

**IN THE MATTER OF** :  
**KINDER MORGAN, INC. AND** :  
**ITS** :  
**RELATED ENTITIES FOR** : **NATURAL RESOURCE DAMAGES**  
**PROGRAM INTEREST NOs.** :  
**BAYONNE TERMINAL** :  
**PI# G000004035;** :  
**KALAMA CHEMICAL PI# 011730;** : **SETTLEMENT AGREEMENT**  
**HARRISON TERMINAL PI# 002104;** :  
**NEWARK TERMINAL PI# 002102;** :  
**and** :  
**NUODEX PI# G000001659.** :

The New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (jointly, the “Department”) enter into this Natural Resource Damages Settlement Agreement (“Settlement Agreement”) pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund by the New Jersey Spill Compensation and Control Act (“Spill Act”), N.J.S.A. 58:10-23.11 et seq., and in the Commissioner of the Department by N.J.S.A. 13:1D-1 et seq. and the Spill Act.

### FINDINGS

1. Kinder Morgan, Inc. (“Kinder Morgan”), is a corporation incorporated in the State of Delaware, with its principal offices at 1001 Louisiana Street, Houston, Texas 77002. Kinder Morgan has various subsidiaries and other related entities, collectively referred to as “Related Entities,” including, but not limited to:

- El Paso LLC, formerly known as El Paso Corporation, a corporation formed in the State of Delaware;
- Coastal Eagle Point Oil Company, a corporation formed in the State of Delaware;
- Coastal Oil of New York Company, a corporation formed in the State of Delaware;
- Tenneco Oil Company, a corporation formed in the State of Delaware;
- Atlantic Coast Terminals, a corporation formed in the State of Maryland;
- EPEC Polymers, Inc., a corporation formed in the State of Delaware; and
- EPEC Oil Company Liquidating Trust, a Trust established in accordance with applicable Delaware corporate dissolution laws and regulations.

For purposes of this Settlement Agreement, Related Entities shall also include the corporate officers, directors, employees, predecessors, parents, successors, subsidiaries, partners, shareholders, assigns, trustees in bankruptcy, or receivers appointed to a proceeding in law or equity. Kinder Morgan and all of its Related Entities are referenced collectively hereinafter as the “Kinder Morgan Parties.”

2. The discharges that are the subject of this Settlement Agreement occurred at the following facilities and properties (individually, a “Site” and collectively, the “Sites”):

- a. The Nuodex Site, PI# G000001659, designated as Block 93, Lot 100.01 (formerly Block 93, Lot 100, Block 62, Lot 2, and Block 62, Lot 3), Block 93, Lot 100.02

(formerly part of Block 93, Lot 100), Block 83, Lot 1, and Block 99, Lot 10 on the tax maps of Woodbridge Township, Middlesex County, New Jersey (“Nuodex”);

- b. The former Coastal Oil of New York Company Bayonne Terminal Site, PI# G000004035, located at the foot of 5th Avenue and formerly designated as Block 431, and currently designated as Block 475, on the tax maps of the City of Bayonne, Hudson County, New Jersey (“Bayonne Terminal”);
- c. The former Kalama Chemical Incorporated Site, PI# 011730, located at 290 River Road and designated as Block 50.01, Lot 1 and Block 50.02, Lot 1 on the tax maps of the City of Garfield, Bergen County, New Jersey (“Kalama Chemical”);
- d. The former Tenneco Oil Company/Atlantic Coast Harrison Terminal Site, PI# 002104, located at 1 Harrison Avenue and designated as Block 66, Lot 1 on the tax maps of Town of Harrison, Hudson County, New Jersey (“Harrison Terminal”); and
- e. The former Tenneco Oil Company/Center Point/Stratus Center Newark Terminal Site, PI# 002102, located at 678 Doremus Avenue and designated as Block 5066, Lots 30 and 30.01 on the tax maps of the City of Newark, Essex County, New Jersey (“Newark Terminal”).

3. The Sites identified in Paragraph 2, and all other areas to which any contamination discharged at or from each Site have migrated, are individually referenced as “Contaminated Site” or collectively referenced hereinafter as the “Contaminated Sites.”

4. This Settlement Agreement addresses the Kinder Morgan Parties’ alleged liability for natural resource damages arising from discharges, as defined in N.J.S.A.58:10-23.11b, at or from the Sites that have impacted Natural Resources.

5. The Kinder Morgan Parties are conducting or have conducted investigation, delineation, and/or other remediation of discharges at the Sites under applicable New Jersey statutes and regulations, including, but not limited to, the Spill Act, the Industrial Site Recovery Act, N.J.S.A. 13:1K-8 et seq., the Brownfield and Contaminated Site Remediation Act (“Brownfield Act”), N.J.S.A. 58:10B-1 et seq., the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and their implementing regulations.

6. The Kinder Morgan Parties have submitted an assessment of injuries to natural resources associated with each Contaminated Site to the Department.

7. The Department’s files indicate that injuries due to discharges of contaminants as defined at N.J.S.A. 58:10B-1 occurred at the Sites as follows:

- a. Nuodex: This Site is located along the Raritan River. Injury to natural resources potentially began in about 1920 with the operation of a chemical plant that may have impacted adjacent wetlands with discharges of hazardous substances at the Site. The Department previously settled ground water and riverine injuries for the Site.
- b. Bayonne Terminal: This Site is located along the Kill Van Kull. Injury to natural resources potentially began in 1956 after the start of Bayonne Terminal operations as a

result of periodic releases of hazardous substances at the Site. Improvements to discharge prevention and control and subsequent remedial actions occurred.

- c. Kalama Chemical: This Site is located along the Passaic River. Injury to natural resources potentially began in approximately 1919 as a result of discharges of hazardous substances at the Site. By December 1982, operations ceased when the Site was sold. Subsequent remedial actions occurred.
- d. Harrison Terminal: This Site is located along the Passaic River. Injury to natural resources potentially began in 1959 after the start of terminal operations as a result of periodic discharges of hazardous substances at the Site. Improvements to discharge prevention and control over time, the 1988 cessation of operations, and subsequent remedial actions occurred.
- e. Newark Terminal: This Site is located along the Passaic River. Injury to natural resource potentially began in approximately 1952 after the start of terminal operations as a result of periodic discharges of hazardous substances at the Site. Improvements to discharge prevention and control over time, the termination of operations by February 1989, and subsequent remedial actions occurred.

8. As the trustee of all Natural Resources within the jurisdiction of the State of New Jersey for the benefit of its citizens, the Department alleges that the discharges at the Sites have injured Natural Resources.

9. In order to provide compensation for the historic and on-going injuries to natural resources described above, the Kinder Morgan Parties have agreed to perform, at the sole cost and expense of Kinder Morgan, the Headgates Dam Removal Project which includes three phases: replacement and relocation of a section of the Bridgewater Township 54 inch sanitary sewer line; the Raritan Water Power Canal Water Supply Replacement Project; and removal of the Headgates Dam (“collectively, “NRD Settlement Projects”). These projects are located in Hillsborough, Somerset County. The Raritan Water Power Canal Water Supply Replacement Project will enhance open water, wetlands and public access on the historic Raritan Water Power Canal. The removal of the Headgates Dam together with the replacement and relocation of the sanitary sewer line, will improve migratory fish passage, water quality and aquatic habitat on the Raritan River. Kinder Morgan will be responsible for the design, permitting, bidding and construction oversight of the NRD Settlement Projects, as further detailed in the Headgates Dam Removal Scope of Work attached as Appendix B (hereinafter “SOW”) and Headgates Dam Removal Project Schedule attached as Appendix C (hereinafter “Project Schedule”), which are incorporated by reference into this Settlement Agreement.

10. Contingent upon Kinder Morgan’s performance of the NRD Settlement Projects in accordance with the SOW and Project Schedule, the Department acknowledges and agrees that the NRD Settlement Projects, together with payment to the Department, in accordance with Paragraph 16 of this Settlement Agreement, will compensate the public for the injuries to Natural Resources caused by the discharges of hazardous substances at the Sites. The Department therefore finds and agrees, subject to these contingencies, that in the context of a voluntary settlement the compensation provided in this Settlement Agreement constitutes the Kinder Morgan Parties’ fair share of Natural Resource Damages addressed in this Settlement Agreement.

11. By entering into this Settlement Agreement, the Kinder Morgan Parties do not admit to any of the Findings of the Department contained in this Settlement Agreement. This Settlement Agreement, including the Findings, Terms and other provisions shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall this Settlement Agreement or any part or paragraph thereof be admissible in any proceeding or hearing as such, except only to the limited extent necessary for the Kinder Morgan Parties or the Department to enforce the provisions of this Settlement Agreement or to establish the scope of the Release (as described in Paragraph 20 and consistent with the form set forth in Appendix A) or contribution protection provisions of this Settlement Agreement.

## DEFINITIONS

12. "Natural Resources" as used in this Settlement Agreement include all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, controlled, or held in trust by the State, including such resources the State recognizes to be held jointly with other natural resource trustees.

13. "Natural Resource Damages" shall mean all claims arising from discharges at or from the Sites that occurred prior to the effective date of this Settlement Agreement, and that are recoverable by NJDEP as natural resource damages for injuries to natural resources under the Spill Act; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 through -20; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 through -1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 through -9675; the Sanitary Landfill Act, or any other state or federal common law, statute, or regulation, and include:

- a. The costs of assessing injury to natural resources, the Department's Office of Natural Resource Restoration's ("ONRR") costs, attorneys' fees, consultants and experts' fees, other litigation costs, and interest, incurred prior to the Effective Date of this Settlement Agreement; and
- b. Compensation for the lost value of, injury to, or destruction of natural resources.

14. "Natural Resource Damages" do not include:

- a. Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;
- b. Any applicable requirements to remediate the Contaminated Site including the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), and any remediation requirements imposed by the State of New Jersey or the EPA; or
- c. The Kinder Morgan Parties' continuing obligations to pay NJDEP's fees and oversight costs determined pursuant to N.J.A.C. 7:26C-4, incurred after the Effective Date of this Settlement Agreement.

## TERMS

15. The Kinder Morgan Parties agree that the settlement terms reflected in this Settlement Agreement are premised on current and future compliance by the Kinder Morgan Parties with all lawfully imposed requirements for remediation of discharges at the Sites, (see paragraph 5 above). The Kinder Morgan Parties' failure to comply may give rise to additional liability for Natural Resource Damages to the extent that the noncompliance increases the scope or duration of injuries to Natural Resources.

16. Within thirty (30) calendar days after the Effective Date of this Settlement Agreement, Kinder Morgan shall make a payment to the Department, in the amount of \$100,000.00 for the Department's Office of Natural Resource Restoration's costs of assessing damages to natural resources at the Contaminated Sites and in overseeing this Settlement Agreement. Kinder Morgan agrees to make this payment in accordance with directions provided by the Department, or by a cashier's or certified check payable to the "Treasurer State of New Jersey" and remit it, with the applicable invoice furnished by the Department, to the address stated on the invoice with a copy of the payment and invoice to:

David Bean, Chief  
Department of Environmental Protection  
Office of Natural Resource Restoration  
Mail Code 501-04  
P.O. Box 420  
Trenton, New Jersey 08625-0420.

17. Kinder Morgan agrees to perform, at the sole cost and expense of Kinder Morgan, the NRD Restoration Projects, described in the Scope of Work attached hereto as Appendix B and in accordance with the Project Schedule attached hereto as Appendix C. Kinder Morgan shall provide the Department with written notice as to the completion of all the NRD Settlement Projects within thirty (30) days of their completion. The Department shall confirm the completion of the NRD Settlement Projects or shall notify Kinder Morgan of any potential deficiencies with its completion within sixty (60) days upon receipt of the written notification from Kinder Morgan.

#### COVENANT AND RELEASE

18. Within sixty (60) calendar days after the Department's determination that Kinder Morgan has complied with all the requirements of this Settlement Agreement, the Department will issue a Release to the Kinder Morgan Parties, consistent with the form of Release set forth in Appendix A, which is attached hereto and made a part hereof.

19. When fully executed, this Settlement Agreement shall constitute an administratively approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a(2)(b) and 42 U.S.C. 9613(f)(2) for purposes of providing protection from contribution actions addressing State trustee settled Natural Resource Damages. Upon satisfying all the requirements of this Settlement Agreement, the Kinder Morgan Parties will have resolved their liability for Natural Resources Damages to the Department for matters addressed in this Settlement Agreement. The Kinder Morgan Parties shall not be liable for claims for contribution regarding matters addressed in this Settlement Agreement to the fullest extent permitted under law from any contribution claim or third party action asserted for Natural Resource Damages, including but not limited to third-party contribution actions or claims under 42 U.S.C. 9613(f) and 42 U.S.C. 9622(h)(4).

20. In accordance with N.J.S.A. 58:10-23.11e2, on May 3, 2021, the Department published notice of this Settlement Agreement in the New Jersey Register and on the Department's website, and arranged notice, as described in the following paragraph, to other potentially responsible parties. The following information was included in such notice:

- a. the name and location of the Sites;
- b. the name of the settling party;
- c. a summary of the terms of this Settlement Agreement; and
- d. that there are 60 days to comment on this proposed Settlement Agreement.

21. The Kinder Morgan Parties shall arrange for written notice of the Settlement Agreement to all other potentially responsible parties of whom the Department had notice. The potentially responsible parties to receive notice are listed in Attachment \_\_\_ to this Agreement. The Kinder Morgan parties agree to make good faith efforts to effectuate written notice to each party listed in Attachment \_\_\_. However, nothing in this Settlement Agreement shall be conditioned upon completion of service or the notice in the event the parties in Attachment \_\_\_ no longer exist, an address for service cannot be found, receipt of service is rejected or other circumstances beyond the ability or control of the Kinder Morgan parties.

22. Upon conclusion of the 60-day comment period set forth in paragraph 21 above, the Department will notify the Kinder Morgan Parties that:

- a. the Department received no comments that disclosed facts or considerations that indicated to the Department, in its sole discretion, that the Settlement Agreement was inappropriate, improper, or inadequate;

or

- b. the Department received comments that disclosed facts or considerations that indicated to the Department, in its sole discretion, that the Settlement Agreement required amendment and the Department provided Kinder Morgan with the specifics of those amendments and provided Kinder Morgan with a Settlement Agreement incorporating the amendments.

23. In any subsequent administrative or judicial proceeding initiated by the Department for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Property, the Kinder Morgan Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims the Department raises in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants set forth in this Settlement Agreement.

## GENERAL PROVISIONS

24. If the Kinder Morgan Parties fail to comply with Paragraphs 15, 16 and 17 above, the Department reserves its right to terminate this Settlement Agreement, withdraw its offer to settle the Natural Resource Damages as provided herein, not issue a Release, and pursue any other actions.

25. Nothing in this Settlement Agreement, including the Department's issuance of a Release as described in Paragraph 18 above, shall impact the Kinder Morgan Parties' obligation to comply with all applicable laws, regulations and legally enforceable requirements with respect to the remediation of the Contaminated Sites, including, but not limited to, the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C) and the Technical Requirements for Site Remediation (N.J.A.C. 7:26E).

26. Nothing in this Settlement Agreement shall modify, waive or impair any rights or defenses that the Kinder Morgan Parties may have with respect to the remediation of the Contaminated Sites.

27. Nothing in this Settlement Agreement shall be construed as an admission by the Kinder Morgan Parties or a finding by the Department of any wrongdoing or liability on the part of the Kinder Morgan Parties for the discharge of hazardous substances at or from the Sites.

28. The Department reserves, and this Settlement Agreement is without prejudice to, all rights against the Kinder Morgan Parties concerning all matters not addressed in this Settlement Agreement, and to which the Kinder Morgan Parties reserve all rights and defenses. This Settlement Agreement does not address discharges by Kinder Morgan or its Related Entities at any site other than those identified in paragraph 2, above.

29. Nothing in this Settlement Agreement shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey to the extent not inconsistent with this Settlement Agreement or any Release issued hereunder.

30. Nothing in this Settlement Agreement shall restrict the ability of the Department to raise or make the above findings in any other proceeding to the extent not inconsistent with this Agreement.

31. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

32. The Kinder Morgan Parties agree not to contest (a) the authority or jurisdiction of the Department to enter into this Settlement Agreement, and (b) the terms or conditions hereof, except that the Kinder Morgan Parties do not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this settlement Agreement.

33. This Settlement Agreement shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

34. No modification or waiver of this Settlement Agreement shall be valid except by written amendment to this Settlement Agreement duly executed by the Kinder Morgan Parties and

the Department.

35. The Kinder Morgan Parties acknowledge that it has no right to an administrative hearing concerning the entry of this Settlement Agreement.

36. Except as otherwise provided herein, all written communication between the Kinder Morgan Parties and the Department shall be sent via email or by hand delivery to the following at the addresses specified below:

For the Department:

David Bean, Chief  
Office of Natural Resource Restoration  
Division of Parks and Forestry  
New Jersey Department of Environmental Protection  
501 East State Street  
P.O. Box 420  
Mail Code 501-04  
Trenton, New Jersey 08625-0420  
Email: David.Bean@dep.nj.gov

For Kinder Morgan:

Andrea Lipuma  
Saul, Ewing Arnstein & Lehr  
650 College Road East  
Suite 4000  
Princeton, New Jersey 08540-6602  
Email:

Nancy Van Burgel  
Kinder Morgan, Inc.  
1667 Cole Boulevard  
Lakewood, Colorado 80401  
Email:

## PROGRESS REPORTS

37. The Kinder Morgan Parties agree to submit semi-annual progress reports beginning six months from the Effective Date of the Settlement Agreement to the Department at the address listed in paragraph 36 above until all provisions of the Settlement Agreement are satisfied. Each progress report shall include, but not be limited to, the following:

- a. identification of the currently active Headgates Dam Removal Project phase of work and reference to this Settlement Agreement;



- b. status of design, permitting and planning approvals required for the Headgates Dam Removal Project and progress to date;
- c. difficulties or problems encountered during reporting period and actions taken to rectify;
- d. activities planned for the next reporting period;
- e. required and actual completion date for each item identified in the SOW and Project Schedule;
- f. an updated Project Schedule;
- g. an explanation of any delays; and
- h. evaluation of all corrective measures implemented to date.

38. Termination, Suspension and Delay

- a. Termination: If, after demonstrating to the Department that the Kinder Morgan Parties have been or will be prevented from performing the NRD Settlement Projects due to the conditions detailed in subparagraph (b) below, Kinder Morgan may terminate this Agreement, provided however, Kinder Morgan shall complete construction of any of the three phases of the NRD Settlement Projects if it has initiated construction of that phase under paragraph 5 of the SOW. The Department may redirect Kinder Morgan to find a mutually agreeable alternative project, provide the State of New Jersey an agreed upon monetary settlement or to terminate the applicable portion of the agreement. In the event of termination, the Kinder Morgan Parties shall not be released from any liability that was encompassed by this Settlement Agreement.
- b. The Kinder Morgan Parties shall notify the Department in writing of any delay or impediment to the Kinder Morgan Parties' performance of the terms and conditions of this Settlement Agreement, including but not limited to performance of the SOW in accordance with the Project Schedule. The notice shall describe the anticipated length of time the impediment or delay may persist and the date when the impediment or delay is reasonably expected to be rectified. If the impediment or delay prevents Kinder Morgan's performance of this Settlement Agreement, the parties may, upon mutual agreement, seek to negotiate alternative NRD Settlement Projects for this Settlement Agreement, or Kinder Morgan may terminate the Settlement Agreement in accordance with subparagraph (a) above. The Kinder Morgan Parties shall not be liable to the Department for the delay or failure to perform, in whole or in part, under this Settlement Agreement where such delay or failure arises by reason beyond the reasonable control of Kinder Morgan.

39. This Settlement Agreement shall be governed and interpreted under the laws of the State of New Jersey.

40. This Settlement Agreement shall be binding on the Kinder Morgan Parties, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of the Kinder Morgan Parties or the ownership of any of the Sites shall alter Kinder Morgan's responsibilities under this Settlement Agreement.

41. Upon receipt of a written request by the Department, the Kinder Morgan Parties shall submit or make available to the Department all non-privileged, non-confidential, technical information and data that the Kinder Morgan Parties have concerning the NRD Settlement Projects, addressed in the Settlement Agreement. Contract bid and related documents are expressly deemed confidential and are not subject to production. The Kinder Morgan Parties' assertion of confidentiality under this paragraph pertains only to documents produced pursuant to this Settlement Agreement. If the Kinder Morgan Parties wish to assert that any documents it submits to the Department under any other program are confidential, it must assert confidentiality pursuant to confidentiality rules that govern those programs. Information and documents that are required for the Department's consideration of any permit application necessary to perform the Scope of Work shall not be considered confidential based on the provisions of confidentiality within this Settlement Agreement.

42. This Settlement Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Settlement Agreement. Signatures may be executed and delivered electronically and shall be deemed to be original signatures.

43. This Settlement Agreement shall be effective upon the execution of this Settlement Agreement by the Department and Kinder Morgan (the "Effective Date").

44. The undersigned representative of Kinder Morgan certifies that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Kinder Morgan to this Settlement Agreement.

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Ray Bukowski  
Assistant Commissioner  
Natural and Historic Resources  
New Jersey Department of Environmental Protection

**NEW JERSEY SPILL COMPENSATION FUND**

Date: \_\_\_\_\_

By: \_\_\_\_\_

David E. Haymes  
Administrator  
New Jersey Spill Compensation Fund  
and Director  
Division of Enforcement, Technical & Financial  
Support  
New Jersey Department of Environmental Protection

**KINDER MORGAN, INC.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

DRAFT

## APPENDIX A

### RELEASE

**IN THE MATTER OF** :  
**THE KINDER MORGAN, INC. AND** :  
**ITS** :  
**RELATED ENTITIES FOR** : **NATURAL RESOURCE DAMAGES**  
**PROGRAM INTEREST NOs.** :  
**BAYONNE TERMINAL** :  
**PI# G000004035;** :  
**KALAMA CHEMICAL PI# 011730;** : **RELEASE**  
**HARRISON TERMINAL PI# 002104;** :  
**NEWARK TERMINAL PI# 002102;** :  
**and** :  
**NUODEX PI# G000001659.** :

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- El Paso LLC, formerly known as El Paso Corporation, a corporation formed in the State of Delaware;
- Coastal Eagle Point Oil Company, a corporation formed in the State of Delaware;
- Coastal Oil of New York Company, a corporation formed in the State of Delaware;
- Tenneco Oil Company, a corporation formed in the State of Delaware;
- Atlantic Coast Terminals, a corporation formed in the State of Maryland;
- EPEC Polymers, Inc., a corporation formed in the State of Delaware; and
- EPEC Oil Company Liquidating Trust, a Trust established in accordance with applicable Delaware corporate dissolution laws and regulations.

For purposes of this Release, Related Entities shall also include the corporate officers, directors, employees, predecessors, parents, successors, subsidiaries, partners, shareholders, assigns, trustees in bankruptcy, or receivers appointed to a proceeding in law or equity. Kinder Morgan and all of its Related Entities are referenced collectively hereinafter as the “Kinder Morgan Parties.”

2. The discharges that are the subject of this Release occurred at the following facilities and properties (individually, a “Site” and collectively the “Sites”):

- a. The Nuodex Site, PI# G000001659, designated as Block 93, Lot 100.01 (formerly Block 93, Lot 100, Block 62, Lot 2, and Block 62, Lot 3), Block 93, Lot 100.02

(formerly part of Block 93, Lot 100), Block 83, Lot 1, and Block 99, Lot 10 on the tax maps of Woodbridge Township, Middlesex County, New Jersey (“Nuodex”).

- b. The former Coastal Oil of New York Company Bayonne Terminal Site, PI# G000004035, located at the foot of 5th Avenue and formerly designated as Block 431 and currently designated as Block 475 on the tax maps of Bayonne, Hudson County, New Jersey (“Bayonne Terminal”);
- c. The former Kalama Chemical Incorporated Site, PI# 011730, located at 290 River Road and designated as Block 50.01, Lot 1 and Block 50.02, Lot 1 on the tax maps of Garfield, Bergen County, New Jersey (“Kalama Chemical”);
- d. The former Tenneco Oil Company/Atlantic Coast Harrison Terminal Site, PI# 002104, located at 1 Harrison Avenue and designated as Block 66, Lot 1 on the tax maps of Harrison, Hudson County, New Jersey (“Harrison Terminal”); and
- e. The former Tenneco Oil Company/Center Point/Stratus Center Newark Terminal Site, PI# 002102, located at 678 Doremus Avenue and designated as Block 5066, Lots 30 and 30.01 on the tax maps of Newark, Essex County, New Jersey (“Newark Terminal”).

3. The Department of Environmental Protection, the Commissioner of the Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (hereinafter, "the Department") and Kinder Morgan entered into a Natural Resource Damages Settlement Agreement that became effective on \_\_\_\_\_ to resolve the Kinder Morgan Parties' potential natural resource damage liability to the State of New Jersey as described in the Settlement Agreement (hereinafter, "Settlement Agreement").

4. Kinder Morgan has complied with the Settlement Agreement.

5. "Natural Resources" as used in this Natural Resource Damages Release includes all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, controlled, or held in trust by the State, including such resources the State recognizes to be held jointly with other natural resource trustees.

6. "Natural Resource Damages" as used in this Natural Resource Damages Release includes all claims arising from discharges at or from the Sites that occurred prior to the Effective Date of the Settlement Agreement and that are recoverable by the Department as natural resource damages for injuries to Natural Resources under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., or any other state or federal common law, statute, or regulation, and include:

- a. The costs of assessing injury to Natural Resources, the Department's Office of Natural Resource Restoration's costs, attorneys' fees, consultants' and experts' fees, other litigation costs, and interest, incurred prior to the Effective Date of this Settlement Agreement; and

b. The compensation for restoration of, the lost value of, injury to, loss of use or destruction of Natural Resources.

7. “Natural Resource Damages” do not include:

a. Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;

b. Any applicable requirements to remediate the Contaminated Site including the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), and any remediation requirements imposed by the State of New Jersey or the EPA; or

c. Kinder Morgan’s continuing obligation to pay the Department’s fees and oversight costs determined pursuant to N.J.A.C. 7:26C-4, and pursuant to Paragraph 25 of the Settlement Agreement.

8. The Department fully and forever releases, covenants not to sue, and not to otherwise take administrative or civil action against Kinder Morgan, the Kinder Morgan Parties and their respective current and former corporate officers, directors, employees, predecessors, parents, successors, and subsidiaries, for any and all of the Department’s causes of actions for Natural Resource Damages arising from discharges at or from the Sites.

9. The Department reserves, and this Release is without prejudice to, all rights against the Kinder Morgan Parties concerning all matters not addressed in this Release and the Settlement Agreement, and to which the Kinder Morgan Parties reserves all rights and defenses. This Release does not address discharges by Kinder Morgan or its Related Entities at any site other than those identified in Paragraph 2 of this Release.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Ray Bukowski  
Assistant Commissioner  
Natural and Historic Resources  
New Jersey Department of Environmental Protection

## APPENDIX B

### SCOPE OF WORK

#### HEADGATES DAM REMOVAL

This Appendix B Scope of Work (“Scope of Work”) outlines each phase of work (hereinafter, “Phase”) for the removal of the Headgates Dam, located at Raritan RM 29.9 at the western end of Duke Island Park in Bridgewater and Hillsborough Townships, Somerset County, New Jersey (“Headgates Dam”):

- Phase 1. Design, design approval, permitting, subcontracting, and construction work required for the replacement and relocation under the Raritan River of the Bridgewater Township 54-inch sanitary sewer (the “Sewer”);
- Phase 2. Design, design approval, permitting, subcontracting, and construction work required for the replacement of the Raritan Water Power Canal (“Canal”) water supply at the head of the Canal; and,
- Phase 3. Design, permitting, subcontracting, and construction work required for dam breaching and removal of the Headgates Dam.

The foregoing three phases of work are defined in the Natural Resource Damages Settlement Agreement executed on \_\_\_\_\_ between the Department and Kinder Morgan (the “Settlement Agreement”) as the NRD Settlement Projects and are collectively referred to in this Scope of Work as the “Headgates Dam Removal Project” or “Project”. Each Phase of the Headgates Dam Removal Project will be implemented in accordance with the Headgates Dam Removal Project Schedule, incorporated into the Settlement Agreement as Appendix C (hereinafter, “Project Schedule”).

The Scope of Work is subject to and governed by the terms and provisions of the Settlement Agreement. Capitalized terms in this Scope of Work are to be construed and interpreted consistent with the definitions of those capitalized terms provided in the Settlement Agreement unless otherwise defined herein. In any cases of contradiction between terms of the Settlement Agreement and this Scope of Work, the terms of the Settlement Agreement shall govern and prevail. The Project can be implemented in any order, at Kinder Morgan’s discretion, except the Sewer has to be relocated prior to demolition of the Headgates Dam.

#### 1. Designation of Representatives

a. Designation of Representatives. The Department and Kinder Morgan hereby designate their representatives for the purposes of providing notices pursuant to this Scope of Work. The parties will provide written notice to each other of any change in the representative or the contact information for such representative, and such change shall become effective immediately upon receipt unless otherwise designated.

**New Jersey Department of Environmental Protection**

Mr. David Bean  
Office of Natural Resource Restoration  
State of New Jersey Dept of Environmental Protection Natural & Historic Resources  
Mail Code 501-04 P.O. Box 420  
Trenton, NJ 08625-0420

**Kinder Morgan**

Mr. Gene Meyer, P.E.  
El Paso Corporation  
1001 Louisiana St.  
Houston, TX 77002

**with a copy to:**

Nancy E. Van Burgel, Esq.  
Assistant General Counsel  
Kinder Morgan, Inc.  
1667 Cole Boulevard  
Lakewood, Colorado 80401

The following will apply to the Headgates Dam Removal Project.

2. Design and Contract Awarding

a. Selection. Kinder Morgan shall select consultants and contractors as necessary for preparing all drawings, specifications, and other documents legally required and/or necessary for performance of a Project. The Kinder Morgan-approved consultants and contractors shall hereinafter be referred to as “Contractors.”

b. Preparation of Design. After selection of Contractors pursuant to paragraph 2.a above, Contractors will prepare a draft of the Design Documents (“Draft Design Documents”) and provide such Draft Design Documents to Kinder Morgan for review.

c. Preparation of Final Construction Documents. Kinder Morgan shall promptly review Draft Design Documents and provide Contractors with any comments or corrections from either Kinder Morgan or any related entity such as owner of the sewer or the County. Upon final approval by Kinder Morgan, the approved Design Documents shall be considered “Final Construction Documents.”

3. Permitting

a. At the request of Kinder Morgan, and at the discretion of the Department’s ONRR (or successor named entity), ONRR may assist in preparing, attending and participating in meetings necessary to acquire the appropriate permits for Project construction.



b. Preparation of Permits. Kinder Morgan will obtain all required permits including State, county, local and federal regulatory permits necessary for implementation of the Project (“Permits”).

c. Submission of Permits. Kinder Morgan will submit the Permit applications to the applicable agencies, including all fees required.

4. Agreements with Property Owners

Kinder Morgan shall obtain consent from the owner of the Headgates Dam (“Dam Owner”) to remove the Headgates Dam and to perform any work on the Dam Owner’s property related to removal of the Headgates Dam. Kinder Morgan also will obtain access agreements from any other owners of property on which work for implementation of the Project will be conducted.

5. Performance of Work

a. Initiation of Construction Work. Performance of Project work specified by the Final Construction Design Documents shall hereinafter be defined as “Construction Work.” After receipt of all Permits and executed access agreements required for any one Phase of the Project, Kinder Morgan will commence Construction Work on that Phase of the Project in accordance with the Headgates Dam Removal Project Schedule. Within 24 hours of initiating Construction Work on any Phase of the Project, Kinder Morgan shall provide written notice to the Department’s ONRR that Kinder Morgan has commenced Construction Work on a specified Phase of the Project. The sequencing of each Phase of the Project shall be at Kinder Morgan’s sole discretion. Kinder Morgan shall be solely responsible for monitoring and overseeing Contractors performing Construction Work to assure each Phase of the Project is completed in accordance with the Final Construction Design Documents and Headgates Dam Removal Project Schedule.

b. Disposal of Debris and Waste. Kinder Morgan shall ensure that in performance of Construction Work associated with each Phase of the Project, Contractors properly characterize and arrange for the disposal of all debris and wastes generated by the Construction Work in accordance with applicable laws and regulations.

c. Documentation of Completion of Work. Within thirty (30) days after completion of this Scope of Work for the Project, Kinder Morgan shall provide the Department with written notice in accordance with the Settlement Agreement and this Scope of Work. The Department shall confirm the completion of the Scope of Work or shall notify Kinder Morgan of any potential deficiencies with its completion within 30 days upon receipt of the written notification from Kinder Morgan. Within Sixty (60) days after the Department has confirmed the completion of the Scope of Work, the Department shall issue a Release pursuant to Paragraph 19 of the Settlement Agreement.

## APPENDIX C

### HEADGATES DAM REMOVAL

#### PROJECT SCHEDULE

This Appendix C Headgates Dam Removal Project Schedule (hereinafter, “Project Schedule”) summarizes the schedule for removing the Headgates Dam, located at Raritan RM 29.9 at the western end of Duke Island Park in Bridgewater and Hillsborough Townships, Somerset County, New Jersey, which consists of three major phases of work to be performed by Kinder Morgan, Inc. (“Kinder Morgan”). Each phase (hereinafter, “Phase”) includes the following work components:

- Phase 1. Access agreement, Memorandum of Understanding (MOU), design, design approval, permitting, subcontracting, and construction associated with the installation of a dual inverted sewer siphon under the Raritan River bed of the Township of Bridgewater to replace the existing 54-inch sanitary sewer line where it crosses the Raritan River;
- Phase 2. Access agreement, MOU, design, design approval, permitting, subcontracting, and construction of a replacement Raritan Water Power Canal water supply at the head of the Canal;
- Phase 3. Access agreement, demolition agreement, design, permitting, subcontracting, and dam breaching and removal of the Headgates Dam.

The foregoing three phases of work are defined in the Natural Resource Damages Settlement Agreement executed on \_\_\_\_\_ between the Department and Kinder Morgan (the “Settlement Agreement”) as the NRD Settlement Projects and are collectively referred to in this Project Schedule as the “Headgates Dam Removal Project” or “Project”. Each Phase of the Headgates Dam Removal Project will be implemented in accordance with this Project Schedule.

The Project Schedule is subject to and governed by the terms and provisions of the Settlement Agreement. Capitalized terms in this Project Schedule are to be construed and interpreted consistent with the definitions of those capitalized terms provided in the Settlement Agreement and the Headgates Dam Removal Project Scope of Work incorporated into the Settlement Agreement as Appendix B unless otherwise defined herein. In any cases of contradiction between terms of the Settlement Agreement or Project Scope of Work and this Project Schedule, the terms of the Settlement Agreement shall govern and prevail.

Kinder Morgan reserves the right to conduct work earlier and in a different sequence than the prescribed Schedule herein, but the Phase 1 Project has priority.

#### **Phase 1 Schedule: Bridgewater Township Dual Inverted Sewer Siphon**

This Phase of the Headgates Dam Removal Project consists of the preparation of a dual inverted sewer siphon design or suitable alternative (dual inverted sewer siphon from hereon forward), application and acquisition of relevant NJDEP permits, and the construction of the dual inverted sewer siphon beneath the Raritan River bed.

The Headgates Dam cannot be removed until the gravity-fed, 54-inch diameter reinforced concrete sanitary sewer line (constructed in 1968 and currently owned by Township of Bridgewater), located approximately 75 feet upriver from the Headgates Dam, is relocated and

the sewer line above the river bed is removed from service. The original sewer installation used the Headgates Dam as a grade control; the sewer line is positioned only three feet below the water line during normal base flows, extends approximately 1.5 feet above the river bed, and would be exposed to the flow of the river should the dam be removed. It was determined that Phase I of the Project would need to address the sewer issue.

1. Schedule for Township of Bridgewater Memorandum of Understanding (MOU):  
Within one (1) month of the Effective Date as defined by the final NJDEP-Kinder Morgan Settlement Agreement, Kinder Morgan will notify the Township of Bridgewater that a dual inverted sewer siphon design is being planned in order to obtain their agreement to accept such a design and share with Kinder Morgan the necessary data necessary to complete the design work. If the concept of installing a replacement inverted sewer siphon is acceptable to the Township of Bridgewater, a memorandum of understanding (MOU) will be developed and executed between Kinder Morgan and the Township of Bridgewater, to allow the following design and construction work to proceed.
2. Schedule of Pre-Design Sewer Siphon Tasks:  
Within three (3) months of the effective date of the Township of Bridgewater and Kinder Morgan fully executed MOU, Kinder Morgan shall implement the following components related to Sewer Siphon Pre-Design in accordance with the schedule set forth below:
  - a. Kinder Morgan shall retain the services of a qualified sewer siphon design firm that is licensed to work in New Jersey (Engineering Firm).
  - b. Kinder Morgan shall (1) negotiate a Right of Entry Agreement with Somerset County, owner of the land overlying the existing 54-inch sewer line and (2) provide relevant conceptual design information to Somerset County to commence the legal process of (i) widening the existing 30-foot wide permanent easement to allow for the installation of new off-set sewer siphon and (ii) provide for additional 40-foot wide temporary working easement for the construction equipment to be used to install the inverted sewer siphon.
  - c. As part of Pre-Design data gathering effort, Kinder Morgan will conduct if technically necessary to do so:
    - Any necessary horizontal and vertical survey of the sewer alignment to determine the slope of the existing sewer inverts;
    - A review of the Township of Bridgewater and receiving POTW (Somerset Raritan Valley Sewerage Authority [SRVSA]) operational flow logs to ascertain whether seasonal sanitary sewer flow trends exist and determine an average daily minimum-maximum discharge.
3. Schedule for Dual Inverted Sewer Siphon Design:
  - a. Within one (1) month following the acquisition of the aforementioned Pre-Design survey and operational data; the retention of a qualified Engineering Firm, and a fully executed Right of Entry Agreement with Somerset County, Kinder Morgan will produce a Conceptual Design drawing illustrating the general layout of the dual inverted sewer siphon, its approximate length and depth below the Raritan River, and the manner in which it will tie into the existing 54-inch sewer on both sides of the river, and attend a meeting to review the conceptual design with the Township of Bridgewater. This conceptual design must be reviewed and approved by the Township of Bridgewater before proceeding.

- b. Within three (3) months of the Township of Bridgewater's acceptance of the Conceptual Design, Kinder Morgan will prepare a 30% Design of the sewer siphon, including preliminary drawings, and attend a meeting to review the 30% design with the Township of Bridgewater. This 30% design must be reviewed and approved by the Township of Bridgewater before proceeding.
- c. Within three (3) months of the Township of Bridgewater's acceptance of the 30% Design, Kinder Morgan will prepare a 90% Design, including a technical analysis report and appropriate drawings. This 90% design must be reviewed and approved by the Township of Bridgewater for approval before proceeding. Township of Bridgewater comments on the 90% design will be addressed and included in the Final Design.
- d. Within three (3) months of the Township of Bridgewater's acceptance of the 90% Design, Kinder Morgan will prepare a 100% Final Design, for review and approval by the Township of Bridgewater, including one complete set of revised drawings, construction specifications, and project manual.
4. Schedule for Dual Inverted Sewer Siphon Construction:
- a. Within two (2) months of the Township of Bridgewater's acceptance of the 100% Design, the selected sewer siphon design firm oversight engineer shall apply for all the necessary NJDEP permits in order to proceed with the proposed sewer siphon construction. These permits may include, but are not limited to, the following regulatory requirements: (1) the Flood Hazard Area Control Rules (FHA) under N.J.A.C. 7:13-12.8 Requirements for a utility line, (2) Freshwater Wetlands Protection Act regulation under N.J.A.C. 7:7A-7.2 General permit 2-Underground utility lines, (3) a Soil Erosion and Sediment Control Plan under the Soil Erosion and Sediment Control Act of 1975 for a project that disturbs greater than 5,000 square feet of land area (footprint of disturbance) submitted to Somerset-Union Soil Conservation District (SCD), (4) a Soil Disturbance Permit from Bridgewater Township for projects that impact more than 5,000 square feet (total disturbance of construction includes land and water), (5) a project review by the Hillsborough Engineering Department for projects disturbing greater than 5,000 square feet, and (6) a Dam Safety Permit, if deemed necessary or required by NJDEP.
- b. Within three (3) months of the Township of Bridgewater's acceptance of the 100% Design, Kinder Morgan shall retain a qualified sewer siphon construction company to implement the design.
- c. Notwithstanding the above schedule, if all necessary sewer siphon construction permits are issued by NJDEP on or before March 1 of a given calendar year and if Somerset County has legally granted to the Township of Bridgewater both a revised permanent easement to allow for the new off-set sewer siphon and a 40-foot wide temporary working easement for the construction equipment, Kinder Morgan shall complete in that calendar year all requirements of dual inverted sewer siphon construction work provided the Raritan River is not subject to prolonged flooding events. If any of the final NJDEP permit approvals are issued after March 1 of any given calendar year, Kinder Morgan shall have a period of 21 months upon the receipt of the final permits to complete the sewer siphon construction. In either case, Kinder Morgan shall implement the following general elements of Construction Work:
- the dual inverted sewer siphon will be installed parallel to the existing 54-inch pipe across the river and beneath the river banks and be offset far enough and at a

deeper depth so the existing 54-inch sewer will not be disturbed and will remain fully functional and in service. Riprap stone and natural river bedload material mounded behind the dam will be used to backfill over the newly installed pipe, if needed;

- On-shore appropriate ancillary sewer siphon structures and tie-ins to the existing 54-inch sewer line will be constructed;
- At an optimal time of relatively low volume sewer flows, and with the expressed permission and consent of the Township of Bridgewater, sewer flows will be bypassed via a temporary pipeline across the river allowing sufficient time to perform the tie-in from the existing sewer to the newly-constructed dual inverted siphon;
- Following the successful tie-in of the inverted sewer siphon, the now inactive portion of the 54-inch sewer in the river will be flushed and then capped to await removal during the dam removal.

d. Within one (1) month of the construction completion, provide ONRR and the Township of Bridgewater with As-Built, Equipment Specifications and Operation & Maintenance Manuals.

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## Phase 2 Schedule: Raritan Water Power Canal Water Supply

Phase II of the Headgates Dam Removal Project consists of replacing the surface water supply to the Raritan Water Power Canal.

The purpose of the original Headgates Dam construction in circa 1842 was to impound water into the manmade, 3-mile long Raritan Water Power Canal (Canal) that extended from the Headgates Dam eastward to the Borough of Raritan. This Canal formerly provided water power for 19<sup>th</sup> and early 20<sup>th</sup> century commercial interests located in the Borough of Raritan and Canal water was also formerly extracted as a public and private water supply to the Somerville Water Company and the Duke Farms estate, respectively. None of commercial interests now exist and the last entity to cease utilizing water withdrawals from the Canal (in circa 1974) was Duke Farms. The Canal was formerly fully open to the river up until the late 1960s when Somerset County dismantled the water control gate house and filled in the head of the Canal (located about 720 feet upstream of the Headgates Dam) and installed a 2-foot diameter concrete pipe with a surface water intake to supply water into the Canal, which vastly reduced the flow in the Canal.

The Canal was placed on the New Jersey and National Registers of Historic Places (ID#3633) in 2001; as such, its general character as a manmade surface water body must be preserved. Once the Headgates Dam is removed, the Canal surface water intake will be approximately four feet above the restored, normal-stage surface water elevation of the river and water will cease to flow into the Canal except during exceptional flooding events. The State Historic Preservation Office (SHPO) would require that the Canal not be allowed to run dry, thereby requiring that some type of water supply flow be made available. The other primary stakeholders (Somerset County and Duke Farms) of the Canal are not expecting that a re-established flow will replicate the original conditions of the river's historical discharge into the Canal; however, Somerset County does require a means to move water into the Canal in the summer months for aesthetic purposes and to maintain wetlands along the Canal route.

1. Schedule for Replacement Canal Water Supply Pre-Design Tasks:  
Within one (1) month of the successful completion of Phase I (Dual Inverted Sewer Siphon Design and Installation), Kinder Morgan shall commence the following components related to Replacement Canal Water Supply:
  - a. Kinder Morgan shall retain the services of a qualified engineering design firm that is licensed in New Jersey.
  - b. Kinder Morgan shall negotiate a Right of Entry Agreement with the County of Somerset, owner of the land where a replacement water supply system would be installed, to use the unnamed Sellers Maintenance Yard road off of York Road (County Road 567) to access the parking lot at the head of the Canal.
  - c. Within three (3) months of a fully executed Right of Entry Agreement with Somerset County, Kinder Morgan will:
    - Commence a geotechnical and/or geophysical research and studies to determine an optimal location of a production well at the head of the Canal that penetrates a portion of the shallow Passaic Formation bedrock aquifer that may penetrate faults or fractures that could increase productivity of Canal supply well;
    - Initiate a Phase 1A Cultural Resource Assessment to address anticipated SHPO New Jersey and National Registers of Historic Places requirements related to the Raritan Water Power Canal Historic District (ID#3633);
    - Schedule and attend a pre-application informational meeting with NJDEP Bureau of Water Allocation to determine whether Somerset County will be required to

submit a Water Allocation Permit that allows a certain rate of diverted groundwater or surface water flow into the Canal

2. Schedule for Somerset County MOU:

Within one (1) month of the completion of the Pre-Design Tasks, Kinder Morgan shall commence negotiation on a MOU with Somerset County Parks Commission to design and construction a replacement water supply for the Canal.

3. Schedule for Replacement Canal Water Supply Well Construction:

a. Within one (1) month following a fully executed Right of Entry Agreement with Somerset County and the acquisition of sufficient geotechnical and/or geophysical information that indicates a feasible groundwater well supply source exists at the head of the Canal, Kinder Morgan shall retain a qualified licensed New Jersey drilling firm.

b. Within two (2) months of retaining a qualified licensed New Jersey drilling firm, and applying for and receiving a Well Permit from NJDEP BWA, Kinder Morgan shall commence the installation of a water supply test well at the head of the Canal or other preferred location(s).

c. Within one (1) month of the well installation completion, and as part of a Pre-Design data gathering effort, Kinder Morgan will conduct a 24-hour pump test of the newly-installed well to determine the sustained flow rate and specific capacity of the well. If an observation well is required to conduct the pump test, it will be installed prior to the commencement of the pump test.

4. Schedule for Engineering Design Plans for Replacement Canal Water Supply:

a. Within two (2) months following both the acquisition and interpretation of pumping test data from the newly-installed test well, Kinder Morgan will produce a Conceptual Design drawing illustrating the general layout of the replacement Canal water supply system and attend a meeting to review the conceptual design with Somerset County. This conceptual design must be reviewed and approved by the Somerset County before proceeding.

b. Within three (3) months of the Somerset County's acceptance of the Conceptual Design, Kinder Morgan will prepare a 30% Design of the replacement Canal water supply system, including preliminary drawings, and attend a meeting to review the 30% design with the Somerset County. This 30% design must be reviewed and approved by the Somerset County, and at this time, Somerset County must identify an acceptable and available electrical power source for the pump station, before any further design work proceeds.

c. Within three (3) months of the Somerset County's acceptance of the 30% Design, Kinder Morgan will prepare a 90% Design, including a technical analysis report and appropriate drawings. This 90% design must be reviewed and approved by the Somerset County for approval before proceeding. Somerset County comments on the 90% design will be addressed and included in the Final Design.

d. Within three (3) months of the Somerset County's acceptance of the 90% Design, Kinder Morgan will prepare a 100% Final Design, for review and approval by the Somerset County, including one complete set of revised drawings, construction specifications, and project manual.

5. Schedule for Replacement Canal Water Supply Construction:
- a. Within two (2) months of the Somerset County's acceptance of the 100% Design, the qualified engineering design firm shall apply for all required NJDEP Water Allocation Permits in conjunction with Somerset County, provide SHPO with supplemental documentation in accordance with Section 106 of the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. § 470, apply for other relevant permits (such as any required construction permits from the Construction Sub-Code Official of Bridgewater Township) in order to proceed with the installation of the proposed replacement Canal water supply system.
  - b. Within two (2) months of the Somerset County's acceptance of the 100% Design, Kinder Morgan shall retain a qualified pump station and piping construction contractor to implement the design.
  - c. Notwithstanding the above schedule, within six (6) months of the receipt of final NJDEP permits to construct the replacement Canal water supply system (including NJDEP SHPO Section 106 Consultation Acceptance Letter, if applicable), Kinder Morgan shall implement the following Construction Work activities:
    - Commence construction of pipeline conveyance, pump station, and other ancillary components for the new water supply system;
    - Upon completion, conduct a minimum 2-hour test of groundwater flow and pump station performance
    - Implement the conditions specified in the SHPO Section 106 Consultation Acceptance Letter, as needed.
  - d. Within one (1) month of the construction completion, provide ONRR and Somerset County with Pump Station As-Built, Equipment Specifications, and Operation & Maintenance Manuals and transfer responsibility of system operation to Somerset County.



### Phase 3 Schedule: Headgates Dam Removal

Phase 3 of the Headgates Dam Removal Project consists of planning and permitting of the removal activities, and the physical removal of the Headgates Dam<sup>1</sup> at Raritan River Mile 29.9. The Phase 1 removal of the 54" abandoned/out-of-service sewer line is an integral part of Phase 3 of the Project and is required to be completed prior to removal of the Headgates Dam.

1. Schedule for Dam Removal Demolition and Access Agreements: Within one (1) month of the successful completion of Phase I (Dual Inverted Sewer Siphon Design and Installation) and Phase II (Replacement Water Supply for Power Canal Design and Construction), Kinder Morgan shall commence negotiation on the following agreements:
  - Headgates Dam Demolition Agreement with Somerset County Parks Commission;
  - A Right of Entry Agreement with Somerset County to use the unnamed western approach road off of River Road in Hillsborough Township to access the dam location;
  - Demolition Equipment Transit Route approval by the Somerset County Department of Public Works, Division of Engineering, Bridge Section.
2. Schedule for Engineering Design Plans for Dam Removal:
  - a. Within six (6) months of the final execution of Headgates Dam Demolition Agreement and Right of Entry Agreement with Somerset County, Kinder Morgan shall complete the necessary requirements of the *Engineering Design Plan for Dam Removal (Technical Backup for Dam Safety Permit)*. Per the New Jersey Dam Safety Standards, N.J.A.C. 7:20-1.7(h), Kinder Morgan shall, as applicable and appropriate, develop the following data and information into a NJDEP Bureau of Dam Safety (Dam Safety) Technical Report for inclusion into the required NJDEP permit submittal:
    - Develop plans and HEC-RAS modeling computations for the breach<sup>2</sup> including size, shape, and location of the initial breach and disposal of the spoil material;
    - Conduct sediment transport analyses using the HEC-RAS model to determine maximum allowable scour velocity during initial breaching. These data shall be used to control the release of sediment from the impoundment during and after the initial breach has been implemented, and to inform the timing for dewatering the impoundment. Nothing herein shall constitute a requirement that Kinder Morgan perform long-term sediment transport modeling;
    - Develop computations detailing the effects of the final breach on the downstream channel, including during 10, 50 and 100 year storms;
    - Identify the proposed work methods and demolition equipment and prepare a proposed work schedule for removing the Headgates Dam;
    - Provide a plan (scaled drawing) of the existing dam and lake along with surrounding property lines;
    - Identify the potential effects of the dam removal upon the environment, life and property downstream of the dam;

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<sup>1</sup> In the Bureau of Dam Safety file documentation, this dam is registered as NJ File No. 25-13.

<sup>2</sup> The term "breach" in this Dam Safety context refers to the complete removal of the dam. Hereafter, the term "initial breach" refers to actions that begin the release of impounded water from above the dam and the "final breach," means the complete removal of the dam.

- Develop Construction Plans and Details (two sets/copies), including estimated as-built condition, river and dam cross-section profiles, and initial/final breach profile and plans for inclusion into the Dam Safety Permit.
- b. For each land parcel adjacent to the Headgates Dam impoundment upstream, determine property ownership and mailing addresses of those parcels that border the Headgates Dam impoundment in accordance to the requirements of NJDEP Dam Safety and NJDEP Division of Land Use Regulation (Land Use).
  - c. Develop the necessary technical supporting data to inform the completion of the Application Checklist Requirements and Compliance Statement for the Land Use GP-18 permit.
3. Schedule for NJDEP Permit Submittals:
    - a. Within one (1) month of the completion of the necessary technical requirements of *Engineering Design Plan for Dam Removal (Technical Backup for Dam Safety Permit)* and the Land Use Application Checklist Requirements and Compliance Statement, Kinder Morgan shall, as applicable and appropriate, complete and submit the following permit application to NJDEP:
      - A Dam Safety Permit application and Dam Safety Technical Report to NJDEP Dam Safety [N.J.A.C. 7:20-1.7(h)]. The information required to be included in the Dam Safety Permit application has been pre-determined by Dam Safety and includes, as appropriate, the project location, project description, estimated construction cost, dam construction/classification information, and information showing no increase in the normal water surface elevation will occur over the historical elevation after the dam removal. The aforementioned Construction Plans and Details shall be an attachment to the Dam Safety Permit application.

At the same time as the submittal of the Dam Safety Permit application, notify adjoining property owners of the impoundment and the municipalities (Borough of Manville and Bridgewater Township) where the reservoir or dam is located that an application has been submitted to Dam Safety to remove the dam. In addition, verify via affidavit that the general public has been given notice of the proposed Dam Safety removal application via a newspaper of general circulation in the municipality (e.g., Courier News) where the Headgates Dam is located.
      - Complete and submit an application for a NJDEP Land Use Permit GP-18 [N.J.A.C. 7:7A-7.18 General permit 18—Dam repair]. The information required to be included in the application has been pre-determined by NJDEP and includes, as appropriate, the watershed identification, property ownership certification, cross-reference and status of other applicable permits (Dam Safety, etc.). In lieu of conducting sediment sampling, the findings included in the NJDEP Green Acres Program *Headgates Dam Fish Passage Feasibility Study, Final Report*, dated October 2014 (The Louis Berger Group, Inc., 2014) will be incorporated into the permit application. As a result of the aforementioned Feasibility Study sampling efforts and *Final Report* conclusions, nothing herein shall constitute a requirement that Kinder Morgan undertake additional sediment collection, sampling or analyses before, during, or after the dam removal, or undertake sediment remediation. In addition, verify via affidavit that the general public has been given notice of the proposed Land Use application via a newspaper of

general circulation in the municipality (e.g., Courier News) where the Headgates Dam is located.

- Provide SHPO with supplemental documentation in accordance with Section 106 of NHPA. The information required to be included in the application has been pre-determined by NJDEP and includes, as appropriate, a cover letter outlining the information that is being provided; a map of the dam, access roads, and staging area locations; photographs of the dam; the history for the dam as currently understood; as-built plans for the dam, to the extent available; information about access and egress to the dam from the downstream boat ramp; and a description of how the dam is to be removed.
- Complete and submit an application for a NJDEP Fish & Wildlife Water Lowering Permit [N.J.A.C. 7:25-6:25]. The information required to be included in the application has been pre-determined by NJDEP and includes, as appropriate, the property owner certification, a map showing the project location, the reason for lowering water levels, the approximate date(s) the lowering will occur, the size of waterbody subject to the lowering, the extent of water level drawdown (as measured in vertical feet from crest of dam spillway), the method of water release, the depth of water that will be initially released, and a cross-reference to the status of other applicable permits (Dam Safety, Land Use, etc.).

b. Notwithstanding the above schedule, if all approved NJDEP and local permits are issued to Kinder Morgan on or before February 1 of a given calendar year, Kinder Morgan shall complete in that same calendar year all requirements related to the removal of the Headgates Dam provided the Raritan River is not subject to prolonged flooding events. If any of the final NJDEP or local permit approvals are issued after February 1 of any given calendar year, Kinder Morgan shall have a period of 22 months upon the receipt of the final permits to complete the dam removal. In either case, Kinder Morgan shall implement the following dam removal Construction Work activities:

- Following the receipt of all permit and approvals, and prior to the commencement of Construction Work, submit the required Construction Notice to Dam Safety;
- Submit copies of all approved NJDEP permits to the appropriate Township Administrator/Municipal Clerk and Construction Sub-Code Officials of both Hillsborough and Bridgewater Townships;
- Commence Construction Work by implementing customary dam demolition practices to remove the Headgates Dam once the dam is accessed by the demolition equipment provided that the prescribed low flow conditions for initial breaching occur during the allowable dam removal permitted time frame;
- Initially breach the dam in a specific location at a prescribed and modeled low flow (the calculation of this initial breach flow will be a requirement of the Dam Safety Permit, which confirms and authorizes the maximum flow allowable for the initial breaching), and once river water is largely diverted through the initial breach, commence removal of the emergent dam structure;
- Remove the empty inactive portion of the 54-inch sanitary sewer from the river bed;
- Convey off-site and dispose of at a licensed solid waste disposal/recycling facility concrete debris generated by the dam demolition. Excess sediment formerly entrapped behind the dam, if any, will be emplaced into the dam void space and downstream scour pools in addition to being used to stabilize the river-facing

abutments of the former Headgates Dam, if needed. No sediment will be removed from the river or manifested off-site;

- Submit semi-monthly (every two weeks) status reports, as required by Dam Safety, in compliance with the required *Construction Inspection Program* guidelines;
- Re-establish the natural river bed gradient through the former dam location consistent with the engineering plans and Dam Safety Permit, thereby establishing the presence of a sufficient river channel geometry that lacks obstructions and hydraulic jumps that shall allow fish passage under normal flow conditions;
- Implement the conditions specified in the SHPO Section 106 Consultation Acceptance Letter, as needed.

c. Following the completion of the dam removal and demobilization from the site, submit a Completion Report to NJDEP Dam Safety. This Completion Report will be accompanied by an as-built drawing that documents the re-establishment of the natural river bed gradient through the former dam location consistent with the approved engineering plans and the Dam Safety Permit. Dam Safety will then perform an inspection of the completed project to confirm that all Dam Safety permit requirements were met and, provided permit conditions have been met, subsequently issue a *Release from Dam Safety Act* letter to Kinder Morgan. Kinder Morgan will subsequently forward this letter to NJDEP ONRR. Within a reasonable amount of time after Kinder Morgan's submission of the Release from Dam Safety Act letter to NJDEP ONRR, the NJDEP shall issue to Kinder Morgan a fully executed Release in accordance with Paragraph 19 and Appendix A of the Settlement Agreement.

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