

KEWAUNEE SCIENTIFIC CORP /DE/

Form S-8

September 08, 2017

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, DC 20549**

**FORM S-8**

**REGISTRATION STATEMENT**

*Under*

*The Securities Act of 1933*

**KEWAUNEE SCIENTIFIC CORPORATION**

**(Exact name of Registrant as specified in its charter)**

<b>Delaware</b>	<b>38-0715562</b>
<b>(State or other jurisdiction of</b>	<b>(I.R.S. Employer</b>
<b>incorporation or organization)</b>	<b>Identification Number)</b>
<b>2700 West Front Street, Statesville, North Carolina 28677-2927</b>	
<b>(Address of Registrant's Principal Executive Offices)</b>	

**KEWAUNEE SCIENTIFIC CORPORATION 2017 OMNIBUS INCENTIVE PLAN**

**(Full Title of the Plan)**

**THOMAS D. HULL III**

**VICE PRESIDENT, FINANCE, CHIEF FINANCIAL OFFICER, TREASURER AND SECRETARY**

**KEWAUNEE SCIENTIFIC CORPORATION**

**2700 West Front Street, Statesville, North Carolina 28677-2927**

**(Name and Address of Agent for Service)**

**(704) 873-7202**

**(Telephone Number, Including Area Code, of Agent for Service)**

*Copies to:*

**J. Craig Walker**

**K&L Gates LLP**

**70 West Madison Street**

**Chicago, Illinois 60602**

**(312) 807-4321**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, par value \$2.50 per share	280,100 Shares (1)(2)	\$26.05 (3)	\$7,296,605	\$845.68

- (1) This amount reflects 280,100 shares of Common Stock which are issuable under the 2017 Omnibus Incentive Plan (the Plan ).
- (2) Pursuant to Rule 416 under the Securities Act of 1933 (the Securities Act ), this registration statement also covers an indeterminate number of shares of common stock that may be issuable by reason of stock splits, stock dividends, or other adjustment provisions of the Plan described herein.
- (3) Estimated in accordance with Rule 457(h) solely for purposes of calculating the registration fee and based upon the average of the high and low sale prices of the Common Stock on the Nasdaq Global Market on September 5, 2017.

## EXPLANATORY STATEMENT

This Registration Statement on Form S-8 is filed by Kewaunee Scientific Corporation (the Registrant or the Company), relating to 280,100 shares of the Registrant's common stock, par value \$2.50 per share (the Common Stock), issuable to eligible individuals under the Plan.

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The information called for by Part I of Form S-8 will be sent or given to participants in the 2017 Plan, as specified by Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### **Item 3. Incorporation of Documents By Reference.**

The Company incorporates herein by reference the following documents heretofore filed by the Company with the SEC:

- (1) The Company's Annual Report on Form 10-K for the year ended April 30, 2017;
- (2) The Company's Quarterly Report on Form 10-Q for the quarter ended July 31, 2017;
- (3) The Company's Current Report on Form 8-K filed on August 31, 2017 reporting information pursuant to Items 5.02 and 5.07 of Form 8-K; and
- (4) The description of the Company's Common Stock set forth under the caption "Description of Capital Stock" in the Company's registration statement on Form 8-A, for the registration of the Common Stock under Section 12(g) of the Securities Exchange Act of 1934, as amended (the Exchange Act), including all amendments thereto.

In addition, all documents that the Company files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this registration statement, and before the filing of a post-effective amendment indicating that all securities offered pursuant to this registration statement have been sold, or deregistering all the securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part of this registration statement from the date of filing of those documents. Any statement contained in a document incorporated, or deemed to be incorporated, by reference in this registration statement shall be deemed to be modified, or superseded for purposes of this registration statement, to the extent that a statement contained in this registration statement, or in any subsequently filed document that also is, or is deemed to be, incorporated by reference in this registration statement, modifies or supersedes that statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Company is incorporated under the laws of the state of Delaware.

Section 145(a) of the General Corporation Law of the State of Delaware (the "DGCL") provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(e) of the DGCL provides that expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in Section 145 of the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 145(g) of the DGCL specifically allows a Delaware corporation to purchase liability insurance on behalf of its directors and officers and to insure against potential liability of such directors and officers regardless of whether the corporation would have the power to indemnify such directors and officers under Section 145 of the DGCL.

Section 102(b)(7) of the DGCL permits a Delaware corporation to include a provision in its certificate of incorporation eliminating or limiting the personal liability of directors to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. This provision, however, may not eliminate or limit a director's liability (1) for breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchases or redemptions, or (4) for any transaction from which the director derived an improper personal benefit. The Company's Restated Certificate of Incorporation contains such a provision.

The Company's Restated Certificate of Incorporation provides for indemnification of the Company's officers and directors to the fullest extent permitted by Section 145 of the DGCL.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The exhibits to this registration statement are listed in the Exhibit Index which appears elsewhere herein and is hereby incorporated by reference.

**Item 9. Undertakings.**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however, that:*

(A) Paragraphs (a)(i) and (a)(ii) do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934



that are incorporated by reference in this registration statement; and

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Statesville, State of North Carolina, on September 8, 2017.

**KEWAUNEE SCIENTIFIC  
CORPORATION**

By: /s/ David M. Rausch  
David M. Rausch

President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933 this registration statement has been signed by the following persons in the capacities and on the dates indicated.

/s/ David M. Rausch	Director, President and Chief Executive Officer	September 8, 2017
David M. Rausch	(Principal Executive Officer)	
/s/ Thomas D. Hull III	Vice President, Chief Financial Officer,	September 8, 2017
Thomas D. Hull III	Treasurer and Secretary	
	(Principal Financial and Accounting Officer)	
/s/ William A. Shumaker	Director	September 8, 2017
William A. Shumaker		
/s/ Keith M. Gehl	Director	September 8, 2017
Keith M. Gehl		
/s/ David S. Rhind	Director	September 8, 2017
David S. Rhind		
/s/ Margaret B. Pyle	Director	September 8, 2017
Margaret B. Pyle		
/s/ John D. Russell	Director	September 8, 2017
John D. Russell		

/s/ Donald F. Shaw

Director

September 8, 2017

Donald F. Shaw

**KEWAUNEE SCIENTIFIC CORPORATION**

**Exhibit Index**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
4.1	Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended April 30, 1985).
4.2	<u>By-Laws of the Company (as amended as of December 9, 2015) (incorporated by reference to Exhibit 3 to the Company's Current Report on Form 8-K filed on December 10, 2015).</u>
5.1	<u>Opinion of K&amp;L Gates LLP (including consent).</u>
23.1	<u>Consent of K&amp;L Gates LLP (included in Exhibit 5.1).</u>
23.2	<u>Consent of Cherry Bekaert LLP with respect to the audited consolidated financial statements of the Company.</u>
23.3	<u>Consent of Ernst &amp; Young LLP with respect to the audited consolidated financial statements of the Company.</u>