

**MINNESOTA POLLUTION CONTROL AGENCY  
MINNESOTA DEPARTMENT OF NATURAL RESOURCES**

**IN THE MATTER OF:**

**DOUGLAS CORPORATION  
3520 XENWOOD AVENUE SOUTH  
ST. LOUIS PARK, MINNESOTA**

**NATURAL RESOURCE DAMAGES  
SETTLEMENT AGREEMENT**

The Minnesota Pollution Control Agency (“MPCA”) and the Minnesota Department of Natural Resources (“DNR”), acting as co-trustees for natural resources of the State of Minnesota pursuant to Executive Orders 11-09 & 19-29 (collectively, the “Trustees”), and Douglas Corporation n/k/a 3520 Xenwood Avenue Corporation (“Douglas”) voluntarily enter into this Natural Resource Damages Settlement Agreement (“Agreement”) as follows:

**RECITALS**

A. Douglas is a Minnesota corporation that operates a chrome plating facility located at 3520 Xenwood Avenue South, St. Louis Park, Minnesota. The building housing the chrome plating facility and the property on which the facility is located shall be referred to collectively as the “Facility.”

B. Historically, Douglas used plating solutions that contained per- and polyfluoroalkyl substances (“PFAS”) as part of its manufacturing process. PFAS are a group of human-made chemicals, the components of which break down very slowly over time. PFAS include, but are not limited to, perfluorooctanesulfonic acid (“PFOS”) and perfluorooctanoic acid (“PFOA”).

C. Douglas has used—and continues to use—hexavalent chromium as part of its manufacturing process.

D. On May 4, 2016, the MPCA and Douglas entered into a Schedule of Compliance (“2016 Schedule of Compliance”) to resolve alleged violations of environmental statutes and rules arising from or relating to releases of PFAS and hexavalent chromium at or from the Facility.

E. The 2016 Schedule of Compliance remains in effect, and Douglas continues to implement the 2016 Schedule of Compliance, including the requirements that Douglas (1) determine the extent and magnitude of groundwater contamination; and (2) if necessary, implement groundwater response actions. The investigation required under the 2016 Schedule of Compliance includes testing for PFAS compounds, hexavalent chromium, total chromium, and volatile organic compounds (“VOCs”).

F. The Trustees reserved their right to pursue recovery for Natural Resource Damages in the 2016 Schedule of Compliance.

G. The Trustees allege that Douglas is liable for Natural Resource Damages arising from or relating to releases of PFAS and hexavalent chromium at or from the Facility.

H. Douglas denies that it is liable for Natural Resource Damages arising from or relating to releases of PFAS, hexavalent chromium, or other hazardous substances at or from the Facility.

I. Even if Douglas were found liable for any Natural Resource Damages, Douglas has limited ability to pay for Natural Resource Damages arising from or relating to releases of PFAS, hexavalent chromium, or other hazardous substances at or from the Facility.

J. The Trustees and Douglas selected a third-party financial expert to evaluate the company’s financial condition. The analysis showed that Douglas has limited financial resources.

K. This Agreement is neither an admission of liability by Douglas nor a concession by the Trustees that their claims are not well-founded.

L. The Trustees and Douglas desire to settle the claims for Natural Resource Damages through this Agreement.

IT IS THEREFORE AGREED BETWEEN THE PARTIES AS FOLLOWS:

**I. DEFINITIONS.**

A. “Natural Resources” has the meaning set forth in Minn. Stat. § 115B.02, subd. 10.

B. “Natural Resource Damages” means all damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, which are or may be recoverable by the Trustees under Minn. Stat. Ch. 115B or any other law.

C. “Release” of a specific PFAS compound, hexavalent chromium, or total chromium means a “release” as defined in Minn. Stat. § 115B.02, subd. 15. In addition, for purposes of this Agreement, the continued migration or transformation of the specific PFAS compounds identified in Section 3, Paragraph 6 below, or of hexavalent chromium or total chromium after the Effective Date, which were originally released prior to the Effective Date, shall not be construed as a new “release” if the migration or transformation is solely the result of natural causes, or is the result of conduct expressly authorized by the Trustees

D. “Natural causes” for purposes of Paragraph I.C means all causes or effects on migration that do not arise from the conduct of Douglas or its agents.

**II. PAYMENT.**

1. To resolve its alleged liability for Natural Resource Damages, Douglas will make a total payment of \$1,375,000 to the Trustees. This amount shall be split into two payments. The first payment will be in the amount of \$1,003,000. The Trustees will issue an invoice to Douglas for the first payment within 7 days of the Effective Date of this Agreement. Douglas will make the first payment within 30 days of receipt of the first invoice. The second payment will be in the amount of \$372,000. The Trustees will issue an invoice to Douglas for the second payment 120

days after the Effective Date of this Agreement. Douglas will make the second payment within 30 days of receipt of the second invoice.

2. Douglas shall execute this Agreement first, then the Trustees. The Effective Date of this Agreement shall be the date it is signed by the Trustees.

3. The Trustees shall deposit the payments in the Natural Resources Damages Account of the Remediation Fund pursuant to Minn. Stat. §§ 115B.17, subd. 7, 115B.172, and 116.155, subd. 5(b).

4. The Trustees shall use the payments for administration, planning, and implementation of projects that restore and enhance surface and groundwater quality, fisheries, natural resource improvement, and outdoor recreational opportunities. The Trustees shall fund projects located east of Highway 169 within the lower watershed of Minnehaha Creek and in other locations that the Trustees determine, in their sole discretion, would benefit the impacted areas. These projects may include, but are not limited to shoreline restoration, including erosion controls, vegetation enhancements, and nearshore and shoreland protection; fish habitat improvement; enhancing fishing access; and protecting and enhancing groundwater quality and recharge. The Trustees shall make any expenditures according to their statutory obligations in Minn. Stat. §§ 115B.172, subd. 3, 115B.20, subd. 2, and 116.155, subd. 2.

5. Notwithstanding paragraph 4, the Trustees may use up to \$375,000 from the payments for general administration of the NRDA Program and reimbursement for the reasonable costs incurred by the Trustees for assessing damages to natural resources pursuant to Minn. Stat. § 115B.04, subd. 1(3).

### III. RELEASE OF CLAIMS.

6. In consideration of the total payment set forth above in Paragraph 1, the sufficiency of which is acknowledged, the Trustees will release and waive any and all claims against Douglas and its current or former shareholders, members, directors, managers, governors, employees, agents, customers, vendors, and the like (the “Released Parties”) from liability for Natural Resource Damages arising out of or relating to the release of PFOS, PFOA, PFHxS, PFBA, PFBS, 6:2 FTS, hexavalent chromium, and total chromium at or from the Facility through the Effective Date of this Agreement (the “Release from Liability”).

7. The Release from Liability is conditioned on the satisfactory performance by Douglas of its obligations under this Agreement. The Trustees reserve their right to enforce this Agreement or take any action authorized by law if Douglas fails to comply with the terms and conditions of this Agreement.

8. The Release from Liability will not be effective until Douglas completes the second, or subsequent, payment to the Trustees that is required in Paragraph 1 above. The Parties agree that the Release from Liability is void if Douglas fails to make the second payment.

9. Douglas agrees that any applicable statutes of limitations within which the Trustees may commence an action for Natural Resource Damages will remain tolled until all payments required by this Agreement have been made. The tolling period shall include the period of January 23, 2013, through May 31, 2016, and the period of May 24, 2019, through completion of the second payment.

10. The Release from Liability extends only to the Trustees’ claims for Natural Resource Damages arising out of or relating to releases of PFOS, PFOA, PFHxS, PFBA, PFBS, 6:2 FTS, hexavalent chromium, and total chromium at or from the Facility through the Effective

Date of this Agreement. The Release from Liability does not extend to any claims for Natural Resource Damages arising out of or relating to releases of PFOS, PFOA, PFHxS, PFBA, PFBS, 6:2 FTS, hexavalent chromium, and total chromium at or from the Facility after the Effective Date of this Agreement. In addition, the Trustees reserve, and the Release from Liability is without prejudice to, all rights against Douglas with respect to all matters not expressly included within Paragraph 6, including, without limitation: (a) claims based on a failure by Douglas to meet a requirement of this Agreement; (b) claims based on a failure by Douglas to meet a requirement of the 2016 Schedule of Compliance; and (c) claims for remediation, including claims for costs of removal or remedial action under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), or claims for response and removal costs under MERLA, Minn. Stat. § 115B.04, subd. 1(1)-(2), except as such claims may be limited by the 2016 Schedule of Compliance.

#### **IV. SCHEDULE OF COMPLIANCE.**

11. The 2016 Schedule of Compliance shall remain in place, and Douglas shall continue to be bound by the terms of the 2016 Schedule of Compliance.

12. As of the Effective Date of this Agreement, the Trustees warrant that they are unaware of any facts that would indicate a violation of the Schedule of Compliance.

13. As of the Effective Date of this Agreement, Douglas warrants that it is unaware of any facts that would indicate a violation of the Schedule of Compliance.

#### **V. GENERAL TERMS**

14. The execution and delivery of this Agreement shall not constitute or be construed as an admission of responsibility, fault, liability, or wrongdoing by any of the Parties, nor does it constitute evidence of liability or wrongful conduct on the part of the Parties, and this Agreement

shall not be admissible as evidence of fault or liability in any investigation, claim, action, suit, or proceeding, or federal or state court or arbitration proceeding.

15. Nothing in this Agreement shall relieve Douglas of its obligation to comply with all applicable Minnesota and federal laws and regulations, except as expressly provided in this Agreement or the 2016 Schedule of Compliance.

16. Nothing in this Agreement shall limit the Trustees' ability to bring claims against any person or entity not covered by this Agreement.

17. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same Agreement. This Agreement may be executed by facsimile or electronic copy in any image format.

18. The person signing this Agreement for Douglas warrants that he or she is authorized to execute this Agreement, that Douglas has been fully advised by its counsel before entering into the Agreement, and that the person is executing this Agreement in an official capacity that binds Douglas. The persons signing this Agreement for the Trustees warrant that they have been authorized to do so by the MPCA and the DNR, respectively, and they do so in their official capacities.

19. This Agreement constitutes the full and complete terms of the agreement entered into by the Parties.

20. The Parties agree that the Hennepin County District Court shall have jurisdiction over this matter for purposes of enforcing the Agreement.

21. The failure of Douglas or the Trustees to exercise any rights under this Agreement shall not be deemed a waiver of any right or any future rights.

22. If any part of this Agreement shall be found or held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement.

23. This Agreement may be amended only by written agreement between the Parties.

24. This Agreement, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

25. Each of the Parties is represented by counsel, participated in the drafting of this Agreement, and agrees that the Agreement's terms may not be construed against or in favor of any of the Parties by virtue of draftsmanship.

26. The Parties agree to perform such further acts and to execute and deliver such further documents as may reasonably be necessary to carry out this Agreement.

*[SIGNATURES ON THE FOLLOWING PAGE]*



FOR THE MINNESOTA POLLUTION  
CONTROL AGENCY

Date: May 2, 2023

Katrina Kessler Digitally signed by Katrina Kessler  
Date: 2023.05.02 09:58:58 -05'00'

KATRINA KESSLER  
Commissioner  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, MN 55155

FOR THE MINNESOTA DEPARTMENT OF  
NATURAL RESOURCES

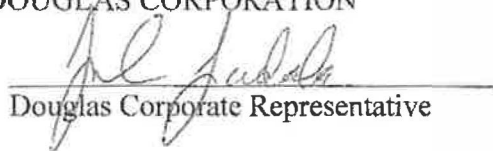
Date: May 2, 2023



SARAH STROMMEN  
Commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155

FOR DOUGLAS CORPORATION

Date: 5/1/2023

  
Douglas Corporate Representative