

COMMENT-RESPONSE DOCUMENT

FOR

Elcon Recycling Services, LLC

Proposed Commercial Hazardous Waste Treatment Facility - Phase I Siting Application

September 30, 2015, Public Hearing

Falls Township, Bucks County

Pennsylvania Department of Environmental Protection

Background

On May 29, 2015, the Pennsylvania Department of Environmental Protection (“DEP”) received a Phase I Siting Application from Elcon Recycling Services, LLC (“Elcon”) for a proposed commercial hazardous waste storage and treatment facility to be located at 100 Dean Sievers Place within the Keystone Industrial Port Complex (former United States Steel Fairless Works site) in Falls Township, Bucks County.¹

DEP determined, by letter dated June 19, 2015, that the Phase I application package contained sufficient detail to proceed with a technical review for conformance with the Phase I Siting Criteria for a commercial hazardous waste treatment facility.

In accordance with Section 309(c) of the Hazardous Sites Cleanup Act, 35 P.S. § 6020.309(c), within five months of the receipt of an administratively complete siting module portion of a permit application for a commercial hazardous waste treatment or disposal facility, DEP must complete its review of the siting modules to determine the conformity of the proposed site to the Phase I exclusionary criteria as established in 25 Pa. Code §§ 269a.21 - 269a.29. During this 5-month review period, DEP is to conduct at least one public information meeting and one public hearing.

The 5-month review period for Elcon commenced on June 19, 2015, which was the date DEP determined the Phase I application to be administratively complete. At that time, copies of the application were made available at DEP’s Southeast Regional Office in Norristown, DEP’s Rachel Carson State Office Building in Harrisburg, and the Levittown branch of the Bucks County Free Library. A public meeting was held at the Sheraton Bucks County Hotel in Falls Township on August 12, 2015, to inform the public of the Phase I siting process, discuss the application under review, answer questions on the review and permit process, and supply the public with information to assist in preparing comment or testimony for the upcoming public hearing. The public hearing was subsequently held on September 30, 2015, at the Sheraton Bucks County Hotel, to receive written and oral testimony regarding the Phase I application. The comment period for the public hearing closed on October 14, 2015. Based on the administrative completeness date of June 19, 2015, the 5-month review period for Elcon ends on or before November 16, 2015.

DEP is providing this comment and response document for the public hearing held on the Elcon Phase I application. Relevant comments derived from written, oral and email comments received during the comment period for the public hearing are summarized in this document. Comments are representative of single or multiple commentators. Department responses are provided for each comment or grouping of similar comments related to each criterion in the Phase I exclusionary criteria. For example, all comments and responses relating to Wetlands (25 Pa. Code § 269.23) will be found under that heading. The list of commentators, from whom the

¹ Note that the May 29th application is a resubmittal by Elcon. A previous Phase I application by Elcon had been denied on February 4, 2015, based on a failure to demonstrate conformance with the flood hazard area criteria found in 25 Pa. Code 269a.22(b). On May 29, 2015, Elcon resubmitted a Phase I Exclusionary Siting Criteria application to address the flood hazard area deficiencies with the intent to begin the Phase I review process anew.

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comments have been summarized, is provided below. Please note that comments received outside of the hearing comment period, while evaluated and included in the file as public comments on the application, are not included in this comment and response document.

List of Commentators

Clay Aberts	Dewey and Rosemarie Clark
Joseph Apice	Janene Cleary
Chuck Artillio	Eugene Costantini
The Auerbachs	Rochelle Costigan
Steve Bacher	Elizabeth Couillard
Barbara Balasco	Joanne Coyne, Delaware River Yatchmen's League
Judy Bartella	Christopher Crockett, Philadelphia Water Department
Chris Beach	Susanne Curran
Elizabeth and Bill Becker	Spencer and Elizabeth DeForrest
Jannah Bensch	Russ Dettmann
Adam Berman	Mr. and Mrs. Michael DiGiulio
Robert Bocock	Mr. and Mrs. Rick DiGiulio
Erin Bogart	Ranya Dajani
Elizabeth Bonitatibus	Elizabeth Ann DiNardi
Connie Borichevsky, League of Women Voters of Bucks County	dmccarron1962@aol.com
Hal Bozarth, Exec. Dir. Chemical Council of New Jersey	Patricia Drapczak
Richard Brook, Township of Florence, New Jersey	William Drapczak
Rick Browne	Marilyn Drucker
Kathryn Cain-Bell	Linda Dyke
Douglas Campbell, Red Dragon Canoe Club	Julia Edgerton
Joseph Campbell	Mark Eisold, P.E., Engineer for Lower Makefield Twp.
Roland Camunas	Sandra Elson
Mr. and Mrs. Mike Catalini	Angela Ensslen
Denise Cauvin	Rick Ensslen
Marguerite Chandler	Nancy Erlston
June Cianfrana, West End Boat Club	Priscilla Estes
Grace and Eugene Ciccimaro	Mike Ewall,
Steve Cickay	Erin Fagan

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Mike Falkevitz	jgreschl1c
Mike Fehrle	Wenjun Jiang
Stephen Fenton	Paul Jusino, Delaware River Yatchmen's League
Marjorie Fitzpatrick, IES, Consultant for Elcon	Carol Kelley-Adams
Judith Franlin, League of Women Voters of Bucks County	Kim Kelly
Tim Frey	Mary Keppel
Becky Fuller	Nirbhe Kaur Khalsa
Bernie Geedo	Kathie Kirkpatrick
Steve Giovannelli	Patricia Kollar
Charissa and Matthew Glenn	Veronica Koslosky
Joe Godcharles	Corryn Kronnagel
Elizabeth and Mark Goy (?)	Lynne Krysa
Josh Gradwohl	George Laurence
Joan Graves	Bill Lawyer
Bernard Griggs, Building Trades Council of Philadelphia	Scott Levy
Leigh Gygax	Karen Lucca
Jerry Haimowitz	Claire Ludlow
Hugh Harr	Patricia Macrina
Kathleen Harr	Samuel Madeira
Dennis Hart	Jaime Maniatis
Rich Hart	John Maniatis
Karin Hazzard	Danielle Marchese
Nancy Hedinger, League of Women Voters of New Jersey	Pam Martino
Dave Henry	Patricia McCarron
Kelly Henry	Kevin McCloskey
Denis Hewitt	Kurt McCoy
Susanne Hewitt	Coleen McDonnell
Kate Hinman	Karen McGlynn
Susan Hoffman	Mike Meile, Steamfitters Local 420
Charmaine Hofmann	Paul Micharski
Shawn Hogan	Tom Mirande
Candyce Holmstrup	Summer Monach
Melanie Horahan	Janet Morris
John Hotvedt	Robert Mucciarelli
Gil Howard	Nicholas Noderer
Joe Jacoby, Boilermakers Local 13	Ann Nugent
Lorraine Jasinskas	Chistine O'Donnell

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Bob Oehrle	Paul Schwartz
Barbara O'Hare	Anthony Semeraro
Ryan O'Hare	Mark Senior
Liz Owen	Richmond Shreve
Halley Oyer	Gerry Siliverdis
Mr. and Mrs. Arthur Patrick	Chris Small
Mr. Arthur Patrick Jr.	Thomas Soper
Mr. and Mrs. Daniel Patrick	Mike Souchuck
Joe and Sarah Patrick	Jasmine Spence
Mr. and Mrs. John Patrick	Matt Stafford
Ryan Peters	Steph
Eugene Pevzner	Fred Stine, Delaware Riverkeeper Network
Theodore Peyton	Stephanie Struck
Carey Phipps	Nick Sucic
Everard Pinneo	Fred Swain
Jill Popko, Dep. Mayor, Bordentown Township, New Jersey	Bill Swezey
Patricia Power	Sally Swezey
Ron Power	J Tadlock
Coralie Pryde	Betty Tatham, League of Women Voters of Pennsylvania
Patrick Reilly	Cindy Tenaglia
Carol Richardson	Gabriel Tenaglia
Jeffrey Rife	Terry Tuttle
Alan Robinson	Phyllis Virga
Ed Rodier	Den Ward
Roland Roland	Todd and Lynne Waymon
James Rolle	Marion Wells
Carol Romano, Director Food Pantry, Morrisville Presbyterian Church	Craig Wilkie, Mayor, Township of Florence, New Jersey
Catherine Ross	Anna Windle
Lionel Ruberg	Barbara Yacos
Dana Russikoff	Jamie Zaccaria, New Jersey Sierra Club
Sallie	Russell Zerbo, Clean Air Council, Philadelphia
Carolyn Sandler	Ann Zeuke
Maryellen Saylor	Susan Zudick
Sandy Schemelia	

Comments and Responses

There are nine (9) Phase I exclusionary siting criteria; however, only six (6) apply to this particular site because the applicant proposes a treatment facility. Some of the Phase I exclusionary criteria only apply to landfills, land treatment and surface impoundment facilities, and are not applicable to treatment facilities such as the one being proposed by the applicant. All of the Phase I criteria can be found in 25 Pa. Code §§ 269a.21 through 269a.29.

§ 269a.21. Water supply.

Comment: We are concerned about potential impacts that the facility's operations could have on area drinking water supplies, both surface and ground water. An industrial accident at this site would reach the Delaware River and could contaminate downstream drinking water supplies. Trucks or rail cars transporting hazardous waste to the facility could have accidents and contaminate surface and/or ground water supplies.

Response: For the purpose of a Phase I exclusionary criteria review, only hazardous waste landfills, land treatment facilities, and surface impoundments are required to evaluate the water supply siting criteria found in 25 Pa. Code § 269a.21. Potential impacts to public water supplies from a hazardous waste treatment facility, such as Elcon is proposing, would be considered as part of a Phase II review, as would design standards or features proposed to mitigate any potential impact, such as tank and container management systems, secondary containment, spill prevention and overflow controls, and water quality detection monitoring programs.

Offsite transportation matters are not subject to the Phase I review process.

§ 269a.22. Flood hazard areas.

Comment: The proposed site for Elcon is subject to flooding of the Delaware River. It is too close to the 100-year floodplain. Flooding in the Delaware River Basin will get worse with continued land development and climate change. There is an increased likelihood of sea-level rise and major storms or other cataclysmic events. The 500-year floodplain boundary should be used to site the facility.

Response: Elcon is required to demonstrate conformance with the Phase I exclusionary criteria for flood hazard areas, as those criteria are defined in 25 Pa. Code § 269a.22(b). As such, Elcon may not site a facility "in the 100-year floodplain or a larger area that the flood of record has inundated." Based on the most current FEMA mapping, the proposed Elcon facility is not located in the 100-year floodplain. Elcon has also submitted information to demonstrate that the proposed site was not inundated by the 1955 flood of record. DEP's

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review of Elcon's application finds that Elcon has demonstrated conformance with the Phase I exclusionary criteria for flood hazard areas. DEP cannot arbitrarily apply other flood hazard criteria that are not required by the applicable regulations.

§ 269a.23. Wetlands.

Comment: Spills or releases from Elcon's operations will impact nearby wetlands. Accidents from truck and/or rail transportation activities will impact wetlands. Rail access to the facility will pass along a wetland and encroach on wetland buffer areas. The proposed facility site will have a rail spur crossing the 50 foot buffer area proximate to a wetland, in violation of the wetlands siting criterion. The Township has a 100 foot wetland setback requirement. The site plan shows a borrow pit that appears to be excavating a wetland, in violation of the siting criteria.

Response: As part of the Phase I application, an applicant must identify wetlands on its property and configure its proposed facility to avoid wetlands. As required in DEP's "*Exclusionary Siting Criteria Guidance Document for Hazardous Waste Treatment and Disposal Facilities*", the proposed facility site includes a 50-foot buffer zone measured inside the site boundary within which no treatment, storage, disposal and auxiliary facility may be located. Thus, the facility site is made up of the facility itself, the 50-foot buffer area, and any future expansion area that the applicant chooses to include in the application. The application must include information about the access road, non-contiguous or on-property borrow areas, etc., but these are not considered as part of the facility site. Elcon has demonstrated that the facility site will not be located in wetland areas, which satisfies the requirement for the purpose of a Phase I exclusionary siting review.

However, wetlands are present within the property boundary. The proposed facility's effect upon wetlands, including construction of an onsite rail spur, can be evaluated further under § 269a.50, Environmental Assessment Considerations, during the Phase II review. Offsite transportation issues are not directly subject to Elcon's control or the RCRA permit application review, except to the extent that Phase II transportation standards and safety services criteria reviews may be applicable.

A DEP requirement, established pursuant to the Solid Waste Management Act and the regulations promulgated thereunder, does not preclude the operator from needing to comply with any applicable local zoning or land development requirement enforceable by the local municipality, provided that said local requirement is not pre-empted by, or less stringent than, the applicable DEP requirement. DEP's review herein is limited to Elcon's conformance with the DEP Phase I exclusionary criteria for wetlands as found in § 269a.23.

As part of its Phase I application, the applicant must include information about non-contiguous or on-property borrow areas, but these are not considered as part of the facility site. As clarified by the applicant, the borrow site identified on the site plan is an existing feature that is shown as required pursuant to the DEP guidance document. Elcon states that it is not planning to create any borrow area on the site.

§ 269a.24. Oil and gas areas.

This criterion applies only to the siting of landfills, land treatment and surface impoundment facilities. The applicant is proposing a treatment facility, not a landfill, land treatment or surface impoundment facility. Therefore, this criterion does not apply.

§ 269a.25. Carbonate bedrock areas.

This criterion applies only to the siting of landfills, land treatment and surface impoundment facilities. The applicant is proposing a treatment facility, not a landfill, land treatment or surface impoundment facility. Therefore, this criterion does not apply.

§ 269a.26. National natural landmarks and historic places.

The proposed facility is located in the United State Steel Keystone Industrial Port Complex and is not within National Natural Landmarks designated by the National Park Service or historic sites listed on the National Register of Historic Places. No public comments were provided on this criterion.

§ 269a.27. Dedicated lands in public trust.

The proposed facility is located in the United State Steel Keystone Industrial Port Complex, which is currently owned by United States Steel and is under contract of sale to Elcon Recycling Services, LLC. There are not any lands in public trust within the facility's boundaries. No public comments were provided on this criterion.

§ 269a.28. Agricultural areas.

The proposed facility is located in the United State Steel Keystone Industrial Port Complex. Soil maps from the Natural Resources Conservation Service, formerly known as the Soil Conservation Service, indicate that the proposed facility is not located either in "agricultural areas" or farmlands identified as Class I (prime farmland or farmland with statewide importance). In addition, the proposed facility is not located in agricultural areas established under the Agricultural Security Law, 3 P.S. §§ 901-915. No public comments were provided on this criterion.

§ 269a.29. Exceptional value waters.

The Delaware River, and its tributaries in the drainage area of the proposed site, are not classified as exceptional value waters. No public comments were provided on this criterion.

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Other

Comment: Please extend the public hearing comment period for an additional two weeks.

Response: The comment period cannot be extended. The five month statutory time limitation for review of the Phase I application ends on November 16, 2015. An extension of the comment period from October 14th to the end of October would not provide DEP with sufficient time to evaluate and respond to written comments and still meet the statutory deadline for completion of the Phase I review. In addition, sufficient time was provided for the public to review the application and prepare verbal and/or written comments for submission as part of the hearing comment period. The application was available for review for three months prior to the September 30th hearing date, and the public informational meeting was held a month and a half prior to the hearing. No new or revised application information was submitted prior to the hearing that necessitated additional time for review and comment.

Comment: Many other comments were received throughout the public hearing comment period. These comments deal with issues or concerns beyond the limited scope of a Phase I review. The following bulleted list is a sampling of some of these comments and is not intended to be inclusive or representative of all such comments:

- The Elcon plant has potential to do damage to our air quality, destroy and pollute our land and waterways, and cause harm to the people living in the area as well as those that live down and up river. Accidents do happen and a mechanical malfunction, human error, or even mother-nature could cause a severe and deadly catastrophic disaster to the area.
- Elcon's "thermal" machinery is an incinerator and will burn off hazardous waste into the air resulting in emissions and potential exposure to downwind residents.
- The operation will potentially harm the immediate surrounding population of approximately 100,000 within 2 miles and 250,000 people within 5 miles plus the children and employees at schools and companies in the event of untreated hazardous waste spilling from a tanker truck or from a river barge.
- It is unimaginable that we would consider creating a hazardous waste facility near the waterways, coast, and a large population center.
- Please do not permit Econ Recycling Services to bring additional pollutants and hazardous materials to an area that has enough industrial waste and environmental challenges.
- Such a hazardous chemical waste treatment facility is not suited for such a densely populated area.
- The air pollution will affect people living on both sides of the Delaware River in PA and NJ.
- Air borne chemicals will affect the water, crops, people, pets, feed animals and other animals living in or near streams, lakes and the Delaware River.
- An environmental impact statement must be completed before the project proceeds any further.

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- Elcon projects in their permit application to hire 50 people. That is a miniscule number of workers compared to jobs that could be lost in tourism, sports and recreation in and near the river and hundreds of thousands of businesses and other industries along the river in PA, NJ, DE and even in Maryland could be endangered. The economic loss plus liability which could run into billions of dollars as happened recently in China could cripple PA's economy.
- The compliance history of Elcon's operation in Israel does not support approving a permit.
- Elcon has not been truthful in their meetings before the public.
- Who will manage the cleanup if there is a major explosion, fire, spill or tank rupture on the site and water in the Delaware is contaminated?
- We don't want the truck and trains carrying hazardous waste to travel through our community.
- The site is in an environmental justice community, or in the vicinity of one.
- The facility will adversely affect property values in the area.
- Elcon is not specific on what hazardous wastes they will accept and treat.
- We need localized treatment capacity, and KIPC is the best place to locate such a facility from an infrastructure standpoint as well as from a land use/zoning standpoint.
- The facility will bring needed jobs to the area, both during construction and during operation.

Response: While DEP understands the public's concerns, these comments do not address the Phase I exclusionary criteria which are subject to DEP review at this stage of the application review process. These comments are not ripe for consideration at this stage of DEP's review. The only issue currently before DEP is Elcon's conformance with the applicable Phase I exclusionary criteria. Comments received on Phase I siting criteria, and DEP's responses to those comments, have been provided in this document. DEP will not be providing specific responses to non-Phase I review issues as these issues are not technically or legally before DEP at this time.

Comment: General or non-specific opposition to a hazardous waste facility being located in the local area.

Response: Thank you for your comments and your interest.

Comment: General or non-specific support for a hazardous waste facility being located in the local area.

Response: Thank you for your comments and your interest.

Comment: Elcon submitted, as part of the hearing record, information to respond to what it believes are some of the public misunderstandings or misconceptions that it heard during the public hearing.

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Response: Thank you for your comments. The information will be included as part of the application record, as well as the hearing record, so that it will be available for reference during the review of any Part B application that Elcon may submit. A copy of Elcon's response is included as an attachment to this comment and response document as the responses provided therein may be relevant to some of the comments received throughout the public hearing process and, therefore, may prove useful to the public in the course of their review of any future Elcon Part B application submittal.

Attachment: October 14, 2015, Elcon Public Hearing Comments

Prepared: 11/12/2015