



October 14, 2015

Hazardous Waste Facility Siting Permit Team Leader
PA DEP
2 East Main Street
Norristown, PA 19401

SUBJECT: Elcon Recycling Facility, 100 Dean Sievers Place – Waste Management, Exclusionary Siting Permit Application – Phase 1 –

The Delaware Riverkeeper Network (DRN), the League of Women Voters Pennsylvania (the League) and the Clean Air Council (CAC) urge Pennsylvania Department of Environmental Protection (PADEP) respectfully submit this comment to supplement that provided PADEP at the September 30, 2015 public hearing and the October 7, 2015 meeting with the Tech Review Team.

DRN, the League and the CAC urge PADEP to deny Elcon Recycling Services, LLC's Phase 1 Siting Application because it does not comply with the water supply, flood hazard area and wetlands criteria under *PA Code Chapter 269a. Siting*.

As stated in the Code (DRN's emphasis added):

§ 269a.12. Phase I.

Phase I exclusionary criteria are established in § § 269a.21—269a.29 (relating to Phase I exclusionary criteria) and **prohibit the siting of a hazardous waste treatment or disposal facility in an excluded area delineated under these criteria. The Department will deny a permit application without further review if the Department determines the proposed facility is located in an excluded area.** Phase I criteria apply to hazardous waste treatment or disposal facilities, except for the following:

- (1) A facility sited and substantially constructed in good faith prior to the effective date of this chapter.
- (2) Modifications to a facility within the existing facility site.

In General:

An area of concern is the apparent conflicting diagrams submitted to PADEP by Elcon. In the Preliminary Grading Plan, dated April 9, 2015 by Gilmore and Associates clearly shows a basin – likely stormwater collection – that, according to the dashed lines, will be receiving stormwater runoff from both the truck and railcar staging area, as well as the main interior roadway that all tanker trucks will utilize once the entry the

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
drm@delawareriverkeeper.org
www.delawareriverkeeper.org

property and drive between the Process Tank Farm, Tank Farm on the left and the Production Plant and Warehouse on the right. This stormwater collection system/holding pond will receive runoff from the staging areas that will most probably have hazardous waste residue and possible spills from those tanker trucks. Any spills or accidents during inclement weather could pose serious harm to the community and environment. That runoff will flow into the stormwater lagoon/basin designed to overflow into the neighboring wetlands and thereby creating a direct route for any hazardous waste falling on the road surface during staging, off-loading of waste or filling of trucks of hazardous sludge into the adjacent wetlands. Because this proposed stormwater system could easily have an impact on the adjacent wetlands and hydrologically-connected Biles Creek and Delaware River in which millions of people depend on for drinking water, jobs, recreation, etc., DRN, the League and CAC urge PADEP to deny this permit under the Phase One Criteria.

Further, in Elcon's Site Plan, dated May 27, 2015 by IES Engineers, the same approximate area that contained the stormwater basin/lagoon mentioned above shows a "Future Truck Staging and Delivery" area. That area on the planning sheet represents a huge and substantial future paved area. These two planning sheets appear to contradict each other in that both the stormwater collection basin/lagoon and parking area are one-in-the-same. And if they are, in fact, being considered to be located adjacent to each other, there is even greater reason for concern to have a truck staging area next to a stormwater system designed to collect surface runoff and potentially discharge to adjacent wetlands. Elcon has submitted these plans as part of their Phase One application and show direct and probable impact to the wetlands and water supply. As such, PADEP must weigh this information as part of the Phase One Siting permit and deny the application.

Another concern on the Site Plan referenced above is the proposed "Burrow Pit." This appears to be excavating a wetland (DP-4 and DP-5) – for what purpose? The Criteria states specifically that the "treatment and disposal facilities shall not be sited in wetland areas" assuming, in whole or in part, to protect the ecological value of those regulated areas. If Elcon's design proposes to excavate a wetland, PADEP must recognize that this proposed facility will, in fact, have a direct and substantial impact on wetlands on site, a stated exclusion and reason for denial under Section 269a.23.

§ 269a.21. Water supply

Based upon Elcon's revised Environmental Siting Assessment Phase 1 application, their proposed Commercial Hazardous Water Treatment Facility does not have to comply with this Water Supply aspect of the criteria as indicated in their answers "N/A" (not applicable) under sections (269a.21(a)(1) and 269a.21(a)(2) and then "no" under (269a.21(a)(3). DRN, the League and CAC (as well as many NJ Delaware River waterfront towns – see below) adamantly dispute this fact based upon Conestoga-Rovers and Associates Wetland Delineation Report dated August 13, 2014. Multiple wetlands on site are "hydrologically connected" to Biles Creek, a navigable waterway and direct tributary to the Delaware River. As such, Elcon should have fully provided the requisite documentation. They did not.

The Elcon proposed facility clearly meets the definition of a "Qualifying facility" and therefore must meet these criteria under the Phase 1 Siting Code:

§ 269a.1. Definitions.

- (a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Qualifying facility—Is one of the following:

- (i) A new commercial hazardous waste treatment or disposal facility, which did not exist as a solid waste or recycling facility prior to December 18, 1988..”

Bristol Borough, Florence Township, the City of Burlington, New Jersey American Water Company which operates an intake in Delran, NJ and, while further downstream, Philadelphia, all obtain their municipal drinking water either directly from the River or from aquifers that exchange hydrologically with the River (see email correspondence below). Elcon submitted an application that failed to provide the required information. The question that begs to be asked is how can an applicant such as Elcon that is proposing to be receiving, treating, baking, storing and exporting over 580 different hazardous and toxic chemicals being transported to their facility via rail car and highways, possibly think that they will not have any impact on local drinking water supplies?

Email sent to DRN January 8, 2014

“Fred, I saw some of the other responses. Florence Township draws its water from an aquifer connected to the PRM. The wells are located only 6 to 10 blocks from the Delaware River. Our concern would be the potential for leakage into the aquifer from the Delaware River. The same goes for a potential hydraulic connection with the Delaware River. If the river becomes polluted or contaminated, there is no going back in time to fix the problem. Our residents depend on their potable water supply, and we monitor it very closely.”

Richard Brook
Administrator
Township of Florence

Email sent to DRN January 8, 2014

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The City of Burlington has a surface water treatment plant, using water from the Delaware River.”

Robin Snodgrass
Management Assistant
City of Burlington
Mayor's Office

PADEP’s Technical Committee must deny this permit based on the fact that an industrial accident or intentional act of terrorism at this site would likely reach the Delaware River and likely contaminate the drinking water supplies of the aforementioned towns that depend on a freshwater intake directly or indirectly from the River. DRN, the League and CAC remind PADEP that it was only about 1 ½ years ago that only 5,500 gallons of contaminated waste polluted the drinking water of 300,000 people in West Virginia (Attachment #1). The recent chemical explosion in China (Attachment #2) too illustrates that

accidents occur and are devastating. Placing Elcon's hazardous waste treatment and storage facility adjacent to a public water supply would be making an error in judgement. The Elcon facility should not be permitted to be constructed adjacent to this critical, regional water supply.

Pursuant to § 269a.21. Water supply and the threat of water supplies, PADEP must deny this application.

§ 269a.22. Flood hazard areas

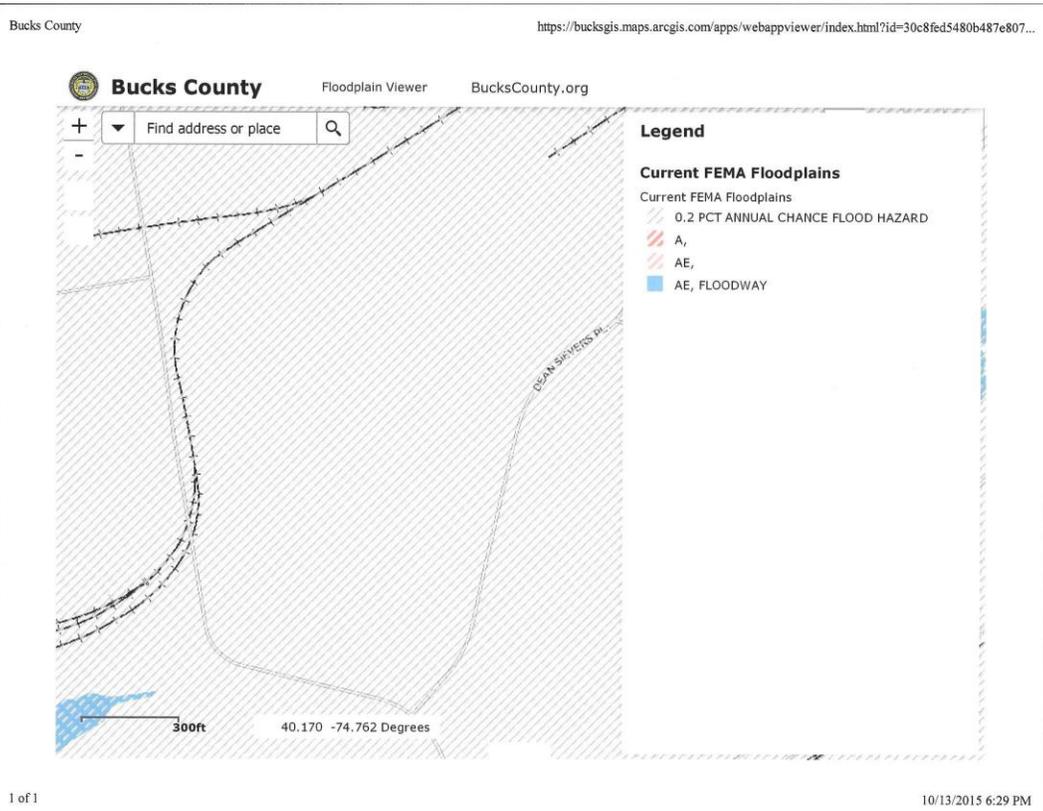
Elcon attempts to rationalize that the proposed Dean Sievers Place site is not likely to be flooded using flawed logic. Specifically:

Attachment C3-Flood Area Response

C3.1, pg C3-1, Para #4 – The Keystone Industrial Park is stated to be 4000 acres. Are all the facilities within the Park at the same elevations or have the same or similar topographic features/characteristics? The fact that “several approved storage tank permits”, as Elcon states, were issued to “nearby sites” is not germane to the siting of tanks on Dean Sievers Place. The proposed Elcon facility has documented wetlands on site and upland elevations as low as 13.84 feet above sea level. Those wetlands are hydrologically connected to a massive drinking water supply for Pennsylvania and New Jersey communities. Some of the elevations, both inside the 50-foot buffer and many outside the buffer, but still on the Dean Sievers parcel, are below the stated 17'1” – the Delaware River flood level during the 1955 flood. The other sites that Elcon is using as a comparison may be up to 2 miles or more away. They may be at higher elevations due to those facilities having had fill brought in to construct those buildings. Will Elcon's hazardous treatment and storage facility need to be built on fill? It is irrelevant if other companies flooded or didn't flood in 1955 when they may have been so far removed and possibly different site characteristics from Elcon's proposed site. PADEP must not be swayed by Elcon's conjecture and deny this permit with the intended purpose of being prudent and more protective of the communities and environment.

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.

C3.4, pg C3-3-100-year Floodplain and FIRM – FIRM maps (see Bucks County Planning Departments floodplain mapping of Dean Seivers Place below) show that Elcon's proposed siting is, while outside the 100-year floodplain, clearly within the 500-year floodplain. Elcon uses out-of-date mapping to explain where the proposed site will be located in reference to the 500-year floodplain.



<https://bucksgis.maps.arcgis.com/apps/webappviewer/index.html?id=30c8fed5480b487e80776e6e4b025dce>

While the Criteria (Section 269a.22(a) states that their hazardous waste facility must only be located outside the 100-year floodplain, we strongly urge PADEP to assert administrative discretion to require that Elcon meet a more protective siting by staying outside the 500-year floodplain.

That administrative discretion is supported in two ways. The first is through PADEP’s Bureau of Land Recycling and Waste Management Guidance Document #251-2000-704, October 18, 2002. The second is the recommendations of the Delaware River Basin Commission’s Flood Advisory Committee.

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 intent of 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:

“This document establishes the framework within which DEP will exercise its administrative discretion...” (pg i) and

“a facility “shall not be sited in the 100-year floodplain or **such larger area** as the Flood of Record...” (pg 4)

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 “such 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 Commission's *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)

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 Recommendations,**
- 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* (DRN emphasis added) 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 development, 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 FRES 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) (highlight added)**

PADEP should consider the 500-year floodplain and the DRBC FRES Recommendations as thresholds for criteria with the Elcon siting application because of the increasing worsening weather conditions due to climate change and sea level rise. The DRBC recommendations are further supported and reinforced with the just-published Princeton University study (<http://earth.columbia.edu/articles/view/3259>). 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. The projected impacts of these combined phenomena could result in flooding way beyond what the Northeast has experienced in the past.

A Princeton University study excerpt:

“Over the past century, the East Coast has seen sea-level rise far above the 8-inch global average—up to a foot in much of the Mid-Atlantic and Northeast, including New York City. Global rise is being driven mainly by melting of ice and expansion of seawater as the ocean warms. In this region, sinking land and currents that chronically drive water coastward have worsened matters. Most projections call for a further 2- to 4-foot rise by 2100; some go as high as 6 feet.

At the same time, separate studies suggest that the intensity of the biggest storms generated in the North Atlantic may increase, because warmer waters contain more energy. Projections of this phenomenon are somewhat less certain, but scientists are taking them with increasing seriousness.”

Population and land use changes since the 1955 flood make that threshold antiquated and not a responsible threshold for future planning or protections. According to the Delaware Valley Regional Planning Commission:

“The population of Greater Philadelphia grew rapidly during the 20th century. In 1900, there were approximately two million people living in the nine-county region. At that time, over 65

percent of those two million people resided in the City of Philadelphia. By the year 1950, the region's population had doubled to around four million people, and the city reached its population apex of over two million people. Fifty years later, the region had approximately 5.4 million residents, while the city contracted to a little less than 1.5 million people. Between 1930 and 2000, the nine-county DVRPC region gained almost 2.1 million new residents. Most of this growth took place between 1940 and 1970, when the region's population increased by over 50 percent. This growth occurred primarily in the suburbs." (Pg 10) (highlights added) (<http://www.dvrpc.org/reports/ADR020.pdf>):

Further:

"Population Trends - In the eighty years between 1920 and 2000, the population of the Delaware River Basin has nearly doubled. While population continues to increase in general across the basin, older communities, most notably the City of Philadelphia, continue to experience population loss. And while established areas—portions of the Schuylkill watershed, for example—continue to grow, new development is making inroads into areas once sparsely developed, such as the Lackawaxen watershed." (Pg 67) (NOTE: this is Pike County, one of the fastest developing counties in the Commonwealth)

<http://www.state.nj.us/drbc/library/documents/SOTB/landscape.pdf>

Populations and land cover have changed dramatically from the 1955 storm. If a rain event (or series of events) occurred today as it had in 1955, it logically stands to reason that the down-river flooding and devastation would reach far further inland than the 1955 Flood of Record.

A third source of relevant data of climate change and how regulators and land planners are adapting comes from another body of work from the DRBC (<http://www.state.nj.us/drbc/hydrological/climate/>).

State of the Basin Report:

This amplified level of warming is a concern. Scientists all over the world are studying the occurrence of climate change over the past century and the impacts it will have on the Earth in the future. Calls for adaptation at all levels - internationally, nationally, and locally - are being sounded. The discussion of climate change has been brought out of the laboratory and into the forefront.

Local climate change impacts for the Delaware River Basin include increased temperature, changes in precipitation patterns, and sea level rise. DRBC's [State of the Basin Report](#) (2008) included a feature on climate change (in the hydrology section), which highlighted the need for more localized studies, mapping, monitoring, and modeling, as well as for planning initiatives that integrate the reality of a changing climate. Basin water resource managers must seriously look at how climate change will affect the watershed and how to best adapt. (highlight added)

The combination of current information in the Princeton Report, DRBC's FRES Report of which PADEP staff participated in, and the DRBC State of the Basin report, clearly indicate that planning and stormwater experts, as well as academicians are warning us of the wisdom of placing a hazardous waste chemical facility in an area merely based upon the 100-year floodplain or the Flood of Record. 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.

Question: How will the PADEP Technical Review Team calculate extent of flooding today in light of the significantly changed impervious cover in watershed from a 1955-like (or 2005) storm on this site?

269a.23. Wetlands

The DRN and the League urge PADEP deny this Phase 1 application due to the fact that Elcon's proposed facility will encroach upon regulated wetlands buffers. Two important notes:

- 1) 175,000 tons of hazardous waste will be arriving on site by both railcar and as many as 25 tanker trucks each day, 350 days per year, 7-days a week. Elcon's facility planning diagrams indicate 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.

While DEP has stated that the designated 50-foot buffer is there for protective reasons, materials arriving into the facility and waste being hauled away must be able to "pierce" that buffer to have required access. This obviously makes sense if it were that encroachments were just encroaching on the perimeter of the facility footprint and not ecologically sensitive wetlands that are hydrologically-connected to the Delaware River.

DRN urges PADEP not to waive this important protective element of the regulations. There may be other examples where hazardous waste being transported through wetlands, but the Elcon is a NEW encroachment on the wetlands and threat to drinking water.

Question: Is there precedence set where PADEP has exercised that administrative discretion to allow a new encroachment and potential impact to water supply?

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.

Another encroachment within the regulated 50-foot buffer will occur with the 25 tanker trucks that pass alongside the wetland (shown as DP-5 in Conestoga-Rover Assoc. report) along intersection of Steel Road and Dean Seivers Place. 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...**”. While piercing the buffer for access is understandable, the scope of accessing “management activity” should be expanded to include all movement of hazardous materials around the perimeter of the property. We believe PADEP should look at the entire process in its entirety and err on being more protective..

Additionally, the Conestoga Rovers report indicates that these wetlands are somewhat degraded as a result of surrounding industrial land use. Regardless of that fact, wetlands of all classification provide valuable eco-system services, such as water quality filtration and pollution up-take, flood mitigation and even some wildlife value.

Additionally, only recently did the US EPA announce a renewed partnership with PADEP, NJDEP and the Partnership for the Delaware Estuary focusing on wetlands in the Delaware River Estuary – the proposed Elcon facility is in the Delaware River Estuary. One of the primary objectives of this new 7 year partnership is to protect wetlands. It is reported that the plan is to make new efforts to counter growing threats from climate change, especially the inundation of coastal wetlands by rising sea levels. NJDEP’s Assistant Commissioner of Water Resources Daniel Kennedy, “the reality is that we are seeing a loss of coastal wetlands,”

EPA’s Shawn Garvin is quoted saying “Wetlands need to be defended in order to maintain their value as a buffer to tidal flows, and as a filter for land-based pollutants.”

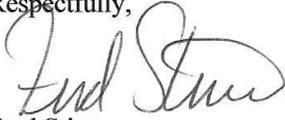
The DRN, the League and CAC’s point here is that no wetland, even ones dominated by phragmites, which some of the ones on the Elcon site are, are without value and filling or encroaching any of them should be recognized as short-sighted.

We urge PADEP to assess Elcon’s environmental record from their facilities in Israel to begin to assess their compliance track-record. PADEP has received documentation from many members of the public, including the attached report from the Ministry of Environmental Protection (Attachment #3). DEP 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.

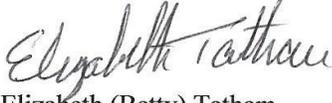
According to Mr. Vince Ou’s July 16, 2015 email message, he expressed concern that Elcon only be able to pierce the 50-foot buffers of the wetlands as long as Elcon does not “stage and unload” rail cars within that buffer and then only if they are “constantly monitoring and inventory control.” DRN, the League and the CAC urge PADEP not to put the responsibility of monitoring in the hands of the industry, especially when that company has a spotty compliance record and the fate of the community and ecological health of the area are at play.

Based on the regulations under the Phase I Exclusionary Criteria as they relate to Water Supply, Flood Hazard Areas and Wetlands and for the other reasons discussed above, DRN, the League and the Clean Air Council urge PADEP to deny the Elcon facility Phase 1 application.

Respectfully,



Fred Stine
Citizen Action Coordinator
Delaware Riverkeeper Network



Elizabeth (Betty) Tatham
Environmental Advisor to the President (volunteer)
League of Women Voters Pennsylvania



Russell Zerbo
Advocacy Coordinator
Clean Air Council