



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE  
*Governor*

BOB MARTIN  
*Commissioner*

KIM GUADAGNO  
*Lt. Governor*

IN THE MATTER OF	:	
EL PASO CORPORATION, COASTAL	:	NATURAL RESOURCE DAMAGES
EAGLE POINT OIL COMPANY, EL PASO	:	SETTLEMENT AGREEMENT
MERCHANT ENERGY-PETROLEUM	:	AND CONSENT ORDER
COMPANY, EPEC POLYMERS, INC. AND	:	
EL PASO CORPORATION'S SUBSIDIARIES	:	
AND AFFILIATES.	:	

The New Jersey Department of Environmental Protection ("DEP"), 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 Settlement Agreement pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund by the Spill Compensation and Control 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 New Jersey Spill Compensation and Control Act, and duly delegated to the Assistant Commissioner, Natural and Historic Resources and the Administrator pursuant to N.J.S.A. 13:1B-4.

### FINDINGS

1. El Paso Corporation is a corporation incorporated in the State of Delaware, with its principal offices at 1001 Louisiana Street, Houston, Texas 77002. El Paso Corporation has various subsidiaries and affiliates including, but not limited to, Coastal Eagle Point Oil Company, El Paso Merchant Energy-Petroleum Company, and EPEC Polymers, Inc. El Paso Corporation and all subsidiaries and affiliates of El Paso Corporation are referenced collectively hereinafter as the "El Paso Parties." All references herein to "affiliate" shall mean any entity that controls, is controlled by, or is under common control with El Paso Corporation.

2. The discharges that are the subject of this Natural Resource Damages Settlement Agreement and Consent Order (hereinafter "Settlement Agreement") occurred at the following facilities (hereinafter collectively referred to as "the Properties"):

(a) Coastal Eagle Point Oil Company Refinery, PI# 003724, Industrial Site Recovery Act (ISRA) Case No. E84158, also listed as Coastal Eagle Point, designated as West Deptford Block 1, Lots 1, 1.01 – 1.08, 5, 7, 7.01, 7.04, 8 on the tax maps of West

Deptford Township, Gloucester County, New Jersey and Westville Borough, Block 161, Lot 1 and Block 71, Lot 22 (hereinafter, "CEPOC Property.")

(b) EPEC Polymers, Inc., PI# 015468, ISRA Case No. E86315, also listed as Tenneco Polymers, designated as Block 27, Lot 34 on the tax map of Flemington Borough, Hunterdon County, New Jersey (hereinafter, "Flemington Property").

(c) EPEC Polymers, Inc., PI# 002511, ISRA Case No. 86305, also listed as 35 Beverly Road, designated as Block 94, Lots 34, 3.01, and 4 and Block 95, Lots 8, 8.01, 9.01, 12.01, 12.03 on the tax maps of Burlington City, Burlington County, New Jersey (hereinafter, "Burlington Property").

(d) Nuodex Inc., PI# G000001659, ISRA Case Nos. E85161 and E89475, designated as Block 62, Lots 2 and 3 and Block 93, Lot 100 on the tax map of Woodbridge Township, Middlesex County, New Jersey (hereinafter, "Nuodex Property").

3. The El Paso Parties are conducting or have conducted investigation, delineation and/or other remediation of discharges at the Properties pursuant to ISRA (f/k/a Environmental Cleanup Responsibility Act), including orders or agreements pursuant to the ISRA case numbers provided above in paragraph 2.

4. The El Paso Parties have conducted baseline ecological evaluations of the discharges at each of the Properties and reported the results to DEP as set forth below:

**CEPOC Property:** A baseline ecological evaluation prepared by McLaren Hart Inc., and dated February 2000, was submitted to DEP. DEP responded to this baseline ecological evaluation by letter dated January 23, 2001 and required additional sampling. This additional sampling was incorporated in CEPOC's Remedial Action Report submitted to DEP on November 7, 2002. In 2004, the CEPOC Property was sold to Sunoco, Inc. (R&M). DEP and Sunoco entered into a remediation agreement dated January 13, 2004 for ISRA case numbers E20030519, E20030520 and E20030521 pursuant to which Sunoco agreed to perform all applicable ISRA program requirements relating to the CEPOC Property, including any further baseline ecological evaluations and/or ecological risk assessments.

**Flemington Property:** A baseline ecological evaluation dated December 1999 and a Supplemental Ecological Evaluation Report dated June 5, 2007, prepared by Sovereign Consulting, Inc. were submitted to DEP. DEP issued a letter of No Further Action dated February 23, 2009.

The El Paso Parties concluded that an ecological risk assessment was not necessary at the Flemington Property because all criteria in N.J.A.C. 7:26E-3.11(a)4 of the baseline ecological evaluation were not present.

**Burlington Property:** A baseline ecological evaluation dated February 2005 and baseline ecological evaluation addendum, dated January 2007, both prepared by Sovereign Consulting, Inc. were submitted to DEP. DEP approved the evaluations in October 2007.

The El Paso Parties concluded that an ecological risk assessment was not necessary at the Burlington Property because all criteria in N.J.A.C. 7:26E-3.11(a)4 of the baseline ecological evaluation were not present.

**Nuodex Property:** A baseline ecological evaluation prepared by Environmental Resource Management ("ERM"), dated March 2004 was submitted to DEP. By letter dated April 18, 2005, DEP concluded that additional investigations of the ponds were unnecessary but that additional investigations for the contaminated uplands/wetlands and transition areas may be necessary to evaluate ecological risk to terrestrial receptors.

An Ecological Risk Assessment for West Lake, Central Wetlands, Southern Wetlands and Raritan River Wetlands prepared by ERM and dated November 2005 and an Addendum Ecological Risk Assessment prepared by URS Corporation and dated May 2007 were submitted to DEP. The Assessments were approved by DEP by letter dated September 17, 2007.

5. The El Paso Parties have completed remedial investigations of discharges at each of the Properties and reported the results of each investigation to DEP as set forth below:

**CEPOC Property.** The remedial investigation of discharges at this property was completed and the results of the investigations were reported in the Remedial Investigation Report prepared by MWH Americas, Inc. ("MWH"), dated November 7, 2002, and September 30, 2003, and approved by DEP by letter dated August 21, 2003.

**Flemington Property.** The remedial investigation of discharges at this property was completed and the results were reported in the Remedial Investigation Report and Remedial Action Work Plan Addendum prepared by SECOR International, Inc., dated January 1997, and approved by DEP by letter dated September 8, 1997.

**Burlington Property.** The remedial investigation of discharges at this property was completed and the results were reported in the Remedial Investigation Report prepared by El Paso Inc. dated June 4, 1993 and approved by DEP by letter dated February 18, 1994.

**Nuodex Property.** The remedial investigation of discharges at this property have been completed and the results were reported to DEP in the Investigation Report/Remedial Action Work Plan for Area of Concern 3 dated October 7, 2007, Remedial Investigation Report for Area of Concern 4 dated October 7, 2005, Remedial Investigation Report/Conceptual Remedial Action Work Plan for Area of Concern G dated October 13, 2005, Remedial Investigation Report/Conceptual Remedial Action Work Plan for Area of Concern I dated November 8, 2005, Remedial Investigation Report/Conceptual Remedial Action Work Plan for Area of Concern I dated December 15, 2005 (all of the above reports were prepared by Sovereign Consulting Inc. and submitted by The Whitman Companies, Inc.) and the Supplemental Remedial Investigation Report prepared by Brown and Caldwell dated March 2010.

6. The El Paso Parties and the Department agree that the information referenced in paragraphs 4 and 5 is sufficient to determine the nature and extent of the El Paso Parties' liability for Natural Resource Damages arising from discharges at the Properties.

7. The El Paso Parties have published legal notices in three newspapers of general circulation in the area of each of the Properties for a period of not less than three days that contained the following information:

(a) Name and location of the Properties where the discharges occurred:

i. Coastal Eagle Point Oil Company Refinery, PI# 003724, Industrial Site Recovery Act (ISRA) Case No. E84158, also listed as Coastal Eagle Point, designated as West Deptford Block 1, Lots 1, 1.01 – 1.08, 5, 7, 7.01, 7.04, 8 on the tax maps of West Deptford Township, Gloucester, County, New Jersey, and Westville Borough, Block 161, Lot 1 and Block 71, Lot 22

ii. EPEC Polymers, Inc., PI# 015468, ISRA Case No. E86315, also listed as Tenneco Polymers, designated as Block 27, Lot 34 on the tax map of Flemington Borough, Hunterdon County, New Jersey.

iii. EPEC Polymers, Inc., PI# 002511, ISRA Case No. 86305, also listed as 35 Beverly Road, designated as Block 94, Lots 34, 3.01, and 4 and Block 95 Lots 8, 8.01, 9.01, 12.01, 12.03 on the tax maps of Burlington, City, Burlington, County, New Jersey.

iv. Nuodex Inc., PI# G000001659, ISRA Case Nos. E85161 and E89475, designated as Block 62, Lots 2 and 3 and Block 93, Lot 100 on the tax map of Woodbridge Township, Middlesex, County, New Jersey.

(b) Parties to the Settlement: El Paso Corporation, Coastal Eagle Point Oil Company; El Paso Merchant Energy-Petroleum Company; EPEC Polymers, Inc.; and all affiliates and subsidiaries of El Paso Corporation, and the Department.

(c) Summary of the Terms of the Settlement: The El Paso Parties have agreed to remove certain dams subject to the Settlement Agreement and pursuant to scopes of work approved by DEP, at the El Paso Parties' sole cost and expense, including oversight costs incurred by DEP in connection with the removal of the dams in settlement of the El Paso Parties' potential Natural Resources Damages, as defined below, liability to the Department for the Properties.

(d) Public notice will be published in the New Jersey Register on October 18, 2010.

8. On October 18, 2010, the Department published notice of this Settlement Agreement in compliance with N.J.S.A. 58:10-23.11e2. The Department also arranged for written notice of the Settlement Agreement, which included the information provided in (a) – (d) of paragraph 7, to all other potentially responsible parties of whom the Department had notice.



9. On November 29, 2010, the Department notified the El Paso Parties that 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.

10. 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 Properties have injured and continue to injure Natural Resources and the services that Natural Resources provide.

11. By entering into this Settlement Agreement, the El Paso Parties do not admit any of the Findings of the Department. This Settlement Agreement shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall it be admissible in any proceeding as such, except only to the limited extent necessary to enforce the provisions of this Settlement Agreement or to establish the scope of the release or contribution protection provisions of this Settlement Agreement.

12. "Natural Resources" as used in this Settlement Agreement includes all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

13. "Natural Resource Damages" as used in this Settlement Agreement, include all claims arising from discharges at the Properties that occurred prior to the effective date of this 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 and natural resource services by DEP's Office of Natural Resource Restoration (hereinafter "ONRR"), ONRR's oversight costs determined consistent with N.J.A.C. 7:26C-4.5, attorneys' fees, consultants' and experts' fees, other litigation costs, and interest; and

(b) The compensation for restoration of, the lost value of, injury to, damage to, loss of use or destruction of Natural Resources and natural resource services.

14. Natural Resource Damages do not include, however:

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

(b) Requirements to clean up any contamination as a result of discharges at the Site; or

- (c) The El Paso Parties' continuing obligation to pay the Department's oversight costs, determined pursuant to N.J.A.C. 7:26C-4.5, incurred after the effective date of this Settlement Agreement.

15. The El Paso Parties agree that the settlement terms reflected in this Settlement Agreement are premised on current and future compliance with all lawfully imposed requirements for remediation of discharges at the Properties (see paragraph 3 above). 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 El Paso Parties' receipt of the executed Settlement Agreement from the Department, the El Paso Parties shall pay to the Department:

The sum of \$15,000.00 for ONRR's assessment costs, ONRR's oversight costs determined consistent with N.J.A.C. 7:26C-4.5, attorneys' fees, consultants' and experts' fees, other litigation costs, and interest.

The El Paso Parties agree to make this payment by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submit it to:

Administrator  
Office of Natural Resource Restoration  
Natural and Historic Resources Program  
Department of Environmental Protection  
P.O. Box 420  
Trenton, New Jersey 08625-0420

17. Subject to paragraph 21, the El Paso Parties shall also arrange for the performance of certain work, as defined in this paragraph, as further consideration for the settlement, releases and contribution protection provided pursuant to this Settlement Agreement. In addition to the execution of this Settlement Agreement and payments set forth in paragraphs 16, 17, and 18 herein, the work described below shall provide the final consideration for the settlements, releases and contribution protection for the Properties.

The releases associated with paragraphs 17a, 17b and 17c below are limited to the El Paso Parties and expressly do not release any claims against third parties that have owned and/or operated the CEPOC Property for injuries to Natural Resources to the extent resulting or arising from, or attributable to, discharges at or from the CEPOC Property during the third parties' ownership, operation and/or use of the CEPOC Property. However, by operation of this Agreement, including paragraph 19, the El Paso Parties shall not be liable for claims for contribution relating to or regarding these claims.

(a) CEPOC Property The El Paso Parties agree to perform, at the sole cost and expense of the El Paso Parties, the scope of work attached hereto as Appendix B (relating to the Robert Street Dam and payment of \$156,655 to the Department for research or

studies within the Delaware River estuary) ("Appendix B Scope of Work"). The El Paso Parties shall provide DEP with written notice as to the completion of the Appendix B Scope of Work within 30 days of its completion. DEP shall confirm the completion of the Appendix B Scope of Work within thirty (30) days upon receipt of the written notification from the El Paso Parties. Within thirty (30) days of confirming the completion of the Appendix B Scope of Work, and subject to the receipt of the El Paso Parties' payments pursuant to paragraphs 15, 17 and 18 of this Settlement Agreement, the Department will issue a Release to the El Paso Parties consistent with Appendix A, which is attached hereto and made a part hereof, for the CEPOC Property.

(b) Flemington Property and Burlington Property. The El Paso Parties agree to perform, at the sole cost and expense of the El Paso Parties, the scope of work attached hereto as Appendix C (relating to the Nevius Street Dam) ("Appendix C Scope of Work"). The El Paso Parties shall provide DEP with written notice as to the completion of the Appendix C Scope of Work within 30 days of its completion. DEP shall confirm the completion of the Appendix C Scope of Work within thirty (30) days upon receipt of the written notification from the El Paso Parties. Within thirty (30) days of confirming the completion of the Appendix C Scope of Work and subject to the receipt of the El Paso Parties' payments pursuant to paragraphs 15, 17 and 18 of this Settlement Agreement, the Department will issue a Release to the El Paso Parties consistent with Appendix A, which is attached hereto and made a part hereof, for the Flemington Property and Burlington Property.

(c) Nuodex Property. The El Paso Parties agree to perform, at the sole cost and expense of the El Paso Parties, the scope of work attached hereto as Appendix D (relating to the Calco Dam) ("Appendix D Scope of Work"). The El Paso Parties shall provide the DEP with written notice as to the completion of the Appendix D Scope of Work within 30 days of its completion. DEP shall confirm the completion of the Appendix D Scope of Work within thirty (30) days upon receipt of the written notification. Within thirty (30) days of confirming the completion of the Appendix D Scope of Work and subject to the receipt of the El Paso Parties' payments pursuant to paragraphs 15, 17 and 18 of this Settlement Agreement, the Department will issue a Release to the El Paso Parties consistent with Appendix A, which is attached hereto and made a part hereof, for the Raritan River.

(d) In the event that the work and payments set forth in paragraphs a., b., and c. above cannot be completed, the Department reserves its right to redirect El Paso 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 this agreement.

18. Within thirty (30) calendar days after receipt from the Department of a written request for reimbursement of the Department's oversight costs incurred after the date of this Agreement in connection with the work described in paragraph 17 and determined pursuant to N.J.A.C. 7:26C-4.5, the El Paso Parties agree to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" for the full amount of the Department's costs, for the period being charged, to the Office of Natural Resource Restoration at the address in paragraph 16 above.

19. This Settlement Agreement constitutes 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 the purpose of providing protection from contribution actions for settled Natural Resource Damages. The El Paso Parties have resolved their liability for Natural Resource Damages to the Department. The El Paso 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.

20. 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 Properties, the El Paso 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**

21. If the El Paso Parties fail to comply with paragraphs 15, 16, 17 and 18 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 against the El Paso Parties. However, it shall not be a breach, violation, failure to comply with or default of this Settlement Agreement if the El Paso Parties do not perform or elect not to perform one or more of the scopes of work identified in paragraph 17. The effect of the El Paso Parties not performing one or more of the scopes of work identified in paragraph 17 will be that the El Paso Parties will not be entitled to and shall not be deemed to have settled, been released from or obtained contribution protection pursuant to this Settlement Agreement for that property or properties that were assigned to the scopes of work that were not performed. As to those properties for which the scopes of work were not performed, the Department reserves the right to terminate this Settlement Agreement, withdraw its offer to settle the Natural Resource Damages, not issue a release, and pursue any other actions against the El Paso Parties. The Settlement Agreement shall remain in full force and effect as to those Properties for which the assigned scopes of work identified in paragraph 17 are performed by the El Paso Parties.

22. Subject to paragraph 19 above, the Department further reserves, and this Settlement Agreement is without prejudice to, all rights its has against third parties with respect to liability for costs, injunctive relief, and damages related to MTBE contamination, relating to the Properties and this Settlement Agreement in no way limits any potential liability of third parties for any and all costs, injunctive relief, and damages available to the Department being sought in the United States District Court for the District of New Jersey, in the case captioned *NJDEP et al. v. Atlantic Richfield Co. et al.*, Docket No. 08-CIV-00312, and now currently pending in the United States District Court for the Southern District of New York, captioned as *In Re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, MDL No. 1358.

23. Nothing in this Settlement Agreement, including the Department's issuance of a Release as described in paragraph 17 above, shall impact the El Paso Parties' obligation to complete, if necessary, the remediation of discharges at the Properties.

24. Subject to paragraph 21, the El Paso Parties agree to comply with this Settlement Agreement, which shall be fully enforceable as an Order in the Superior Court of New Jersey Superior Court pursuant to the Department's statutory authority.

25. No modification or waiver of this Settlement Agreement shall be valid except by written amendment to this Settlement Agreement duly executed by the El Paso Parties and the Department.

26. The El Paso Parties waive their rights to an administrative hearing concerning the entry of this Settlement Agreement.

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

28. 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.

29. This Settlement Agreement shall be effective upon the execution of this Settlement Agreement by the Department and the El Paso Parties.

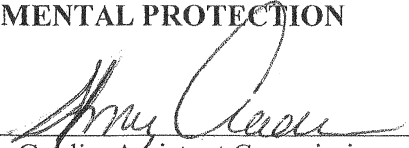
30. The undersigned representative of the El Paso Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the El Paso Parties to this Settlement Agreement.

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

Date:

1/25/11

By:


  
Amy Cradic, Assistant Commissioner  
Natural and Historic Resources

**NEW JERSEY SPILL COMPENSATION FUND**

Date:

\_\_\_\_\_

By:

  
Anthony J. Farro, Administrator

**Coastal Eagle Point Oil Company**

Date: 30 Nov 2010

By: Robert W. Baker

Signature

Robert W. Baker

Print Full Name Signed Above

Executive Vice President and  
Title General Counsel

**El Paso Merchant Energy-Petroleum Company**

Date: 30 Nov 2010

By: Robert W. Baker

Signature

Robert W. Baker

Print Full Name Signed Above

Executive Vice President and  
Title General Counsel

**EPEC Polymers, Inc.**

Date: 30 Nov 2010

By: Robert W. Baker  
Signature

Robert W. Baker  
Print Full Name Signed Above

Executive Vice President and  
Title General Counsel

**El Paso Corporation, on behalf of itself and the El Paso Parties**

Date: 30 Nov 2010

By: Robert W. Baker  
Signature

Executive Robert W. Baker  
Print Full Name Signed Above

Executive Vice President and  
Title General Counsel

## APPENDIX A

IN THE MATTER OF	:	
EL PASO CORPORATION, COASTAL	:	NATURAL RESOURCE DAMAGES
EAGLE POINT OIL COMPANY, EL PASO	:	RELEASE
MERCHANT ENERGY-PETROLEUM	:	
COMPANY, EPEC POLYMERS, INC. AND	:	
EL PASO CORPORATION'S SUBSIDIARIES	:	
AND AFFILIATES.	:	

1. El Paso Corporation is a corporation incorporated in the State of Delaware, with its principal offices at 1001 Louisiana Street, Houston, Texas 77002. El Paso Corporation has various subsidiaries and affiliates including, but not limited to, Coastal Eagle Point Oil Company, El Paso Merchant Energy-Petroleum Company, and EPEC Polymers, Inc. El Paso Corporation and all subsidiaries and affiliates of El Paso Corporation are referenced collectively hereinafter as "El Paso Parties". All references herein to "affiliate" shall mean any entity that controls, is controlled by, or is under common control with El Paso Corporation.

2. The discharges that are the subject of this Natural Resource Damages Release occurred at the **[insert here name of the Property]**:

3. The Department of Environmental Protection ("DEP"), the Commissioner of the Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (the "Department") and the El Paso Parties entered into a Natural Resource Damages Settlement Agreement and Consent Order that became effective on **[Fill in date]** to resolve the El Paso Parties' potential natural resource damage liability to the State of New Jersey as described therein ("Settlement Agreement").

4. The El Paso Parties have complied with the Settlement Agreement for the **[insert name of Property]** as defined in 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, held in trust or otherwise controlled by the State.

6. "Natural Resource Damages" as used in this Natural Resource Damages Release includes all claims arising from discharges at the **[Insert here the name of Property]** 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 and natural resource services, DEP's Office of Natural Resource Restoration's oversight costs determined pursuant to N.J.A.C. 7:26C-4.5, attorneys' fees, consultants' and experts' fees, other litigation costs, and interest;

(b) The compensation for restoration of, the lost value of, injury to, damage to, loss of use or destruction of Natural Resources and natural resource services.

7. Natural Resource Damages do not include, however:

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

(b) Requirements to cleanup any contamination as a result of discharges at the Property; or

(c) The continuing obligation to pay the Departments' future oversight costs in connection with the work described in paragraph 18 of the Settlement Agreement determined pursuant to N.J.A.C. 7:26C-4.5, incurred after the effective date of this Settlement Agreement.

8. The Department fully and forever releases, covenants not to sue, and not to otherwise take administrative action against the El Paso Parties and their corporate officers, directors, employees, predecessors, parents, successors, affiliates, and subsidiaries, for any and all of the Department's causes of actions for Natural Resource Damages.

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

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

Amy Cradic

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

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

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

Anthony J. Farro, Spill Fund Administrator

New Jersey Department of Environmental Protection

## **APPENDIX B**

### **SCOPE OF WORK**

#### **CEPOC PROPERTY – ROBERT STREET DAM**

This Appendix B Scope of Work is for the breach and/or demolition of the dam located at Raritan River Mile (RM) 27.9 at the eastern terminus of Edgewater Avenue in Bridgewater Township, Somerset County, New Jersey ("Robert Street Dam") and associated removal activities to be performed pursuant to paragraph 17(a) of the Settlement Agreement ("Work").

The provisions of this Appendix B are subject to and governed by the terms and provisions of the Settlement Agreement between the Department and the El Paso Parties, as defined in the Settlement Agreement. Capitalized terms in this Appendix B 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 Appendix B, the terms of the Settlement Agreement shall govern and prevail.

1. Designation of Representatives

a. Designation of Representatives. DEP and CEPOC hereby provide that the following shall be their representatives for the purposes of providing notices pursuant to this Appendix B Scope of Work. DEP and/or CEPOC 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 501-01; P.O. Box 420

Trenton, NJ 08625-0420

**Coastal Eagle Point Oil Company**

Mr. Gene Meyer

El Paso Corporation

1001 Louisiana St.

Houston, TX 77002

**with a copy to:**

Scott J. Miller, Esq.

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

2. Design of Dam Demolition

a. Selection of Consultant and Contractor. CEPOC shall select consultants and contractors as necessary for preparing all drawings, specifications, and other documents required for performance of the Work, subject to the requirements and conditions set forth herein (collectively, "Design Documents"), and for performing the Work consistent with the Design Documents. CEPOC shall provide a written notice to DEP identifying all such consultants and contractors with information concerning the qualifications of such consultants and contractors ("Selection Notice"). If DEP has any objection to any consultant or contractor identified in the Selection Notice, DEP shall provide CEPOC written notice of the objection and sufficient detail as to the basis of such objection ("Objection Notice") within 30 days following DEP's receipt of the Selection Notice. If CEPOC does not receive an Objection Notice within 30 days following the date that DEP received the Selection Notice, then the selection and retention of the consultants and contractors identified in the Selection Notice will be considered as having been approved by DEP. If DEP provides an Objection Notice objecting to one or more of the consultants or contractors identified in the Selection Notice, DEP and CEPOC shall consult and confer to approve the selection and retention of the consultants and contractors necessary for the performance of the requirements of this Appendix B Scope of Work. The approved consultants and contractors shall hereinafter be referred to as "Contractors."

b. Preparation of Draft Design Documents. After approval of Contractors pursuant to paragraph 2.a above, CEPOC will cause Contractors to prepare a draft of the Design Documents ("Draft Design Documents") and to provide such Draft Design Documents to DEP and to CEPOC for review.

c. Review of Draft Design Documents. Upon receipt of the Draft Design Documents, DEP and CEPOC shall promptly review the Draft Design Documents and provide Contractors in writing and with copies to each other, any questions, comments, or proposed revisions to the Draft Design Documents. Contractors, DEP, and CEPOC shall consult and confer to provide Contractors the information and approval necessary to finalize the Design Documents. To the extent that changes to the Design Documents are necessary due to the permitting activities described in paragraph 3 below, the Contractors, DEP, and CEPOC shall consult and confer to provide Contractors the information and approval necessary to allow finalization of the Design Documents consistent with any permitting requirements.

d. Preparation of Construction Documents. Upon completion of the review of the Draft Design Documents pursuant to paragraph 2.c above, CEPOC shall cause the Contractors to prepare the Design Documents consistent with the information provided by DEP and CEPOC pursuant to paragraph 2.c. above and to provide the Design Documents to DEP and CEPOC.

e. Approval of Final Construction Documents. Upon receipt of the Design Documents pursuant to paragraph 2.d above, DEP and CEPOC shall review the Design Documents for final approval. If DEP and/or CEPOC are unable to approve the Design Documents, the Contractors, DEP, and CEPOC shall consult and confer to provide Contractors the information necessary to revise the Design Documents, if necessary, to allow approval by DEP and CEPOC. Upon approval by DEP and CEPOC, the approved Design Documents shall be considered "Final Construction Drawings."

f. Payment of Contractors. CEPOC will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph 2 of the Appendix B Scope of Work. Neither DEP nor the Department will have any obligation to pay for or reimburse CEPOC or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph 2 of the Appendix B Scope of Work.

### 3. Permitting

a. Preparation of Applications. DEP and CEPOC shall consult and confer as to all local, state, and federal governmental permits, authorizations and approvals necessary for the Work ("Permits"). CEPOC shall cause Contractors to prepare the applications and supporting documents and information ("Applications") necessary to obtain Permits. Contractor shall provide drafts of all Applications for review and comment by DEP and CEPOC. CEPOC shall cause Contractors to incorporate all changes and comments provided by DEP and CEPOC prior to finalization. Unless not legally permissible, the Applications shall name DEP as the primary applicant or permittee with CEPOC as Co-applicant or Co-permittee.

b. Submission of Applications and Interaction with Agencies and Public. Upon approval of the Applications by DEP and CEPOC, DEP or CEPOC, as appropriate, will submit the Applications to the applicable governmental entities. CEPOC shall provide payment for any and all expenditures required for submitting the Applications, including, but not limited to, application fees. DEP and CEPOC will cooperate in answering any questions, making any public notifications, and in interacting with governmental entities and the public with regard to the Applications and Permits. To the greatest extent possible, CEPOC will prepare all materials to assist in communications with governmental entities and the public regarding the Applications and the Permits, and DEP or CEPOC, as appropriate, will deliver such communications to governmental entities and the public, with the participation of CEPOC or its consultant when requested by DEP. DEP shall provide CEPOC with copies or summaries of all such communications and shall keep CEPOC informed as to the status of the Applications, Permits, and communications related thereto. To the extent that assistance is needed from Contractors in performing the requirements of this paragraph 3.b, CEPOC shall cause Contractors to perform the necessary tasks and prepare any necessary documents.

c. Payment of Contractors. CEPOC will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph 3 of the Appendix B Scope of Work. Neither DEP nor the Department will have any obligation to pay for or reimburse CEPOC or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph 3 of the Appendix B Scope of Work.

4. Agreements with Dam Owners and Property Owners

a. Preparation of Draft Agreements. CEPOC shall prepare draft agreements to be proposed to the owner(s) of the Robert Street Dam ("Dam Owner") for performance of the Work and to the owners of any real property onto or across which access will be required for the Work ("Property Owners") (such draft agreements collectively referred to hereinafter as the "Draft Access Agreements"). CEPOC shall provide the Draft Access Agreements to DEP for review and comment by DEP. DEP and CEPOC shall consult and confer in order to resolve any comments that DEP and/or CEPOC have concerning the Draft Access Agreements until DEP and CEPOC each approve the Draft Access Agreements (hereinafter referred to as the "Access Agreements"). DEP and CEPOC shall both be parties and signators to the Access Agreements.

b. Conferences with Dam Owner and Property Owners. CEPOC shall contact and communicate with the Dam Owner and the Property Owners to pursue the execution of the Access Agreements by the Dam Owner and the Property Owners. CEPOC shall keep DEP apprised of the status of the communications with the Dam Owner and the Property Owners, and DEP and CEPOC shall consult and confer concerning any changes to the Access Agreement requested and/or required by the Dam Owner and/or the Property Owners.

c. Final Agreements with Dam Owner and the Property Owners. Upon reaching agreement between DEP, CEPOC, and the Dam Owner and/or the Property Owners, DEP and CEPOC shall execute the Access Agreements, and CEPOC shall arrange for execution of the Access Agreements by the Dam Owner and/or Property Owners. CEPOC shall provide a copy of the executed Access Agreement to Contractors and instruct Contractors that the Work shall be performed in compliance with the terms and conditions of the executed Access Agreements.

5. Performance of Dam Breach and/or Demolition

a. Initiation of Work. After receipt by DEP and CEPOC of all Permits and executed Access Agreements, CEPOC shall cause the Contractors to begin the activities required for the Work in accordance with the Final Construction Drawings and in compliance with any terms and conditions of Permits and Access Agreements.

b. Oversight of Contractor Performance. CEPOC shall monitor and oversee the performance of Work by Contractors and shall provide monthly written reports to DEP on the status of the Work until the start of demolition activities and then weekly written reports until demolition is complete on the status of the Work.

c. Disposal of Debris and Waste. CEPOC shall ensure that during the performance of the Work that Contractors properly characterize and arrange for the disposal of all debris and wastes generated by the Work.

d. Documentation of Completion of Work. Within 30 days after completion of the Work, CEPOC shall provide DEP with written notice as to the completion of the Work consistent with the Settlement Agreement and this Appendix B Scope of Work. DEP shall confirm the completion of the Work within 30 days upon receipt of the written notification from CEPOC which confirmation shall invoke the provisions of paragraph 17(a) of the Settlement Agreement concerning issuance of a Release to the El Paso Parties.

e. Payment of Contractors. CEPOC will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph. Neither DEP nor the Department will have any obligation to pay for or reimburse CEPOC or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph.

6. Post-Completion Obligations

a. Post-Completion Obligations. Upon completion of the Work and submittal of the written notification and confirmation pursuant to paragraph 5(d) above, neither CEPOC nor the El Paso Parties shall have any further responsibilities, obligations or liabilities related to the former Robert Street Dam, the Work, the structural stability of the banks of the Raritan River upstream and downstream of the former Robert Street Dam, or for any issues related to future flow patterns or flooding of the Raritan River. To the extent that DEP, the Department, or any other governmental authority or entity, with applicable jurisdiction, requires or orders work and/or other action to be performed for any such issues, including but not limited to, investigations or remedial work, DEP will cause such work to be performed by DEP or some entity other than the El Paso Parties at no cost to any of the El Paso Parties.

## **APPENDIX C**

### **SCOPE OF WORK**

#### **FLEMINGTON AND BURLINGTON PROPERTIES – NEVIUS STREET DAM**

This Appendix C Scope of Work is for the breach and/or demolition of the dam located at Raritan River Mile (RM) 27.0, located south of the Borough of Raritan and just east of the Lyman Street Bridge, in Somerset County, New Jersey ("Nevius Street Dam") and associated removal activities to be performed pursuant to paragraph 17(b) of the Settlement Agreement ("Work").

The provisions of this Appendix C are subject to and governed by the terms and provisions of the Settlement Agreement between the Department and the El Paso Parties, as defined in the Settlement Agreement. Capitalized terms in this Appendix C 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 Appendix C, the terms of the Settlement Agreement shall govern and prevail.

1. Designation of Representatives

a. Designation of Representatives. DEP and EPEC Polymers hereby provide that the following shall be their representatives for the purposes of providing notices pursuant to this Appendix C Scope of Work. DEP and/or EPEC Polymers 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 501-01; P.O. Box 420 Trenton, NJ 08625-0420

**EPEC Polymers, Inc.**

Mr. Gene Meyer

El Paso Corporation

1001 Louisiana St.

Houston, TX 77002

with a copy to:

Scott J. Miller, Esq.

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

2. Design of Dam Demolition

a. Selection of Consultant and Contractor. EPEC Polymers shall select consultants and contractors as necessary for preparing all drawings, specifications, and other documents required for performance of the Work, subject to the requirements and conditions set forth herein (collectively, "Design Documents"), and for performing the Work consistent with the Design Documents. EPEC Polymers shall provide a written notice to DEP identifying all such consultants and contractors with information concerning the qualifications of such consultants and contractors ("Selection Notice"). If DEP has any objection to any consultant or contractor identified in the Selection Notice, DEP shall provide EPEC Polymers written notice of the objection and sufficient detail as to the basis of such objection ("Objection Notice") within 30 days following DEP's receipt of the Selection Notice. If EPEC Polymers does not receive an Objection Notice within 30 days following the date that DEP received the Selection Notice, then the selection and retention of the consultants and contractors identified in the Selection Notice will be considered as having been approved by DEP. If DEP provides an Objection Notice objecting to one or more of the consultants or contractors identified in the Selection Notice, DEP and EPEC Polymers shall consult and confer to approve the selection and retention of the consultants and contractors necessary for the performance of the requirements of this Appendix C Scope of Work. The approved consultants and contractors shall hereinafter be referred to as "Contractors."

b. Preparation of Draft Design Documents. After approval of Contractors pursuant to paragraph 2.a above, EPEC Polymers will cause Contractors to prepare a draft of the Design Documents ("Draft Design Documents") and to provide such Draft Design Documents to DEP and to EPEC Polymers for review.

c. Review of Draft Design Documents. Upon receipt of the Draft Design Documents, DEP and EPEC Polymers shall promptly review the Draft Design Documents and provide Contractors in writing and with copies to each other, any questions, comments, or proposed revisions to the Draft Design Documents. Contractors, DEP, and EPEC Polymers shall consult and confer to provide Contractors the information and approval necessary to finalize the Design Documents. To the extent that changes to the Design Documents are necessary due to the permitting activities described in paragraph 3 below, the Contractors, DEP, and EPEC Polymers shall consult and confer to provide Contractors the information and approval necessary to allow finalization of the Design Documents consistent with any permitting requirements.



d. Preparation of Construction Documents. Upon completion of the review of the Draft Design Documents pursuant to paragraph 2.c above, EPEC Polymers shall cause the Contractors to prepare the Design Documents consistent with the information provided by DEP and EPEC Polymers pursuant to paragraph 2.c. above and to provide the Design Documents to DEP and EPEC Polymers.

e. Approval of Final Construction Documents. Upon receipt of the Design Documents pursuant to paragraph 2.d above, DEP and EPEC Polymers shall review the Design Documents for final approval. If DEP and/or EPEC Polymers are unable to approve the Design Documents, the Contractors, DEP, and EPEC Polymers shall consult and confer to provide Contractors the information necessary to revise the Design Documents, if necessary, to allow approval by DEP and EPEC Polymers. Upon approval by DEP and EPEC Polymers, the approved Design Documents shall be considered "Final Construction Drawings."

f. Payment of Contractors. EPEC Polymers will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph 2 of the Appendix C Scope of Work. Neither DEP nor the Department will have any obligation to pay for or reimburse EPEC Polymers or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph 2 of the Appendix C Scope of Work.

### 3. Permitting

a. Preparation of Applications. DEP and EPEC Polymers shall consult and confer as to all local, state, and federal governmental permits, authorizations and approvals necessary for the Work ("Permits"). EPEC Polymers shall cause Contractors to prepare the applications and supporting documents and information ("Applications") necessary to obtain Permits. Contractor shall provide drafts of all Applications for review and comment by DEP and EPEC Polymers. EPEC Polymers shall cause Contractors to incorporate all changes and comments provided by DEP and EPEC Polymers prior to finalization. Unless not legally permissible, the Applications shall name DEP as the primary applicant or permittee with EPEC Polymers as Co-applicant or Co-permittee.

b. Submission of Applications and Interaction with Agencies and Public. Upon approval of the Applications by DEP and EPEC Polymers, DEP or EPEC Polymers, as appropriate, will submit the Applications to the applicable governmental entities. EPEC Polymers shall provide payment for any and all expenditures required for submitting the Applications, including, but not limited to, application fees. DEP and EPEC Polymers will cooperate in answering any questions, making any public notifications, and in interacting with governmental entities and the public with regard to the Applications and Permits. To the greatest extent possible, EPEC Polymers will prepare all materials to assist in communications with governmental entities and the public regarding the Applications and the Permits, and DEP or EPEC Polymers, as appropriate, will deliver such communications to governmental entities and the public, with the participation of EPEC Polymers or its consultant when requested by DEP. DEP shall provide EPEC Polymers with copies or summaries of all such communications and shall keep EPEC Polymers informed as to the status of the Applications, Permits, and communications related thereto. To the extent that assistance is needed from Contractors in performing the requirements of this paragraph 3.b,

EPEC Polymers shall cause Contractors to perform the necessary tasks and prepare any necessary documents.

c. Payment of Contractors. EPEC Polymers will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph 3 of the Appendix C Scope of Work. Neither DEP nor the Department will have any obligation to pay for or reimburse EPEC Polymers or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph 3 of the Appendix C Scope of Work.

4. Agreements with Dam Owners and Property Owners

a. Preparation of Draft Agreements. EPEC Polymers shall prepare draft agreements to be proposed to the owner(s) of the Nevius Street Dam ("Dam Owner") for performance of the Work and to the owners of any real property onto or across which access will be required for the Work ("Property Owners") (such draft agreements collectively referred to hereinafter as the "Draft Access Agreements"). EPEC Polymers shall provide the Draft Access Agreements to DEP for review and comment by DEP. DEP and EPEC Polymers shall consult and confer in order to resolve any comments that DEP and/or EPEC Polymers have concerning the Draft Access Agreements until DEP and EPEC Polymers each approve the Draft Access Agreements (hereinafter referred to as the "Access Agreements"). DEP and EPEC Polymers shall both be parties and signators to the Access Agreements.

b. Conferences with Dam Owner and Property Owners. EPEC Polymers shall contact and communicate with the Dam Owner and the Property Owners to pursue the execution of the Access Agreements by the Dam Owner and the Property Owners. EPEC Polymers shall keep DEP apprised of the status of the communications with the Dam Owner and the Property Owners, and DEP and EPEC Polymers shall consult and confer concerning any changes to the Access Agreement requested and/or required by the Dam Owner and/or the Property Owners.

c. Final Agreements with Dam Owner and the Property Owners. Upon reaching agreement between DEP, EPEC Polymers, and the Dam Owner and/or the Property Owners, DEP and EPEC Polymers shall execute the Access Agreements, and EPEC Polymers shall arrange for execution of the Access Agreements by the Dam Owner and/or Property Owners. EPEC Polymers shall provide a copy of the executed Access Agreement to Contractors and instruct Contractors that the Work shall be performed in compliance with the terms and conditions of the executed Access Agreements.

5. Performance of Dam Breach and/or Demolition

a. Initiation of Work. After receipt by DEP and EPEC Polymers of all Permits and executed Access Agreements, EPEC Polymers shall cause the Contractors to begin the activities required for the Work in accordance with the Final Construction Drawings and in compliance with any terms and conditions of Permits and Access Agreements.

b. Oversight of Contractor Performance. EPEC Polymers shall monitor and oversee the performance of Work by Contractors and shall provide monthly written reports to DEP on the status of

the Work until the start of demolition activities and then weekly written reports until demolition is complete on the status of the Work.

c. Disposal of Debris and Waste. EPEC Polymers shall ensure that during the performance of the Work that Contractors properly characterize and arrange for the disposal of all debris and wastes generated by the Work.

d. Documentation of Completion of Work. Within 30 days after completion of the Work, EPEC Polymers shall provide DEP with written notice as to the completion of the Work consistent with the Settlement Agreement and this Appendix C Scope of Work. DEP shall confirm the completion of the Work within 30 days upon receipt of the written notification from EPEC Polymers which confirmation shall invoke the provisions of paragraph 17(a) of the Settlement Agreement concerning issuance of a Release to the El Paso Parties.

e. Payment of Contractors. EPEC Polymers will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph. Neither DEP nor the Department will have any obligation to pay for or reimburse EPEC Polymers or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph.

6. Post-Completion Obligations

a. Post-Completion Obligations. Upon completion of the Work and submittal of the written notification and confirmation pursuant to paragraph 5(d) above, neither EPEC Polymers nor the El Paso Parties shall have any further responsibilities, obligations or liabilities related to the former Nevius Street Dam, the Work, the structural stability of the banks of the Raritan River upstream and downstream of the former Nevius Street Dam, or for any issues related to future flow patterns or flooding of the Raritan River. To the extent that DEP, the Department, or any other governmental authority or entity, with applicable jurisdiction, requires or orders work and/or other action to be performed for any such issues, including but not limited to, investigations or remedial work, DEP will cause such work to be performed by DEP or some entity other than the El Paso Parties at no cost to any of the El Paso Parties.

## **APPENDIX D**

### **SCOPE OF WORK**

#### **NUODEX PROPERTY – CALCO DAM**

This Appendix D Scope of Work is for the breach and/or demolition of the dam located at Raritan River Mile (RM) 20.9, in Bridgewater Township, Somerset County, New Jersey ("Calco Dam") and associated removal activities to be performed pursuant to paragraph 17(c) of the Settlement Agreement ("Work").

The provisions of this Appendix D are subject to and governed by the terms and provisions of the Settlement Agreement between the Department and the El Paso Parties, as defined in the Settlement Agreement. Capitalized terms in this Appendix D 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 Appendix D, the terms of the Settlement Agreement shall govern and prevail.

1. Designation of Representatives

a. Designation of Representatives. DEP and EPEC Polymers hereby provide that the following shall be their representatives for the purposes of providing notices pursuant to this Appendix D Scope of Work. DEP and/or EPEC Polymers 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 501-01; P.O. Box 420

Trenton, NJ 08625-0420

EPEC Polymers, Inc.

Mr. Gene Meyer

El Paso Corporation

1001 Louisiana St.

Houston, TX 77002

**with a copy to:**

Scott J. Miller, Esq.

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

2. Design of Dam Demolition

a. Selection of Consultant and Contractor. EPEC Polymers shall select consultants and contractors as necessary for preparing all drawings, specifications, and other documents required for performance of the Work, subject to the requirements and conditions set forth herein (collectively, "Design Documents"), and for performing the Work consistent with the Design Documents. EPEC Polymers shall provide a written notice to DEP identifying all such consultants and contractors with information concerning the qualifications of such consultants and contractors ("Selection Notice"). If DEP has any objection to any consultant or contractor identified in the Selection Notice, DEP shall provide EPEC Polymers written notice of the objection and sufficient detail as to the basis of such objection ("Objection Notice") within 30 days following DEP's receipt of the Selection Notice. If EPEC Polymers does not receive an Objection Notice within 30 days following the date that DEP received the Selection Notice, then the selection and retention of the consultants and contractors identified in the Selection Notice will be considered as having been approved by DEP. If DEP provides an Objection Notice objecting to one or more of the consultants or contractors identified in the Selection Notice, DEP and EPEC Polymers shall consult and confer to approve the selection and retention of the consultants and contractors necessary for the performance of the requirements of this Appendix D Scope of Work. The approved consultants and contractors shall hereinafter be referred to as "Contractors."

b. Preparation of Draft Design Documents. After approval of Contractors pursuant to paragraph 2.a above, EPEC Polymers will cause Contractors to prepare a draft of the Design Documents ("Draft Design Documents") and to provide such Draft Design Documents to DEP and to EPEC Polymers for review.

c. Review of Draft Design Documents. Upon receipt of the Draft Design Documents, DEP and EPEC Polymers shall promptly review the Draft Design Documents and provide Contractors in writing and with copies to each other, any questions, comments, or proposed revisions to the Draft Design Documents. Contractors, DEP, and EPEC Polymers shall consult and confer to provide Contractors the information and approval necessary to finalize the Design Documents. To the extent that changes to the Design Documents are necessary due to the permitting activities described in paragraph 3 below, the Contractors, DEP, and EPEC Polymers shall consult and confer to provide Contractors the information and approval necessary to allow finalization of the Design Documents consistent with any permitting requirements.

d. Preparation of Construction Documents. Upon completion of the review of the Draft Design Documents pursuant to paragraph 2.c above, EPEC Polymers shall cause the Contractors to prepare the Design Documents consistent with the information provided by DEP and EPEC Polymers pursuant to paragraph 2.c. above and to provide the Design Documents to DEP and EPEC Polymers.

e. Approval of Final Construction Documents. Upon receipt of the Design Documents pursuant to paragraph 2.d above, DEP and EPEC Polymers shall review the Design Documents for final approval. If DEP and/or EPEC Polymers are unable to approve the Design Documents, the Contractors, DEP, and EPEC Polymers shall consult and confer to provide Contractors the information necessary to revise the Design Documents, if necessary, to allow approval by DEP and EPEC Polymers. Upon approval by DEP and EPEC Polymers, the approved Design Documents shall be considered "Final Construction Drawings."

f. Payment of Contractors. EPEC Polymers will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph 2 of the Appendix D Scope of Work. Neither DEP nor the Department will have any obligation to pay for or reimburse EPEC Polymers or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph 2 of the Appendix D Scope of Work.

### 3. Permitting

a. Preparation of Applications. DEP and EPEC Polymers shall consult and confer as to all local, state, and federal governmental permits, authorizations and approvals necessary for the Work ("Permits"). EPEC Polymers shall cause Contractors to prepare the applications and supporting documents and information ("Applications") necessary to obtain Permits. Contractor shall provide drafts of all Applications for review and comment by DEP and EPEC Polymers. EPEC Polymers shall cause Contractors to incorporate all changes and comments provided by DEP and EPEC Polymers prior to finalization. Unless not legally permissible, the Applications shall name DEP as the primary applicant or permittee with EPEC Polymers as Co-applicant or Co-permittee.

b. Submission of Applications and Interaction with Agencies and Public. Upon approval of the Applications by DEP and EPEC Polymers, DEP or EPEC Polymers, as appropriate, will submit the Applications to the applicable governmental entities. EPEC Polymers shall provide payment for any and all expenditures required for submitting the Applications, including, but not limited to, application fees. DEP and EPEC Polymers will cooperate in answering any questions, making any public notifications, and in interacting with governmental entities and the public with regard to the Applications and Permits. To the greatest extent possible, EPEC Polymers will prepare all materials to assist in communications with governmental entities and the public regarding the Applications and the Permits, and DEP or EPEC Polymers, as appropriate, will deliver such communications to governmental entities and the public, with the participation of EPEC Polymers or its consultant when requested by DEP. DEP shall provide EPEC Polymers with copies or summaries of all such communications and shall keep EPEC Polymers informed as to the status of the Applications, Permits, and communications related thereto. To the extent that assistance is needed from Contractors in performing the requirements of this paragraph 3.b,

EPEC Polymers shall cause Contractors to perform the necessary tasks and prepare any necessary documents.

c. Payment of Contractors. EPEC Polymers will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph 3 of the Appendix D Scope of Work. Neither DEP nor the Department will have any obligation to pay for or reimburse EPEC Polymers or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph 3 of the Appendix D Scope of Work.

4. Agreements with Dam Owners and Property Owners

a. Preparation of Draft Agreements. EPEC Polymers shall prepare draft agreements to be proposed to the owner(s) of the Calco Dam ("Dam Owner") for performance of the Work and to the owners of any real property onto or across which access will be required for the Work ("Property Owners") (such draft agreements collectively referred to hereinafter as the "Draft Access Agreements"). EPEC Polymers shall provide the Draft Access Agreements to DEP for review and comment by DEP. DEP and EPEC Polymers shall consult and confer in order to resolve any comments that DEP and/or EPEC Polymers have concerning the Draft Access Agreements until DEP and EPEC Polymers each approve the Draft Access Agreements (hereinafter referred to as the "Access Agreements"). DEP and EPEC Polymers shall both be parties and signators to the Access Agreements.

b. Conferences with Dam Owner and Property Owners. EPEC Polymers shall contact and communicate with the Dam Owner and the Property Owners to pursue the execution of the Access Agreements by the Dam Owner and the Property Owners. EPEC Polymers shall keep DEP apprised of the status of the communications with the Dam Owner and the Property Owners, and DEP and EPEC Polymers shall consult and confer concerning any changes to the Access Agreement requested and/or required by the Dam Owner and/or the Property Owners.

c. Final Agreements with Dam Owner and the Property Owners. Upon reaching agreement between DEP, EPEC Polymers, and the Dam Owner and/or the Property Owners, DEP and EPEC Polymers shall execute the Access Agreements, and EPEC Polymers shall arrange for execution of the Access Agreements by the Dam Owner and/or Property Owners. EPEC Polymers shall provide a copy of the executed Access Agreement to Contractors and instruct Contractors that the Work shall be performed in compliance with the terms and conditions of the executed Access Agreements.

5. Performance of Dam Breach and/or Demolition

a. Initiation of Work. After receipt by DEP and EPEC Polymers of all Permits and executed Access Agreements, EPEC Polymers shall cause the Contractors to begin the activities required for the Work in accordance with the Final Construction Drawings and in compliance with any terms and conditions of Permits and Access Agreements.

b. Oversight of Contractor Performance. EPEC Polymers shall monitor and oversee the performance of Work by Contractors and shall provide monthly written reports to DEP on the status of

---

the Work until the start of demolition activities and then weekly written reports until demolition is complete on the status of the Work.

c. Disposal of Debris and Waste. EPEC Polymers shall ensure that during the performance of the Work that Contractors properly characterize and arrange for the disposal of all debris and wastes generated by the Work.

d. Documentation of Completion of Work. Within 30 days after completion of the Work, EPEC Polymers shall provide DEP with written notice as to the completion of the Work consistent with the Settlement Agreement and this Appendix D Scope of Work. DEP shall confirm the completion of the Work within 30 days upon receipt of the written notification from EPEC Polymers which confirmation shall invoke the provisions of paragraph 17(a) of the Settlement Agreement concerning issuance of a Release to the El Paso Parties.

e. Payment of Contractors. EPEC Polymers will pay the costs incurred by Contractors in performing the tasks required pursuant to this paragraph. Neither DEP nor the Department will have any obligation to pay for or reimburse EPEC Polymers or the El Paso Parties for the costs incurred by Contractors pursuant to this paragraph.

6. Post-Completion Obligations

a. Post-Completion Obligations. Upon completion of the Work and submittal of the written notification and confirmation pursuant to paragraph 5(d) above, neither EPEC Polymers nor the El Paso Parties shall have any further responsibilities, obligations or liabilities related to the former Calco Dam, the Work, the structural stability of the banks of the Raritan River upstream and downstream of the former Calco Dam, or for any issues related to future flow patterns or flooding of the Raritan River. To the extent that DEP, the Department, or any other governmental authority or entity, with applicable jurisdiction, requires or orders work and/or other action to be performed for any such issues, including but not limited to, investigations or remedial work, DEP will cause such work to be performed by DEP or some entity other than the El Paso Parties at no cost to any of the El Paso Parties.