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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT TACOMA

15 COLUMBIA RIVERKEEPER,

16 Plaintiff,

17 vs.

18 KALAMA EXPORT COMPANY, LLC,

19 Defendant

COMPLAINT

20 **1. INTRODUCTION**

21 1. This action is a citizen suit brought under Section 505 of the Clean Water Act
22 (“CWA”) as amended, 33 U.S.C. § 1365. Plaintiff, Columbia Riverkeeper, seeks declaratory and
23 injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’
24 and expert witness’ fees for the defendant Kalama Export Company, LLC’s (“KEC’s”) repeated
25 and ongoing violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342,
26 and the terms and conditions of the National Pollution Discharge Elimination System
27 (“NPDES”) permit authorizing discharges of pollutants from KEC’s facility to navigable waters.
28

II. JURISDICTION AND VENUE

1
2 2. The Court has subject matter jurisdiction under Section 505(a) of the CWA, 33
3 U.S.C. § 1365(a). KEC is in violation of an “effluent standard or limitation” as defined by
4 Section 505(f) of the CWA, 33 U.S.C. § 1365(f). The relief requested herein is authorized by
5 Sections 309(d) of the CWA, 33 U.S.C. §§ 1319(d) and 1365.
6

7 3. In accordance with Section 505(b)(1)(A) of the CWA, 33 U.S.C. §1365(b)(1)(A),
8 Columbia Riverkeeper notified KEC of KEC’s violations of the CWA, and of Columbia
9 Riverkeeper’s intent to sue under the CWA, by letter dated and postmarked July 7, 2020
10 (“Notice Letter”). A copy of the Notice Letter is attached to this complaint as Exhibit 1. The
11 allegations in Sections II through IX of the Notice Letter are incorporated herein by this
12 reference. In accordance with 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2(a)(1), Columbia
13 Riverkeeper provided copies of the Notice Letter to the Administrator of the United States
14 Environmental Protection Agency (“EPA”), the Administrator of EPA Region 10, the Director of
15 the Washington Department of Ecology (“Ecology”), and KEC’s Registered Agent by mailing
16 copies to these individuals on July 7, 2020.
17

18
19 4. At the time of the filing of this Complaint, more than sixty days have passed since
20 the Notice Letter and copies thereof were issued in the manner described in the preceding
21 paragraph.
22

23 5. The violations complained of in the Notice Letter are continuing and/or are
24 reasonably likely to re-occur.

25 6. At the time of the filing of this Complaint, neither the EPA nor Ecology has
26 commenced any action constituting diligent prosecution to redress the violations alleged in the
27 Notice Letter.
28

1 recreational interests of Columbia Riverkeeper's members have been, are being, and will be
2 adversely affected by KEC's NPDES permit violations addressed herein and by the members'
3 reasonable concerns related to the effects of the violations and pollutant discharges. In addition,
4 discharges from KEC's facility lessen Columbia Riverkeeper's members' aesthetic enjoyment of
5 nearby areas. Columbia Riverkeeper's members' concerns about the effects of KEC's discharges
6 are aggravated by KEC's failure to record and timely report information about its discharges and
7 pollution controls. These injuries are fairly traceable to KEC's violations of the CWA and are
8 redressable by the Court.
9

10
11 10. Columbia Riverkeeper has organizational standing to bring this action. Columbia
12 Riverkeeper actively engages in a variety of educational and advocacy efforts to improve water
13 quality in the Columbia River and its tributaries. KEC has failed to fulfill its monitoring,
14 recordkeeping, reporting, public disclosure, and planning requirements, among others, necessary
15 for compliance with its NPDES permit and the CWA. As a result, Columbia Riverkeeper is
16 deprived of information that supports its ability to serve its members by disseminating
17 information and taking appropriate action. Columbia Riverkeeper's efforts to educate and
18 advocate for greater environmental protection for the benefit of its members is thereby
19 obstructed. Finally, Columbia Riverkeeper and the public are deprived of information that
20 influences members of the public to become members of Columbia Riverkeeper, thereby
21 reducing Columbia Riverkeeper's membership numbers. Thus, Columbia Riverkeeper's
22 organizational interests have been adversely affected by KEC's violations. These injuries are
23 fairly traceable to KEC's violations and are redressable by the Court.
24

25
26 11. Defendant Kalama Export Company, LLC is a corporation authorized to conduct
27 business under the laws of the State of Washington.
28

1 12. KEC owns and operates a grain export facility at or near 2211 Hendrickson Drive,
2 Kalama, Washington, 98625 (referred to herein as the “facility”).

3 **IV. LEGAL BACKGROUND**

4 13. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of
5 pollutants by any person, unless in compliance with the provisions of the CWA. Section 301(a)
6 prohibits, inter alia, such discharges not authorized by, or in violation of, the terms of a NPDES
7 permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
8

9 14. The State of Washington has established a federally approved state NPDES
10 program administered by Ecology. WASH. REV. CODE § 90.48.260; WASH. ADMIN. CODE
11 Ch. 173-220. This program was approved by the Administrator of the EPA pursuant to section
12 402(b) of the CWA, 33 U.S.C. § 1342(b).

13 15. Ecology has repeatedly issued the Industrial Stormwater General Permit (“ISGP”)
14 under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), most recently on November 20, 2019,
15 effective January 1, 2020, and set to expire December 31, 2024 (the “2020 Permit”). The
16 previous permit was issued December 3, 2014, became effective January 2, 2015, and expired
17 December 31, 2019 (the “2015 Permit”). The 2015 Permit and 2020 Permit (collectively, “the
18 Permits”), contain substantially similar requirements and authorize those that obtain coverage
19 thereunder to discharge stormwater associated with industrial activity, a pollutant under the
20 CWA, and other pollutants contained in the stormwater to waters of the United States subject to
21 certain terms and conditions.
22

23 16. The Permits imposes terms and conditions, including discharge monitoring and
24 sampling requirements, reporting and recordkeeping requirements, public disclosure
25 requirements, and restrictions on the quality of stormwater discharges. To reduce and eliminate
26
27
28

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