

Brian A. Knutsen, WSBA No. 38806
 Kampmeier & Knutsen, PLLC
 1300 SE Stark Street, Suite 202
 Portland, Oregon 97214
 Phone: (503) 841-6515

Simone Anter, WSBA No. 52716
 Columbia Riverkeeper
 407 Portway Avenue, Suite 301
 Hood River, Oregon 97031
 Phone: (541) 399-5312

Attorneys for Plaintiff Columbia Riverkeeper

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

COLUMBIA RIVERKEEPER,

Plaintiff,

v.

KEMIRA CHEMICALS, INC.,

Defendant.

Case No. 3:20-cv-06257

COMPLAINT

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, seeks declaratory and injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witness’ fees, for defendant Kemira Chemicals, Inc.’s (hereinafter, “Kemira”) repeated and ongoing violations of the terms and conditions of its National Pollutant Discharge

1 Elimination System (“NPDES”) permit authorizing discharges of pollutants from Kemira’s
2 facility to waters of the United States.

3 II. JURISDICTION AND VENUE

4 2. The Court has subject matter jurisdiction under section 505(a) of the CWA,
5 33 U.S.C. § 1365(a) (CWA citizen suit provision), and 28 U.S.C. § 1331 (federal question).
6
7 Kemira is in violation of an “effluent standard or limitation” as defined by section 505(f) of the
8 CWA, 33 U.S.C. § 1365(f). The relief requested herein is authorized by sections 309(d) and 505
9 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, and 28 U.S.C. §§ 2201 and 2202.

10 3. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A),
11 Columbia Riverkeeper notified Kemira of the violations of the NPDES permit and of Columbia
12 Riverkeeper’s intent to sue under the CWA by letter dated and postmarked October 14, 2020
13 (“Notice Letter”). A copy of the Notice Letter is attached to this complaint as Exhibit 1. In
14 accordance with 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2(a)(1), Columbia Riverkeeper
15 provided copies of the Notice Letter to the Administrator of the United States Environmental
16 Protection Agency (“EPA”), the Administrator of EPA Region 10, the Director of the
17 Washington Department of Ecology (“Ecology”), and Kemira’s Registered Agent by mailing
18 copies to these individuals on October 14, 2020.
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20

21 4. At the time of the filing of this complaint, more than sixty days have passed since
22 the Notice Letter and copies thereof were issued in the manner described in the preceding
23 paragraph.
24

25 5. The violations complained of in the Notice Letter are ongoing because they are
26 continuing and/or are reasonably likely to re-occur. Kemira is in violation of its NPDES permit.
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1 6. At the time of the filing of this complaint, neither the EPA nor Ecology has
2 commenced any action constituting diligent prosecution to redress the violations alleged in the
3 Notice Letter and this complaint.

4 7. The source of the violations complained of is located in Clark County,
5 Washington, within the Western District of Washington, and venue is therefore appropriate in
6 the Western District of Washington under section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1).
7

8 III. PARTIES

9 8. Plaintiff Columbia Riverkeeper is suing on behalf of itself and its members.
10 Columbia Riverkeeper is a 501(c)(3) non-profit corporation registered in the State of
11 Washington. The mission of Columbia Riverkeeper is to restore and protect the water quality of
12 the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To
13 achieve these objectives, Columbia Riverkeeper implements scientific, educational, and legal
14 programs aimed at protecting water quality and habitat in the Columbia River Basin. This
15 lawsuit is part of Columbia Riverkeeper's effort to improve water quality in the Columbia River
16 Basin for purposes including recreation, habitat quality, and subsistence, recreational, and
17 commercial fishing.
18

19 9. Columbia Riverkeeper has representational standing to bring this action.
20 Columbia Riverkeeper has over 16,000 members, many of whom reside in the vicinity of waters
21 affected by Kemira's discharges of pollutants. Members of Columbia Riverkeeper use and enjoy
22 the waters and the surrounding areas that are adversely affected by Kemira's discharges.
23 Columbia Riverkeeper's members use these areas for, *inter alia*, fishing, swimming, hiking,
24 walking, photography, boating, and observing wildlife. Kemira has repeatedly violated the
25 conditions of its NPDES permits and exceeded the permits' benchmark pollutant discharge
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1 levels. Columbia Riverkeeper has serious concerns about the impacts of Kemira's operations and
2 industrial stormwater discharges on the Columbia River and its tributaries, including Gibbons
3 Creek. Kemira's operations and stormwater discharges degrade water quality in the Columbia
4 River Basin. The environmental, health, aesthetic, and recreational interests of Columbia
5 Riverkeeper's members have been, are being, and will be adversely affected by Kemira's
6 NPDES permit violations addressed herein and by the members' reasonable concerns related to
7 the effects of the violations and pollutant discharges. These injuries are fairly traceable to the
8 violations and redressable by the Court.
9

10 10. Defendant Kemira is a corporation authorized to conduct business under the laws
11 of the State of Washington.
12

13 11. Kemira owns and operates a chemical manufacturing facility at or near 1150 S.
14 35th Street, Washougal, Washington 98671 (referred to herein as the "facility").
15

16 IV. LEGAL BACKGROUND

17 12. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of
18 pollutants by any person unless authorized under certain provisions of the CWA, including an
19 NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.
20

21 13. The State of Washington has established a federally-approved state NPDES
22 program that is administered by Ecology. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch.
23 173-220. This program was approved by the Administrator of the EPA pursuant to section
24 402(b) of the CWA, 33 U.S.C. § 1342(b).
25

26 14. Ecology has issued several iterations of the Industrial Stormwater General Permit
27 ("General Permit") under section 402(a) of the CWA, 33 U.S.C. § 1342(a). The General Permit,
28 in its various iterations since its first issuance in 1993, all of which contain comparable
29

1 requirements, authorizes those that obtain coverage thereunder to discharge stormwater
2 associated with industrial activity, a pollutant under the CWA, and other pollutants contained in
3 the stormwater to waters of the United States subject to certain terms and conditions.

4 15. The General Permit imposes terms and conditions, including discharge
5 monitoring and sampling requirements, reporting and recordkeeping requirements, public
6 disclosure requirements, and restrictions on the quality of stormwater discharges. To reduce and
7 eliminate pollutants in stormwater discharges, the General Permit requires, among other things,
8 that permittees develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”) that
9 includes appropriate best management practices (“BMPs”) and that applies all known and
10 reasonable methods of pollution prevention, control, and treatment (“AKART”) to discharges.
11 The specific terms and conditions of the General Permit are described in detail in the Notice
12 Letter. *See* Exhibit 1 at 2–15.
13
14

15 V. FACTS

16 16. Kemira was granted coverage for the facility under the previous iteration of the
17 General Permit that was issued by Ecology on December 3, 2014, became effective on January 2,
18 2015, and expired on December 31, 2019, under NPDES Permit No. WAR001125 (the “2015
19 General Permit”). Kemira has been granted coverage under the current iteration of the General
20 Permit with the same permit number WAR001125, which was issued on November 20, 2019,
21 became effective on January 1, 2020, and is set to expire on December 31, 2024 (the “2020
22 General Permit”).
23
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25 17. Kemira discharges stormwater associated with industrial activity and other
26 pollutants into the Columbia River and/or Gibbons Creek via tributaries and/or stormwater
27 conveyance systems.
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