

Brian A. Knutsen, OSB No. 112266
Emma A. O. Bruden, OSB No. 163525
KAMPMEIER & KNUTSEN PLLC
1300 S.E. Stark Street, Suite 202
Portland, Oregon 97214
Telephone: (503) 841-6515 (Knutsen)
(503) 719-5641 (Bruden)
Email: brian@kampmeierknutsen.com
emma@kampmeierknutsen.com

Erin Saylor, OSB No. 085725 (*admission application forthcoming*)
COLUMBIA RIVERKEEPER
1125 SE Madison Street, Suite 103A
Portland, Oregon 97214
Telephone: (541) 399-4775
Email: erin@columbiariverkeeper.org

Attorneys for Plaintiff Columbia Riverkeeper

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

COLUMBIA RIVERKEEPER,

Plaintiff,

v.

PERENNIAL POWER HOLDINGS, INC.;
and PERENNIAL-WINDCHASER, LLC,

Defendants.

Case No. 2:20-cv-2256

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Pursuant to Clean Water Act,
33 U.S.C. § 1365(a)(1))**

I. INTRODUCTION

1. This action is a citizen suit brought under section 505 of the Clean Water Act (“CWA”) as amended, 33 U.S.C. § 1365. Plaintiff, Columbia Riverkeeper (Riverkeeper), seeks declaratory and injunctive relief, the imposition of civil penalties, and the award of costs,

including attorneys' and expert witness' fees, for defendants Perennial Power Holdings, Inc. and Perennial-WindChaser, LLC's (collectively, "Perennial") discharges of pollutants to waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of the CWA.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction under 33 U.S.C. § 1365 (CWA citizen suit provision) and 28 U.S.C. § 1331 (federal question). Perennial is in violation of an "effluent standard or limitation" as defined by section 505(f) of the CWA, 33 U.S.C. § 1365(f). The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 and 33 U.S.C. §§ 1319 and 1365.

3. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Riverkeeper notified Perennial of the CWA violations alleged herein and of Riverkeeper's intent to sue under the CWA for those violations by letter dated and postmarked October 20, 2020 ("Notice Letter"). A copy of the Notice Letter is attached to this complaint as Exhibit 1. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and 40 C.F.R. § 135.2(a)(1), Riverkeeper provided copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"), the Administrator of EPA Region 10, the Director of the Oregon Department of Environmental Quality ("DEQ"), and Perennial's register agents by mailing copies to these individuals on October 20, 2020.

4. As of the filing of this complaint, more than sixty days have passed since Riverkeeper mailed the Notice Letter as described in the preceding paragraph.

5. Neither the EPA nor the DEQ has commenced any action constituting diligent prosecution to redress these violations. Specifically, neither EPA nor DEQ has commenced a civil or criminal action in a court of the United States or of a State to enforce against the

violations alleged herein. *See* 33 U.S.C. § 1365(b)(1)(B). Further, while DEQ has issued an administrative penalty to Perennial, that penalty was issued after Riverkeeper issued the Notice Letter and this complaint is being filed less than 120 days after the Notice Letter was issued. *See* 33 U.S.C. 1319(g)(6)(B).

6. Perennial's violations of the CWA alleged herein are ongoing because, as of the filing of this complaint, the violations are continuing to occur and/or are reasonably likely to recur.

7. Venue is appropriate in this District under section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations complained of is located in this District, in Umatilla County, Oregon.

8. A copy of this complaint will be served on the Attorney General of the United States, the Administrator of the EPA, and the Administrator of EPA Region 10 as required by section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), and 40 C.F.R. § 135.4.

III. PARTIES

9. Plaintiff Riverkeeper is suing on behalf of itself and its members. Riverkeeper is a 501(c)(3) non-profit corporation registered in the State of Washington. The mission of Riverkeeper is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper implements scientific, educational, and legal programs aimed at protecting water quality and habitat in the Columbia River Basin. This lawsuit is part of Riverkeeper's effort to improve water quality in the Columbia River Basin for purposes including recreation, habitat quality, and subsistence, recreational, and commercial fishing.

10. Riverkeeper has representational standing to bring this action. Riverkeeper has

over 16,000 members, some of whom reside in the vicinity of waters affected by Perennial's discharges of pollutants. Members of Riverkeeper use and enjoy the waters and the surrounding areas that are adversely affected by Perennial's discharges. Riverkeeper's members use these areas for, *inter alia*, fishing, swimming, hiking, walking, photography, boating, and observing wildlife. Perennial has violated the CWA by discharging pollutants to waters of the United States without the required NPDES permit. Riverkeeper and its members have concerns about the impacts of Perennial's discharges of stormwater associated with construction activity on the Columbia River and its tributaries. Perennial's construction activities and associated stormwater discharges degrade water quality in the Columbia River Basin. The environmental, health, aesthetic, and recreational interests of Riverkeeper's members have been, are being, and will be adversely affected by Perennial's CWA violations addressed herein and by the members' reasonable concerns related to the effects of the violations and pollutant discharges. These injuries are fairly traceable to the violations and redressable by the Court.

11. Defendant Perennial Power Holdings, Inc. is a corporation authorized to conduct business under the laws of the State of Oregon.

12. Defendant Perennial-WindChaser, LLC is a corporation authorized to conduct business under the laws of the State of Oregon.

13. Defendant Perennial-WindChaser, LLC is a wholly owned subsidiary of Defendant Perennial Power Holdings, Inc.

14. Perennial seeks to develop the Perennial Wind Chaser Station, a gas-fired combustion turbine generator facility that would be constructed adjacent to the Hermiston

Generating Station in Hermiston, Oregon.¹ As used herein, the term “Site” includes all areas associated with the proposed development of the Perennial Wind Chaser Station, including areas proposed for the generating plant and contiguous and/or adjacent areas owned and/or operated by Perennial, areas proposed for temporary laydown or other construction work, areas proposed for construction and/or modification of transmission lines, areas proposed for construction and/or modification of natural gas pipelines, areas proposed for construction and/or modification of substations, and any other areas proposed for construction and/or modifications associated with the proposed project.

IV. LEGAL BACKGROUND

15. Congress enacted the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

16. As relevant here, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits “the discharge of any pollutant by any person” unless such discharge is authorized by an NPDES permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

17. The CWA defines the term “discharge of a pollutant” to mean, in part, “any addition of any pollutant to navigable waters from any point source” 33 U.S.C. § 1362(12).

18. Section 402(a) of the CWA empowers EPA or an authorized state to issue NPDES permits authorizing discharges of pollutants. 33 U.S.C. § 1342(a). The State of Oregon has established a federally-approved state NPDES program administered by the Oregon DEQ.

19. Accordingly, DEQ may issue NPDES permits authorizing discharges of pollutants. Compliance with the terms and conditions of an NPDES permit is deemed

¹ The approximate location of the proposed generating facility is: 45°48’09.06” N, 119°21’52.26” W.

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