



Elcon Recycling Services – Falls Township Proposal  
Phase One Siting Criteria  
PADEP Public Hearing – September 30, 2015

Testimony prepared and read by  
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Thank you for this opportunity to provide this verbal comment. The Delaware Riverkeeper Network reserves the right to submit additional comments within the designated comment period.

First I would urge DEP to provide two additional weeks for comment. So instead of Oct 14<sup>th</sup>, I urge DEP to extend the comment period until the end of October to allow the public a more time to assess what we learn in tonight's presentation to what we have heard in the past. In the recent past, Elcon has substantially changed their design and DRN and the public anticipate needing more time to differentiate what we heard several months ago and what we are hearing tonight. The changes Elcon has made in the past include at Elcon's Morrisville presentation in August, they presented images of open lagoons on-site as part of their design. The following night, at the PADEP meeting, they showed different images with no lagoons. Also, comparing Elcon's submission from 2014 to the current submission has gone from one with a discharge to the Delaware River to a zero-discharge. That is a substantial change in technology and likely cost. We urge DEP to grant this small, two week extension.

DRN urges PADEP to deny this Phase One Criteria because it is being proposed in an area deemed excluded under the Chapter 269a. Siting criteria. The Criteria states that:

“The Department will deny a permit application without further review if the Department determines the proposed facility is located in an excluded area.”

This project does not meet the criteria under the Water Supply, Flood Area or Wetland Sections.

**It does not meet the Flood hazard areas, Section 269a.22 and should therefore be denied by PADEP**

Elcon's most recent submission shows that the proposed project is outside of the 100-year floodplain and the volume of Army Corp and other anecdotal information about the Flood of Record, while being more thorough than in Elcon's last submission, it still is inconclusive. See Attachment C3-16 that reports on flooding in Falls Township forcing closures of business during the 1955 flood. That report indicates that this area in Falls Township is susceptible to flooding.

However, the Delaware Riverkeeper Network does not feel that this project should be judged merely on whether it is located in the 100-year floodplain or the Flood of Record and believes that PADEP has the

latitude to make that determination. Due to climate change and sea-level rise, the 100-year floodplain and the Flood of Record are not necessarily relevant as predictors of staying out of harm's-way.

DRN urges PADEP to look more protective at this facility siting because we are not discussing the everyday facility here, not even the everyday industrial facility. The project proposed is a commercial hazardous waste facility bringing in 175,000 tons of waste every year. It's a facility that is not even water dependent, yet we're considering placing it within ½ mile of a major water supply.

DRN believes that it is within PADEP regulatory mission and rights to utilize DEP's Phase One Criteria Guidance Document (Doc #251-2000-704 – 10.18.2002, Pg4). The Guidance document is the PADEP's effort to add clarity in the decision-making process for PADEP Technical Review Teams. The Guidance document states:

“a facility “shall not be sited in the 100-year floodplain or **such larger area** as the Flood of Record...”

The Flood of Record is certainly one such larger area that the regulations are suggesting to use as a determinant factor, but the language in the Guidance document is allowing PADEP to look at the Flood of Record as just one of possibly many other “larger areas”, both spatially and through regulatory programs.

One such area the DRN urges PADEP to evaluate the siting of this facility under the Flood Hazard Area criteria is the Delaware River Basin Commissions *Recommendations of the DRBC Flood Advisory Committee for more effective Floodplain Regulations in the Delaware River Basin* (Oct 2009) ([http://www.state.nj.us/drbc/library/documents/Flood\\_Website/FAC/Rec-FloodplainRegs102209.pdf](http://www.state.nj.us/drbc/library/documents/Flood_Website/FAC/Rec-FloodplainRegs102209.pdf))

This is known as the FRES Report and the relevant points from this study, include

- PADEP staff from the Bureau of Watershed Management participated in this study, as did agencies from each of the Basin states and Central Bucks Chamber of Commerce, and Bucks County Planning Commission. **TAKE-AWAY – DEP's own staff worked on these flooding issues and support the findings and Recommendation,**
- These recommendations advanced from the Flood Regulations Evaluation Subcommittee and were endorsed by the DRBC Flood Advisory Committee. **TAKE-AWAY – The findings and Recommendations of the FRES subcommittee were seen to have substantial value and adopted by the larger DRBC Flood Advisory Committee,**
- Tidal/Non-tidal: Storm surge can affect all of the tidal portions of the Delaware River and tributaries and can extend well beyond the normal head of tide in severe surge events. The head of tide for the main stem of the Delaware River is at Trenton, New Jersey. **TAKE-AWAY – Storm surges can impact the Biles Creek and Falls Township area subjecting Elcon to possible future flooding out of the realm of what has been experienced to date,**
- Storm surge associated with major hurricanes can far exceed the 100-year flood elevations. For example, at Wilmington, Delaware the 100 year flood level is +10 NAVD 88 yet the storm surge elevation associated with a Category 3 hurricane is over 16 feet NAVD 88. Although the return

frequency of a major hurricane may be rare, and may not be appropriate for normal floodplain construction standards, for certain critical facilities and emergency operations functions, it may be appropriate to use hurricane surge levels, in location and design considerations. (Page 4). **TAKE-AWAY – Critical facilities such as a hazardous waste treatment facility should not be located in areas likely to be flooded,**

- Existing DRBC floodplain regulations are applicable only to non-tidal areas of the Delaware River Basin. NFIP regulations allow fill in tidal areas because it is assumed that encroachment in tidal areas will not cause increase in the 100-year flood stage. It is known, though, that filling may cause increases in regional flooding and exacerbate drainage problems during rainfall events in which flood stages do not approach 100-year levels. (Page 5) **TAKE-AWAY – due to filling regionally, flooding could be exacerbated even when flood stages do not approach 100-year levels,**
- The regulations currently in place for addressing development in the floodplain have not successfully reduced flood damages, in fact they have allowed new development, redevelopment, and expansion of existing development to continue and the result has been a continued increase in flood damages. (Page 5) **TAKE-AWAY – In spite of regulations, development and associated flooding have increased.**

Under Recommendations in the DRBC Report, it states that:

- It is important to acknowledge that floods do not stop at regulatory floodplains, nor does the regulatory floodplain define the limit of potential flood damage or losses. Nationally, FEMA reports that 25 percent of total flood insurance claims are made by property owners located outside of the 1% annual chance floodplain. In the Delaware River Basin, 35 percent of repetitive loss property owners are located outside of the 1% annual chance floodplain. (Page 12)
- The goal of managing development in the floodplain shall be to prohibit, except in extraordinary cases, new development in the flood fringe and to reduce risk to people and structures currently located in the floodplain. Development, for purposes of this document, is defined to include structures, infrastructure, impervious surfaces, fill, grading, storage of materials and equipment, and removal of vegetation. (Page 12)
- Require critical facilities including, but not limited to, hospitals, fire and police stations, transportation facilities to be kept outside of the 0.2% (500 year floodplain) to protect life, health and the local economy. (Page 13)

The increasing likelihood that storms are worsening due to climate change and sea level rise, as the DRBC recommendations refer to, is reinforced even more with the just-published Princeton University study. This study cautions us from development decisions as usual. This study combines 1) the impacts of Sea-level rise and 2) how Hurricane Sandy-like storms are predicted to occur with greater intensity and frequency due to global warming. (<http://earth.columbia.edu/articles/view/3259>). The projected impacts of these combined phenomena could result in flooding way beyond what the Northeast has experienced in the past.

The combination of current information in the Princeton Report and the DRBC recommendations clearly caution the wisdom to place a hazardous waste chemical facility in areas based upon merely the 100-year floodplaine. In fact, the DRBC recommendations clearly state that critical facilities such as Elcon is

proposing should be outside the 500-year floodplain. Based on these recommendations, new data and the clarification in the DEP Guidance Document, DRN urges DEP to deny this application.

Again, Elcon is not even a water-dependent facility. Why would PADEP grant them a permit to build next to a critically important waterway like the Delaware River?

**Elcon's permit application does not meet the Wetlands criteria, Section 269a.23**

175,000 tons of hazardous waste will be arriving on site by both railcar and as many as 25 tanker trucks each day.

Two important notes:

- 1) Elcon's facility as proposed has room for expansion too, so the number of tanker trucks and railcars would increase,
- 2) Falls Township ordinances require 100 foot wetland buffers

The railcars will be encroaching within the 50-foot wetland buffer of Wetland Area D (also identified as DP-8). That means that every delivery of hazardous waste from railcars must come within 50 feet of a wetland that is hydrologically connected to Biles Creek and the Delaware River. According to this Phase 1 Criteria, "facilities may not be sited in wetland areas."

PADEP is on record stating that they may exercise administrative discretion here and allow the permit to move forward because Elcon will not be staging any of the railcars in the 50-foot encroachment. DRN urges PADEP not to waive this important protective element of the regulations. Accidental spills and overturning rail cars is occurring more and more frequently due to more increased domestic oil production and dependency on rails. Elcon will be taking in mine drilling cuttings and mining wastes. Two or three years ago a tanker train loaded with chemicals spilled into the Mantua Creek in South Jersey. Human error was largely to blame and this is happening more and more. Having these railcars pass through a wetland area is taking a huge unnecessary risk to the local community, the millions that live downstream and the natural resources. There is no need to place them at risk and PADEP merely has to adhere to the regulation.

Another encroachment within the regulated 50-foot buffer will occur with the 25 tanker trucks that pass alongside the wetland along intersection of Steel Road and Dean Seivers Place. Those are wetlands DP-4 and DP-5. Those wetlands are also within the 50-foot buffer around the perimeter of the site required under the Phase One Criteria. The trucks transporting much of the proposed 175,000 tons of hazardous waste every year will be stopping and starting and passing through that busy intersection. They will be in close proximity to those wetland areas with no protective buffer and no secondary containment. Any accident, hazardous waste could enter the wetlands directly or through a stormwater inlet. Those wetlands are hydrologically connected to the Delaware River.

According to Phase One Criteria Guidance document referenced above, "the hazardous waste facility includes the entire area to be used for **any hazardous waste management activity...**",. Why would

“management activity” not include transporting the hazardous waste into the facility or transporting the contaminated sludge off site for disposal? DRN believes PADEP should look at the entire process in its entirety and err on being more protective, which seems to be the objective of the Phase One Siting Criteria in the first place. PADEP must deny this application.

**My Final comments:**

DRN urges PADEP to assess Elcon’s environmental record from their facilities in Israel to begin to assess their compliance track-record. PADEP would be like an ostrich burying their head in the sand not to look at the complete compliance picture before deciding whether to allow Elcon to bring their processes here

According the DRBC file, Elcon is seeking approval to import 50,000 gallons per day of hazardous waste from outside the Delaware River Watershed.

5-6 million people draw their drinking water from the Delaware River and shallow aquifers fed by the River. The Elcon process is not river-dependent. Why permit it to be in such a critically important and ecologically sensitive part of the watershed?

Thank you.