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

15 COLUMBIA RIVERKEEPER, a Washington
16 non-profit corporation,

17 Plaintiff,

18 v.

19 THOMPSON METAL FAB, INC., an Oregon
20 corporation,

21 Defendant.

Case No. 3:21-cv-05008

COMPLAINT

22
23 **I. INTRODUCTION**

24 1. This action is a citizen suit brought under section 505 of the Clean Water Act
25 (“CWA”), 33 U.S.C. § 1365, as amended. Plaintiff Columbia Riverkeeper (“Riverkeeper”) seeks
26 declaratory and injunctive relief, the imposition of civil penalties, and the award of costs,
27 including attorneys’ and expert witness fees for Defendant Thompson Metal Fab, Inc.’s
28

1 (“Thompson Metal”) repeated and ongoing violations of the terms and conditions of its National
2 Pollutant Discharge Elimination System (“NPDES”) permit authorizing discharges of pollutants
3 from Thompson Metal’s facility to waters of the United States.

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5 **II. JURISDICTION AND VENUE**

6 2. This Court has subject matter jurisdiction under section 505(a) of the CWA, 33
7 U.S.C. § 1365(a) (CWA citizen suit provision), and 28 U.S.C. § 1331 (federal question).

8 Thompson Metal is in violation of an “effluent standard or limitation” as defined by section
9 505(f) of the CWA, 33 U.S.C. § 1365(f). The relief requested herein is authorized by sections
10 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365 and 28 U.S.C. §§ 2201 and 2202.

11 3. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A),
12 Riverkeeper notified Thompson Metal and its registered agent of Thompson Metal’s violations
13 of its NPDES permits and of Riverkeeper’s intent to sue under the CWA, by letter dated and
14 postmarked October 27, 2020 (“Notice Letter”). A copy of the Notice Letter is attached to this
15 complaint as Exhibit 1. The allegations in sections II–IX of the Notice Letter, attached hereto as
16 Exhibit 1 at 2–15, are hereby incorporated by reference. Riverkeeper also notified the
17 Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator
18 of EPA Region 10, and the Director of Washington Department of Ecology (“Ecology”) by
19 mailing copies to the Notice Letter to those officials on October 27, 2020.
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22 4. At the time of the filing of this complaint, more than sixty days have passed since
23 the Notice Letter and copies thereof were issued in the manner described in the preceding
24 paragraph.

25 5. The violations complained of in the Notice Letter are continuing and/or
26 reasonably likely to recur. Thompson Metal 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.

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

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

5 These injuries are fairly traceable to the violations and redressable by this Court.
6

7 10. Riverkeeper also has organizational standing to bring this action. Riverkeeper
8 actively engages in a variety of educational and advocacy efforts to improve water quality in the
9 Columbia River and its tributaries. Thompson Metal has failed to fulfill its monitoring,
10 recordkeeping, reporting, public disclosure, and planning requirements, among others, necessary
11 for compliance with its NPDES permits. As a result, Riverkeeper is deprived of information that
12 supports its ability to serve its members by disseminating information and taking appropriate
13 action. Riverkeeper's efforts to educate and advocate for greater environmental protection for the
14 benefit of its members is thereby obstructed. Thus, Riverkeeper's organizational interests have
15 been adversely affected by Thompson Metal's violations. These injuries are fairly traceable to
16 Thompson Metal's violations and redressable by this Court.
17

18 11. Defendant Thompson Metal is a corporation organized and existing under the
19 laws of the State of Oregon and is authorized to conduct business in Washington.
20

21 12. Thompson Metal owns and operates its industrial facility at or near 3000 SE
22 Hidden Way, Vancouver, Washington 98661 (hereinafter "the Facility"). Thompson Metal's
23 Facility is on land and adjacent to the Columbia River. Thompson Metal's Facility discharges
24 stormwater associated with industrial activity, and pollutants contained therein, to the Columbia
25 River.
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IV. LEGAL BACKGROUND

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

5
6 14. The State of Washington has established a federally approved state NPDES
7 program administered by Ecology. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch. 173-
8 220. This program was approved by the Administrator of the EPA pursuant to section 402(b) of
9 the CWA, 33 U.S.C. § 1342(b).

10 15. Ecology has issued several iterations of the Industrial Stormwater General Permit
11 (“General Permit”) under section 402(a) of the CWA, 33 U.S.C. § 1342(a), the most recent of
12 which was issued on November 20, 2019, became effective on January 1, 2020, and is set to
13 expire on December 31, 2024 (the “2020 General Permit”). The previous iteration was issued on
14 December 3, 2014, became effective on January 2, 2015, and expired on December 31, 2019 (the
15 “2015 General Permit”). The General Permit, in its various iterations since its first issuance in
16 1993, all of which contain comparable requirements, authorizes those that obtain coverage
17 thereunder to discharge stormwater associated with industrial activity, a pollutant under the
18 CWA, and other pollutants contained in the stormwater to waters of the United States subject to
19 certain terms and conditions.
20

21
22 16. The 2015 General Permit and the 2020 General Permit (collectively, “General
23 Permits”) impose terms and conditions, including discharge monitoring and sampling
24 requirements, reporting and recordkeeping requirements, public disclosure requirements, and
25 restrictions on the quality of stormwater discharges. To reduce and eliminate pollutants in
26 stormwater discharges, the General Permits require, among other things, that permittees develop
27 and implement a Stormwater Pollution Prevention Plan (“SWPPP”) that includes appropriate
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