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**Via Federal Express**

December 22, 2017

Mr. James Wentzel, P.E.  
Regional Manager, Waste Management  
PADEP Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401-4915

**Re: Assertion of Confidential Business Information  
Elcon Recycling Services, LLC  
Phase II RCRA Part B Application  
Falls Township, Bucks County  
ID No. PAR 000 544 486  
APS No. 872052, AUTH No. 1075413**

Dear Mr. Wentzel:

We are writing on behalf of our client, Elcon Recycling Services, LLC (“Elcon”) in response to your letter dated November 27, 2017, which requested additional information on Elcon’s claim for confidential business information (“CBI”) relating to the Real Estate Sales Agreement (“RE Agreement”) and the Eighth Amendment of the same, between Elcon and United States Steel Corporation (“USS”). In subsequent communications, the Department gave Elcon until December 26, 2017 to submit its response.

After receiving the Department’s letter, Elcon reviewed the RE Agreement and the Eighth Amendment thereto, and has decided to narrow the scope of its CBI claim to cover only specific enumerated provisions in the RE Agreement and Eighth Amendment. Elcon is now only asserting CBI protection for the following provisions in the RE Agreement:

- Section 3.01 – Purchase Price
- Section 3.02 – Deposits

A Pennsylvania Limited Liability Partnership

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- Article VI – Conditions to Seller’s Obligations
- Article VII – Conditions to Buyer’s Obligations
- Article IX – Closing

Elcon is also now only asserting CBI protection for the following provisions in the Eighth Amendment:

- Section 2 – Purchase Price
- Section 3 – Closing

Accordingly, Elcon is withdrawing its previous assertion of CBI coverage for the entirety of the RE Agreement and the Eighth Amendment, and only seeks CBI protection for the provisions noted above.

In accordance with the requirements of 25 Pa. Code Section 270a.12, Elcon provides the following justification as the basis for its CBI claim for the private contractual provisions noted above.

The RE Agreement and the Eighth Amendment thereto are the product of private contractual negotiations between Elcon and a private landowner, USS. The Commonwealth was not a party to those negotiations, and it was not a party to the RE Agreement resulting from those negotiations. The RE Agreement and the Eighth Amendment are being submitted to the Department not for the purpose of having the Department review and approve the terms, but simply as evidence that Elcon has an equitable interest in the property it proposes to use for the facility it is seeking to permit. The Department can readily ascertain that Elcon has an equitable interest in the land without the benefit of the pricing terms or closing conditions, which represent terms that were negotiated between two private parties, with no involvement of the Commonwealth, and the knowledge of which serves no governmental purpose. With that said, the disclosure of the terms Elcon seeks to protect as CBI could be substantially detrimental to Elcon’s competitive position, and that is why they are considered confidential business information by Elcon.

Elcon has taken numerous measures to guard against the undesired disclosure of the information sought to be protected as CBI. Elcon has not disclosed the pricing or closing information to third parties. To the extent third parties are working on behalf of Elcon to obtain the permits needed for this facility, those third parties have signed Non-Disclosure Agreements relating to all information provided to them by Elcon, which would include the terms of the RE Agreement and Eighth Amendment with USS that it seeks to protect as CBI. No individual or agency (other than PADEP) has been shown the RE Agreement and Eighth Amendment thereto



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other than employees, consultants and agents of Elcon. The terms Elcon seeks to protect as CBI in the RE Agreement and Eighth amendment thereto can only be seen as part of the submission for the Part B application. In sum, the private contractual terms for which CBI protection is sought have not been disclosed to the public and are only known to the two private parties that negotiated those terms.

As the Department is aware, Elcon is seeking to obtain a permit to operate a hazardous waste treatment facility in Falls Township, Bucks County. There are numerous competitors in that service market in the Commonwealth and throughout the U.S. That competition exists is well known to the Department in that it regulates the generation, storage, transportation, treatment, and disposal of hazardous waste. The Commonwealth collects fees from transporters and those treating and disposing hazardous waste. Accordingly, the fact that there is actual competition in that marketplace is well known to the Department.

The disclosure of the terms of private contracts negotiated between Elcon and USS that include the cost of the land necessary for Elcon to construct its facility and the conditions relating to closing on that property, all of which have been maintained as confidential, poses the likelihood of substantial competitive injury to Elcon if the information is released and made available to its competitors. The cost of land used by those competitors for their own facilities and the terms of the private purchase agreements negotiated by those competitors to acquire the land on which they operate is not generally available to Elcon or others, and as such, would place those competitors at a substantial advantage over someone who had to divulge that private information to the public. The cost of the land purchased by Elcon is directly related to the costs it will incur in constructing its facility, and the costs it will incur in constructing its facility are directly related to the costs Elcon will need to charge its customers in order to recover its investment. Providing such information to Elcon's competitors would be highly anti-competitive and pose substantial harm to Elcon's competitive position. Giving competitors access to any private contractual information, not otherwise publicly available, that a future competitor would use in formulating its pricing, would pose significant potential harm to that future competitor, which in this case is Elcon. In addition, divulging to competitors the conditions to closing in the RE Agreement and Eighth Amendment thereto could allow those competitors to take actions to seek to prevent those conditions from occurring. While such actions could be considered illegal as tortious interference with contractual relations, the risk of substantial harm to Elcon from such tortious actions could be avoided entirely by protecting such terms as CBI and preventing their disclosure to competitors.

To sum up, Elcon has narrowed the scope of its CBI claim to include only the terms in the Real Estate Agreement Sales Agreement and Eighth Amendment thereto relating to pricing and closing conditions. We are providing a set of the documents that can be made available to




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the public with those terms redacted. If you have any questions, or require additional information or justification, please let us know.

Sincerely,



M. Joel Bolstein

MJB:ajw

Enclosures

Cc: Jessica D. Hunt, Esq.  
Dr. Zvi Elgat  
Dr. Rengarajam Ramesh  
Marjorie Fitzpatrick