

CLEAN HARBORS INC
Form S-8
May 19, 2010

As filed with the Securities and Exchange Commission on May 19, 2010

Registration No.333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CLEAN HARBORS, INC.

(Exact name of registrant as specified in its charter)

Massachusetts
(State or other jurisdiction
of incorporation or organization)

04-2997780
(I.R.S. Employer Identification No.)

42 Longwater Drive, Norwell, Massachusetts 02061-9149

(Address of principal executive offices) (Zip Code)

CLEAN HARBORS, INC. 2010 STOCK INCENTIVE PLAN

(Full title of plan)

C. Michael Malm

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Davis, Malm & D Agostine, P.C.

One Boston Place

Boston, Massachusetts 02108

(Name and address of agent for service)

617-367-2500

(Agent's telephone number, including area code)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting 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

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered | Proposed maximum offering price per share (1) | Proposed maximum aggregate offering price (1) | Amount of registration fee (1) |
|---|-------------------------|---|---|--------------------------------|
| Common Stock, \$.01 par value per share | 3,000,000 | \$ 60.845 | \$ 182,535,000.00 | \$ 13,014.75 |

(1) Computed under Rule 457(c) and (h) based upon the market price of the registrant's Common Stock on the New York Stock Exchange on May 14, 2010.

Approximate date of proposed public offering: From time to time after the effective date of this Registration Statement.

PART I

This Registration Statement has been prepared in accordance with the requirements of Form S-8 and relates to 3,000,000 shares of common stock, \$.01 par value per share (Common Stock), of Clean Harbors, Inc. (the Company). Such shares are available for potential future issuance under the Company s 2010 Stock Incentive Plan, as approved respectively by the Company s Board of Directors on March 8, 2010 and shareholders on May 10, 2010.

Documents containing the information specified in Part I of Form S-8 will be sent or given to employees as specified in Rule 428(b)(1).

PART II

Item 3. Incorporation of Documents By Reference

The following documents filed by the Company with the Commission (File No. 001-34223) are incorporated in and made a part of this Registration Statement by reference:

- (1) the Company s Annual Report on Form 10-K for the fiscal year ended December 31, 2009; and
- (2) the Company s Quarterly Report on Form 10-Q for the quarter ended March 31, 2010;
- (3) the Company s definitive Proxy Statement dated April 5, 2010 for its annual meeting of shareholders held on May 10, 2010;
- (4) the Company s Reports on Form 8-K (other than the copy of a press release furnished as Exhibit 99.1 to the first such Report) filed with the Commission on May 5, 2010 and May 14, 2010; and
- (5) the description of the Company s Common Stock contained under the caption Description of Capital Stock in the Prospectus Supplement dated April 23, 2008 filed under the Company s Registration Statement on Form S-3 under the Securities Act (No. 333-150296).

In addition to the foregoing documents, all documents subsequently filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference and to be a part hereof from the date of filing of such documents.

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During the quarter ended March 31, 2010, the Company made certain changes to the composition of its reportable segments as discussed in Note 1, Basis of Presentation, to the unaudited interim consolidated financial statements included in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010. The changes consisted primarily of re-assigning certain departments from the Field Services segment to the Industrial Services segment to align with the management reporting changes made during the quarter and related to the acquisition of Eveready Inc. on July 31, 2009. To be consistent with the new reporting segment structure, the financial information which is presented in Note 19, Segment Reporting, to the Company's consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009 as incorporated by reference into this registration statement has been recast as follows:

| | For the Year Ended December 31, 2009 | | | | | |
|----------------------------|--------------------------------------|----------------|---------------------|----------------------|-----------------|--------------|
| | Technical Services | Field Services | Industrial Services | Exploration Services | Corporate Items | Totals |
| Third party revenues | \$ 648,398 | \$ 205,019 | \$ 202,508 | \$ 17,991 | \$ 304 | \$ 1,074,220 |
| Intersegment revenues, net | 24,802 | (19,780) | (3,398) | 392 | (2,016) | |
| Direct revenues | \$ 673,200 | \$ 185,239 | \$ 199,110 | \$ 18,383 | \$ (1,712) | \$ 1,074,220 |

| | For the Year Ended December 31, 2008 | | | | | |
|----------------------------|--------------------------------------|----------------|---------------------|----------------------|-----------------|--------------|
| | Technical Services | Field Services | Industrial Services | Exploration Services | Corporate Items | Totals |
| Third party revenues | \$ 710,135 | \$ 264,153 | \$ 56,408 | \$ | \$ 17 | \$ 1,030,713 |
| Intersegment revenues, net | 24,958 | (19,047) | (3,727) | | (2,184) | |
| Direct revenues | \$ 735,093 | \$ 245,106 | \$ 52,681 | \$ | \$ (2,167) | \$ 1,030,713 |

| | For the Year Ended December 31, 2007 | | | | | |
|----------------------------|--------------------------------------|----------------|---------------------|----------------------|-----------------|------------|
| | Technical Services | Field Services | Industrial Services | Exploration Services | Corporate Items | Totals |
| Third party revenues | \$ 669,885 | \$ 228,561 | \$ 48,432 | \$ | \$ 39 | \$ 946,917 |
| Intersegment revenues, net | 24,628 | (17,927) | (5,551) | | (1,150) | |
| Direct revenues | \$ 694,513 | \$ 210,634 | \$ 42,881 | \$ | \$ (1,111) | \$ 946,917 |

| | December 31, 2009 | December 31, 2008 | December 31, 2007 |
|----------------------|-------------------|-------------------|-------------------|
| Adjusted EBITDA: | | | |
| Technical Services | \$ 176,703 | \$ 186,602 | \$ 163,481 |
| Field Services | 21,210 | 35,042 | 33,536 |
| Industrial Services | 24,757 | 10,936 | 6,809 |
| Exploration Services | 704 | | |
| Corporate Items | (65,794) | (69,361) | (70,529) |
| Total | \$ 157,580 | \$ 163,219 | \$ 133,297 |

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| | December 31, 2009 | December 31, 2008 |
|--|----------------------|----------------------|
| Property, plant and equipment, net: | | |
| Technical Services | \$ 259,873 | \$ 234,640 |
| Field Services | 24,273 | 17,959 |
| Industrial Services | 232,981 | 12,605 |
| Exploration Services | 47,224 | |
| Corporate or other assets | 25,593 | 30,257 |
| Total property, plant and equipment, net | 589,944 | 295,461 |

| | | |
|------------------------------------|------------|-----------|
| Intangible assets: | | |
| Technical Services | | |
| Goodwill | \$ 25,856 | \$ 22,417 |
| Permits and other intangibles, net | 65,162 | 64,817 |
| Total Technical Services | 91,018 | 87,234 |
| Field Services | | |
| Goodwill | 3,372 | 1,506 |
| Permits and other intangibles, net | 4,240 | 2,969 |
| Total Field Services | 7,612 | 4,475 |
| Industrial Services | | |
| Goodwill | 16,229 | 655 |
| Permits and other intangibles, net | 29,972 | 3,968 |
| Total Industrial Services | 46,201 | 4,623 |
| Exploration Services | | |
| Goodwill | 10,628 | |
| Permits and other intangibles, net | 14,814 | |
| Total Exploration Services | 25,442 | |
| Total | \$ 170,273 | \$ 96,332 |

| | December 31, 2009 | December 31, 2008 |
|----------------------|----------------------|----------------------|
| Total assets: | | |
| Technical Services | \$ 514,084 | \$ 446,793 |
| Field Services | 44,279 | 31,016 |
| Industrial Services | 302,392 | 18,421 |
| Exploration Services | 83,471 | |
| Corporate Items | 456,842 | 402,106 |
| Total assets | \$ 1,401,068 | \$ 898,336 |

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The financial information which is presented in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 as incorporated by reference into this registration statement has been recast to conform to the new reporting segment structure as follows:

| | December 31, 2009 | December 31, 2008 | December 31, 2007 |
|--|----------------------|----------------------|----------------------|
| Direct Revenues: | | | |
| Technical Services | \$ 673,200 | \$ 735,093 | \$ 694,513 |
| Field Services | 185,239 | 245,106 | 210,634 |
| Industrial Services | 199,110 | 52,681 | 42,881 |
| Exploration Services | 18,383 | | |
| Corporate or other assets | (1,712) | (2,167) | (1,111) |
| Total | 1,074,220 | 1,030,713 | 946,917 |
| Cost of Revenues: | | | |
| Technical Services | 432,201 | 484,292 | 468,933 |
| Field Services | 142,168 | 182,834 | 157,488 |
| Industrial Services | 158,102 | 38,296 | 32,259 |
| Exploration Services | 16,091 | | |
| Corporate or other assets | 4,921 | 2,398 | 5,760 |
| Total | 753,483 | 707,820 | 664,440 |
| Selling, General & Administrative Expenses: | | | |
| Technical Services | 64,296 | 64,199 | 62,099 |
| Field Services | 21,861 | 27,230 | 19,611 |
| Industrial Services | 16,251 | 3,449 | 3,813 |
| Exploration Services | 1,588 | | |
| Corporate or other assets | 59,161 | 64,796 | 63,657 |
| Total | 163,157 | 159,674 | 149,180 |
| Adjusted EBITDA: | | | |
| Technical Services | 176,703 | 186,602 | 163,481 |
| Field Services | 21,210 | 35,042 | 33,536 |
| Industrial Services | 24,757 | 10,936 | 6,809 |
| Exploration Services | 704 | | |
| Corporate Items | (65,794) | (69,361) | (70,529) |
| Total | \$ 157,580 | \$ 163,219 | \$ 133,297 |

Item 4. Description of Securities

Not Applicable

Item 5. Interest of Named Experts and Counsel

Davis, Malm & D'Agostine, P.C., Boston, Massachusetts, has passed upon the validity of the shares of Common Stock being offered under this

registration statement. As of May 7, 2010, shareholders in Davis, Malm & D'Agostine, P.C., beneficially owned an aggregate of 10,000 shares of Common Stock (including 1,000 shares owned by, or for the benefit of, members of their immediate families).

Item 6. Indemnification of Directors and Officers

Sections 8.51 and 8.52 of the Massachusetts Business Corporation Act, as amended, give Massachusetts corporations the power to indemnify each of their present and former officers or directors under certain circumstances if such person acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the corporation. The Company's Restated Articles of Organization and By-Laws provide for such indemnification of the officers and directors of the Company and its subsidiaries to the extent permitted by law. Reference is made to Article 6 of the Company's Restated Articles of Organization filed as Exhibit 3.1A to the Company's Report on Form 8-K dated May 18, 2005, and Article VII of the Company's Amended and Restated By-Laws filed as Exhibit 3.4B to the Company's Report on Form 8-K dated April 4, 2005, and incorporated herein by reference, for the applicable provisions regarding the indemnification of officers and directors.

The Company also maintains director and officer liability insurance which provides for protection of the directors and officers of the Company and its subsidiaries against liabilities and costs which they may incur in such capacities, including liabilities arising under the Securities Act of 1933, as amended.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

See the Exhibit Index on page II-3.

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:

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- (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

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(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 paragraphs (1)(i) and (1)(ii) do not apply to this registration statement on Form S-8 if 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 Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(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 the 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.

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.

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 Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant, Clean Harbors, Inc., 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, thereunder duly authorized, in the Town of Norwell and the Commonwealth of Massachusetts on the 19th day of May, 2010.

CLEAN HARBORS, INC.

By: /s/ Alan S. McKim
Alan S. McKim, Chairman

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signatures appears below constitutes and appoints Alan S. McKim, James M. Rutledge and C. Michael Malm, jointly and severally, his attorneys-in-fact, each with the power of substitution and resubstitution, for him in any and all capacities, to sign any amendments to this registration statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

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

| Signatures | Title | Date |
|--|--|--------------|
| /s/ Alan S. McKim Alan S. McKim | Chairman of the Board and Chief Executive Officer | May 19, 2010 |
| /s/ James M. Rutledge James M. Rutledge | Executive Vice President and Chief Financial Officer | May 19, 2010 |
| /s/ John R. Beals John R. Beals | Controller and Chief Accounting Officer | May 19, 2010 |

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| | | |
|--|----------|--------------|
| /s/Eugene Banucci Eugene Banucci | Director | May 19, 2010 |
| /s/ John P. DeVillars John P. DeVillars | Director | May 19, 2010 |
| /s/ John F. Kaslow John F. Kaslow | Director | May 19, 2010 |
| /s/ Rod Marlin Rod Marlin | Director | May 19, 2010 |
| /s/ Daniel J. McCarthy Daniel J. McCarthy | Director | May 19, 2010 |
| /s/ John T. Preston John T. Preston | Director | May 19, 2010 |
| /s/ Andrea Robertson Andrea Robertson | Director | May 19, 2010 |
| /s/ Thomas J. Shields Thomas J. Shields | Director | May 19, 2010 |
| /s/ Lorne R. Waxlax Lorne R. Waxlax | Director | May 19, 2010 |

EXHIBIT INDEX

The following exhibits are filed as a part of this Registration Statement:

- 5 Opinion of Davis, Malm & D Agostine, P.C. as to the legality of the securities being registered (filed herewith).
- 23.1 Consent of Independent Registered Public Accounting Firm, Deloitte & Touche LLP (filed herewith).
- 23.2 Consent of Davis, Malm & D Agostine, P.C. is contained in their opinion filed as Exhibit 5.
- 24 Power of Attorney (see page II-1 of this Registration Statement).

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