email sent by Ryan Beyer on December 4, 2024, the placement, mixing, or spreading of the fill material at the site on Highway 212 east of Damascus on parcel number 00603617, tax lot number 23E0303302, is not considered an agricultural activity or a common and accepted agricultural practice and will not be regulated by Oregon Department of Agriculture (ODA). ODA does not agree that it is possible to ensure that the materials are placed and put into crop production at the end of each day. It is not the appropriate time to be seeding for successful germination. If this were regulated by ODA, we would not recommend moving or placement of soil during the rainy season. You need to ensure that the appropriate agency(ies) are ok with this material being transported and placed on site and what measures are required to be able to do so.

Regards,  
Kevin Fenn, Water Quality and SWCD Program Manager  
Oregon Department of Agriculture – Agricultural Water Quality Program  
635 Capitol St NE, Salem, OR 97301-2532  
CELL: 503.510.8214 | WEB: [oregon.gov/ODA](https://oregon.gov/ODA)"





LUP Hearings <lup-hearings@multco.us>

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## Remand Testimony RE: T-3 2022-16220

1 message

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**Charles Ciecko** <cciecko51@gmail.com>  
To: LUP Hearings <lup-hearings@multco.us>  
Cc: Carrie Richter <crichter@batemanseidel.com>

Sun, May 18, 2025 at 8:40 AM



**External Sender** - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information.

The attached testimony is submitted for the LUBA Remand Record regarding case # T-3-2022-16220. Please acknowledge receipt.

Thank you.

Charles Ciecko



**Rebuttal Testimony.pdf**  
3008K