SMF ENERGY CORP
Form S-3/A
November 16, 2009

As filed with the Securities and Exchange Commission on November 13, 2009
Registration No. 333-162243

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Pre-Effective Amendment No. 1 to
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SMF ENERGY CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	65-0707824
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

200 West Cypress Creek Road, Suite 400
Fort Lauderdale, Florida 33309
Telephone: 954-308-4200
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Richard E. Gathright
Chief Executive Officer and President
SMF Energy Corporation
200 West Cypress Creek Road, Suite 400
Fort Lauderdale, Florida 33309
Telephone: 954-308-4200
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:
S. Lee Terry, Jr.
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202

Telephone: 303-892-9400

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: from time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: ¨

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ¨

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box: ¨

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ¨

Indicate by check mark whether the registrant is a large accelerated filer, accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

o Large accelerated filer o Accelerated filer o Non-accelerated filer x Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per Unit	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, $.01 par value	1,373,000	1.57(2)	$ 2,155,610(2)	$ 120.28(3)

(1) Pursuant to Rule 416 of the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers such additional number of shares of common stock that may become issuable as a result of any stock splits, stock dividends, or other similar transactions.

(2) Estimated solely for the purpose of computing the registration fee. The proposed maximum offering price per share and maximum aggregate offering price for the shares being registered hereby are calculated in accordance

with Rule 457(c) under the Securities Act using the average of the high and low sales price per share of our common stock on November 12, 2009, as reported on the Nasdaq Capital Market.

(3) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

The information in this prospectus is not complete and may be changed. The Selling Stockholders may not sell these securities pursuant to this prospectus until the registration statement filed with the Securities and Exchange Commission becomes effective. This prospectus is not an offer to sell these securities and neither SMF Energy Corporation nor the Selling Stockholders are soliciting offers to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated November 13, 2009

PROSPECTUS

SMF ENERGY CORPORATION
1,373,000 SHARES OF COMMON STOCK

This prospectus relates to the proposed resale by the selling stockholders indentified in this prospectus (each a "Selling Stockholder" and collectively, the "Selling Stockholders") of 1,373,000 shares of common stock (the "Shares") of SMF Energy Corporation.

On June 29, 2009, we completed a recapitalization transaction whereby we entered into a series of exchange agreements (the "Exchange Agreements") with holders of our August 2007 11½% Senior Secured Convertible Promissory Notes (the "Secured Notes"), September 2008 12% Unsecured Convertible Promissory Notes (the "Unsecured Notes"), and Series A, Series B and Series C Convertible Preferred Stock (collectively, the "Preferred Stock") whereby we restructured substantially all of our debt and equity (the "Recapitalization"). In accordance with the Exchange Agreements, we are registering for resale the restricted shares of common stock issued in the Recapitalization as well as the restricted shares of common stock underlying the Series D Convertible Preferred Stock (the "Series D Preferred") issued therein. Accordingly, the Shares offered for resale by this prospectus arising from the Recapitalization consist of (i) approximately 997,821 shares of common stock, (ii) approximately 58,479 shares of common stock issued as compensation to placement agents and (iii) approximately 69,444 shares of common stock issuable upon conversion of the Company's Series D Preferred.

In addition, on May 5, 2009, we entered into a series of payment in kind agreements (the "Payment in Kind Agreements") with holders of our Preferred Stock whereby we issued shares of common stock as payment in kind for cash dividends due to the holders. The Shares now offered for resale also include the approximately 246,909 shares of common stock issued pursuant to the Payment in Kind Agreements. All share numbers used in this prospectus have been adjusted to account for the 1 for 4.5 reverse stock split of our common stock, which became effective October 1, 2009, on the Nasdaq Stock Market, and may not reflect a small number of additional shares that may be issued to the Selling Stockholders on account of rounding up shares held in multiple certificates or in multiple securities accounts.

This offering is not being underwritten. The offering price of the Shares that may be sold by the Selling Stockholders may be the market price for our common stock prevailing at the time of sale on the Nasdaq Capital Market, a price related to the prevailing market price, a negotiated price or such other prices as the Selling Stockholders determine from time to time. We will not receive any proceeds from the sale of the Shares by any of the Selling Stockholders.

Our common stock is listed on the Nasdaq Capital Market under the symbol "FUEL." On November 12, 2009, the closing price of our common stock was $1.54 per share.

For a discussion of certain risks that should be considered by prospective investors, see "Risk Factors" beginning on page 6 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is ________, 2009.

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As used in this prospectus, the terms “SMF,” “we,” “us,” and “our” refer to SMF Energy Corporation.

FORWARD-LOOKING STATEMENTS

This prospectus, including the information incorporated by reference, contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. The use of any statements containing the words “intends,” “believes,” “estimates,” “seeks,” “project,” “expects,” “anticipates,” “plans,” “approximately,” “should,” “may,” “will” or sim are intended to identify such statement. Forward-looking statements inherently involve risks and uncertainties that could cause actual results to differ materially from the forward-looking statements. In evaluating these statements, you should specifically consider various factors, including the risks outlined under the caption “Risk Factors” in this prospectus. You should pay particular attention to the cautionary statements involving our history of losses, our capital requirements, our expansion and acquisition strategies, competition and government regulation. These factors and the others set forth under “Risk Factors” may cause our actual results to differ materially and adversely from any forward-looking statement.

PROSPECTUS SUMMARY

Because this is a summary, it may not contain all information that may be important to you. You should read this entire prospectus, including the information incorporated by reference, before you decide whether to buy our common stock. You should pay special attention to the risks of investing in our common stock as discussed under “Risk Factors.”

SMF Energy Corporation

We are a leading provider of petroleum product distribution services, transportation logistics and emergency response services to the trucking, manufacturing, construction, shipping, utility, energy, chemical, telecommunications and government services industries. We provide our services and products through 34 service locations in the 11 states of Alabama, California, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee and Texas.

The broad range of services we offer our customers includes commercial mobile and bulk fueling; the packaging, distribution and sale of lubricants; integrated out-sourced fuel management; transportation logistics and emergency response services. Our fleet of custom specialized tank wagons, tractor-trailer transports, box trucks, and customized flatbed vehicles delivers diesel fuel and gasoline to customers’ locations on a regularly scheduled or as needed basis, refueling vehicles and equipment, re-supplying fixed-site and temporary bulk storage tanks, and emergency power generation systems; and distributes a wide variety of specialized petroleum products, lubricants and chemicals to our customers. In addition, our fleet of special duty tractor-trailer units provides heavy haul transportation services over short and long distances to customers requiring the movement of over-sized or over-weight equipment and manufactured products.

On February 14, 2007, we changed our name from Streicher Mobile Fueling, Inc. to SMF Energy Corporation and reincorporated in Delaware. Our principal executive offices are located at 200 West Cypress Creek Road, Suite 400, Ft. Lauderdale, Florida 33309, and our telephone number is 954-308-4200. Our website is http://www.mobilefueling.com. The information on our website does not constitute part of this prospectus.

The Offering

We are registering 1,373,000 shares of common stock. The Selling Stockholders are offering to sell the Shares pursuant to this prospectus.

The Selling Stockholders received the Shares in connection with the Recapitalization that was completed on June 29, 2009 or the Payment in Kind Agreements entered into on May 5, 2009. The Shares now offered for resale in connection with the Recapitalization include (i) 997,821 shares of common stock, (ii) 58,479 shares of common stock issued as compensation to placement agents and (iii) 69,444 shares of common stock issuable upon conversion of the Company’s Series D Preferred. Each share of Series D Preferred is convertible into 222 shares of common stock.

The Shares now offered for resale in connection with the Payment in Kind Agreements include 246,909 shares of common stock. We relied on the exemptions from registration provided by Sections 4(2) and 4(6) of the Securities Act and Regulation D promulgated thereunder in connection with the Recapitalization and the Payment in Kind Agreements.

All share amounts in this prospectus have been adjusted to account for the reverse stock split and have been rounded up to the nearest share.

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Use of Proceeds

We will not receive any proceeds from the sale of the Shares by the Selling Stockholders.

CURRENT EVENTS

On September 30, 2009, we effectuated a 1 for 4.5 reverse split of our common stock, which became effective on the Nasdaq Stock Market on October 1, 2009. As a result of the reverse stock split, our issued and outstanding common stock was reduced from approximately 38,498,544 shares to approximately 8,557,314 shares. The par value of the common stock was not affected by the reverse stock split and remains at $0.01 per share. Consequently, on our balance sheet, the aggregate par value of the issued common stock was reduced by reclassifying the par value amount of the eliminated shares of common stock to Additional Paid-in Capital. No fractional shares were issued in connection with the reverse stock split. If, as a result of the reverse stock split, a stockholder would otherwise have held a fractional share, the number of shares received by such stockholder was rounded up to the next highest number of shares. In addition, our authorized common stock was not changed by the reverse stock split.

SELECTED FINANCIAL DATA

The selected financial data set forth below has been prepared in accordance with U.S. generally accepted accounting principles and should be read together with, and is qualified by reference to, SMF's Annual Report on Form 10-K for the year ended June 30, 2009. Specifically, see "Management's Discussion and Analysis of Financial Condition and Results of Operations," our audited consolidated financial statements including the notes thereto, and our independent registered public accounting firm's report in such Form 10-K. The selected data in this section is unaudited and only includes the parts of the Selected Financial Data disclosure originally provided in the Form 10-K that was affected by the reverse stock split. It is not intended to replace the Selected Financial Data or the consolidated financial statements included in the Form 10-K, except that the weighted average number of shares of common stock and per share information for all periods has been revised to reflect the reverse stock split.

	Fiscal Year Ended June 30,				
	2009	2008	2007	2006	2005
Basic and diluted net loss per share attributable to common shareholders	$ (1.39)	$ (2.18)	$ (2.58)	$ (2.24)	$ (0.84)
Basic and diluted weighted average common shares outstanding	3,355	3,215	2,558	2,182	1,746

RISK FACTORS

An investment in the Shares involves a high degree of risk. You should carefully consider the following discussion of risks, in addition to the other information included or incorporated by reference in this prospectus, before purchasing any of the securities. In addition to historical information, the information in this prospectus contains "forward–looking" statements about our future business and performance. See "Forward–Looking Statements." Our actual operating results and financial performance may be very different from what we expect as of the date of this prospectus. The risks below address the material factors that may affect our future operating results and financial performance.

No Assurance of Future Profitability; Losses from Operations; Need for Capital. We incurred net losses in each of the fiscal years ended June 30, 2009 and 2008. In order to generate profits in the future, we need to reduce interest expense, increase the volume of products and services sold at profitable margins, control costs and generate sufficient cash flow to support our working capital and debt service requirements. There is no assurance that we will be able to avoid net losses in the future or that we will be able to raise additional capital on acceptable terms if our capital needs cannot be satisfied by cash flow from operations. During fiscal 2009, we faced a number of challenges that required us to raise additional capital in the face of a general tightening of the credit markets and various Nasdaq listing requirements. While we responded to those challenges by cutting costs, improving efficiencies, and completing a $40 million Recapitalization that reduced our total debt by $4.5 million, lowered our annual servicing expense for interest and dividends by over $1 million, increased our shareholders' equity by $4.1 million and reduced our debt to equity ratio from approximately 9 to 1 on June 30, 2008, to 2 to 1 on June 30, 2009, we may still need to obtain new financing or additional capital in the future in order to expand or sustain existing operations. We may also need to raise additional capital to fund new acquisitions or for additional debt repayment. Even though we believe that our new financial strength after the Recapitalization will enable us to obtain needed capital, there can be no assurance that we will do so or that it can be obtained on terms acceptable to us.

No Assurance of Long Term Efficacy of Reverse Stock Split. We completed a 1 for 4.5 reverse stock split of our common stock which became effective on the Nasdaq Stock Market on October 1, 2009. Even though the reverse stock split was successful in reestablishing compliance with Nasdaq's minimum bid price requirement, the long term efficacy of the reverse stock split in maintaining compliance with Nasdaq's minimum bid price requirement is uncertain. In addition, while we currently meet the minimum bid price, stockholders' equity and other requirements needed to maintain our Nasdaq listing, there is no assurance that we will continue to do so, or that the aggregate market value of our common stock will be greater after the reverse stock split than it would have been without ever effecting a reverse stock split.

Volatility of Trading Market for Our Stock. During the past few years, our stock has sometimes traded in large daily volumes and other times at much lower volumes, in many cases at wide price variances. This volatility, which is generally due to factors beyond our control, could make it difficult for shareholders to sell shares at a predictable price. Quarterly and annual operating results, changes in general conditions in the economy, the financial markets or other developments affecting us could also cause the market price of our common stock to fluctuate. The market price of our common stock may be affected by various other factors unrelated to the number of shares outstanding after the reverse stock split, including our future performance and general market conditions.

Acquisition Availability; Integrating Acquisitions. Our future growth strategy involves the acquisition of complementary businesses, such as wholesale fuel or petroleum lubricants marketers and distributors, wholesale fuel and other commercial mobile fueling companies, and transportation logistics services businesses. It is not certain that we will be able to identify or make suitable acquisitions on acceptable terms or that any future acquisitions will be effectively and profitably integrated into our operations. Acquisitions involve numerous risks that could adversely affect our operating results, including timely and cost effective integration of the operations and personnel of the acquired business, potential write downs of acquired assets, retention of key personnel of the acquired business, potential disruption of existing business, maintenance of uniform standards, controls, procedures and policies, additional capital needs, the effect of changes in management on existing business relationships, and profitability and cash flows generally. Our credit facility with our principal lender also requires us to obtain the consent of the principal lender prior to incurring additional debt, or entering into mergers, consolidations or sales of assets.

Growth Dependent upon Future Expansion; Risks Associated with Expansion into New Markets. While we intend to expand more quickly through acquisitions, our growth will also depend upon the ability to achieve greater penetration in existing markets and to successfully enter new markets in both additional major and secondary metropolitan areas. Such organic expansion will largely be dependent on our ability to demonstrate the benefits of our services and products to potential new customers, successfully establish and operate new locations, hire, train and retain qualified management, operating, marketing and sales personnel, finance acquisitions, capital expenditures and working capital requirements, secure reliable sources of product supply on a timely basis and on commercially acceptable credit terms, and successfully manage growth by effectively supervising operations, controlling costs and maintaining appropriate quality controls. There can be no assurance that we will be able to successfully expand our operations into new markets.

Interest Expense. A substantial portion of our net losses for the fiscal years ended June 30, 2009 and 2008 was attributable to the substantial interest burden borne by the Company, including $2.5 million of interest expense in fiscal 2009 and $3.1 million in fiscal 2008. The majority of this expense was interest accrued on our revolving bank debt and our August 2007 senior subordinated secured debt, the burden of which was substantially reduced by our Recapitalization. We are exposed to fluctuating interest rates associated with our line of credit. If and to the extent that interest rates generally increase or we are otherwise required to bear higher interest rates for our future borrowings, our interest expense could increase, adversely affecting our results of operations and financial condition. Similarly, if we borrow to make one or more acquisitions or to make up for future net losses, the heavier interest burden could have a detrimental effect on our results of operations and financial condition.

Need to Maintain Effective Internal Controls. In fiscal 2006, our management identified significant deficiencies related to policies and procedures to ensure accurate and reliable interim and annual consolidated financial statements that, considered together, constituted a material weakness in our internal controls. Even though we have taken the necessary steps to correct the identified material weakness and have not identified any material weakness for fiscal 2009, it is possible that, considering our size, our limited capital resources and our need to continue to expand our business by acquisitions and diversification, we may identify another material weakness in our internal controls in the future. Moreover, even if we do not identify any material weakness or significant deficiencies, our internal controls may not prevent all potential errors or fraud because any control system, no matter how well designed, cannot provide absolute assurance that the objectives of the control system will be achieved.

Dependence on Key Personnel. Our future success will be largely dependent on the continued services and efforts of Richard E. Gathright, our Chief Executive Officer and President, and on those of other key executive personnel. The loss of the services of Mr. Gathright or other executive personnel could have a material adverse effect on our business and prospects. Our success and plans for future growth will also depend on our ability to attract and retain additional qualified management, operating, marketing, sales and financial personnel. There can be no assurance that we will be able to hire or retain such personnel on terms satisfactory to us. We have entered into written employment agreements with Mr. Gathright and certain other key executive personnel. While Mr. Gathright's employment agreement provides for automatic one-year extensions unless either party gives notice of intent not to renew prior to such extension, there is no assurance that Mr. Gathright's services or those of our other executive personnel will continue to be available to us.

Fuel Pricing, Supply Availability; Supplier Credit. Diesel fuel and gasoline are commodities that are refined and distributed by numerous sources. We purchase the fuel delivered to our customers from multiple suppliers at daily market prices and in some cases qualify for certain discounts. We monitor fuel prices and trends in each of our service markets on a daily basis and seek to purchase our supply at the lowest prices and under the most favorable terms. Commodity price risk is generally mitigated since we purchase and deliver our fuel supply daily and generally utilize cost-plus pricing when billing our customers. As a result, we have not engaged in derivatives or futures trading to hedge fuel price movements. If we cannot continue to utilize cost-plus pricing when billing our customers, however, margins would likely decrease and losses could increase. In addition, diesel fuel and gasoline may be subject to supply interruption due to a number of factors, including natural disasters, refinery and/or pipeline outages and labor disruptions. Limitations on the amount of credit available from suppliers has become a more significant issue for us in recent years as the price of fuel increased and then the credit available to businesses tightened over the past year. As a result, increasing the availability of short term credit for fuel purchases was one of the principal motivations for the Recapitalization, which reduced our total debt by $4.5 million, lowered our annual servicing expense for interest and dividends by over $1 million, increased our shareholders' equity by $4.1 million and reduced our debt to equity ratio from approximately 9 to 1 at June 30, 2008 to 2 to 1 on June 30, 2009. In any event, future reductions in the availability of fuel supplies or supplier credit to purchase fuel could adversely affect our ability to provide mobile fueling, commercial bulk fueling, and emergency response services and, in turn, could negatively affect our results of operations.

Risks Associated with Customer Concentration; Absence of Written Agreements. Although we provide services to many customers, a significant portion of our revenue is generated from a few of our larger customers. Sales to our largest customer represented 10% of our total revenue in fiscal year 2009. While we have formal, length of service written contracts with some of these larger customers, such agreements are not customary and we do not have them with the majority of our customers. As a result, most of our customers can terminate our services at any time and for any reason. Correspondingly, we may elect to discontinue service to a customer if changes in the service conditions or other factors cause us not to meet our minimum level of margins and rates, and the pricing or delivery arrangements cannot be re-negotiated. As a result of this customer concentration and the absence of written agreements, our business, results of operations and financial condition could be materially adversely affected if one or more of our larger customers were lost or if we were to experience a high rate of service terminations of our other customers.

Effect of Reduced Fuel Usage. The dramatic increases in fuel prices in fiscal 2008 and through the beginning of fiscal 2009, followed by the drastic downturn in economic conditions worldwide, caused businesses, including many of our customers, to take steps to reduce the amount of fuel that they consume in their operations by driving fewer miles or, in some cases, by using higher mileage or alternative fuel vehicles. In turn, these reductions have reduced the volumes delivered by us to those customers. While recent results suggest that customer demand has stabilized, it is possible that customers' fuel usage will decline further in the future, requiring us to obtain additional customers to replace the lost volume. If we cannot replace the lost volume with new customers, our revenues and results of operation will be negatively affected.

Competition. We compete with other service providers, including several large regional providers and numerous small, local independent operators, who provide some or all of the same services that we offer to our customers. In the mobile fueling area, we also compete with retail fuel marketing, since fleet operators have the option of fueling their own equipment at retail stations and at other third-party service locations such as card lock facilities. Our ability to compete is affected by numerous factors, including price, the complexity and technical nature of the services required, delivery dependability, credit terms, the costs incurred for non-mobile fueling alternatives, service locations as well as the type of reporting and invoicing services provided. There can be no assurance that we will be able to continue to compete successfully as a result of these or other factors.

Operating Risks May Not Be Covered by Insurance. Our operations are subject to the operating hazards and risks normally incidental to handling, storing and transporting diesel fuel and gasoline, which are classified as hazardous materials. We maintain insurance policies in amounts and with coverages and deductibles that we believe are reasonable and prudent. There can be no assurance, however, that our insurance will be adequate to protect us from liabilities and expenses that may arise from claims for personal and property damage arising in the ordinary course of business, including business interruption; that we will be able to maintain acceptable levels of insurance; or that insurance will be available at economical prices.

Governmental Regulation. Numerous federal, state and local laws, regulations and ordinances, including those relating to protection of the environment and worker safety, affect our operations. There can be no assurance that we will be able to continue to comply with existing and future regulatory requirements without incurring substantial costs or otherwise adversely affecting our operations.

Changes in Environmental Requirements. We expect to generate future business by converting certain fleet operators, currently utilizing underground fuel storage tanks for their fueling needs, to commercial mobile fueling. The owners of underground storage tanks have been required to remove or retrofit those tanks to comply with technical regulatory requirements pertaining to their construction and operation. If other more economical means of compliance are developed or adopted by owners of underground storage tanks, the opportunity to market our services to these owners may be adversely affected.

Nasdaq Listing of Our Common Stock. Our common stock is listed on the Nasdaq Capital Market under the symbol “FUEL.” While we consider the listing on Nasdaq to be a valuable attribute of our common stock, there can be no assurance that such listing will continue. Beginning in fiscal 2008, our listing on Nasdaq came into question on two different grounds, namely the stockholders equity rule and the bid price rule. Our June 2009 Recapitalization and our October 2009 reverse stock split have established our compliance with both of these requirements, and Nasdaq has confirmed our compliance with the rules relating thereto. After we took several interim steps to increase our stockholders’ equity, the Recapitalization increased our stockholders’ equity to $6.5 million at June 30, 2009. In addition, after our 1 for 4.5 reverse stock split, the closing bid prices of our common stock were above $1.00 for the ten consecutive trading days required by Nasdaq to reestablish compliance with the minimum bid price rule. There can be no assurance, however, that such compliance will continue indefinitely. For example, future net operating losses would reduce our stockholders’ equity and could cause us to again violate Nasdaq Marketplace Rule 4310(c)(3). Similarly, subsequent trading prices for our common stock could fall below $1.00 for 30 consecutive business days in the future, causing us to violate Marketplace Rule 4310(c). Any such delisting of our common stock could have a variety of adverse consequences, including but not limited to reduced liquidity for shareholders.

Terrorism and Warfare in the Middle East May Adversely Affect the Economy and the Price and Availability of Petroleum Products. Terrorist attacks, as well as the continuing political unrest and warfare in the Middle East, may adversely impact the price and availability of fuel, our results of operations, our ability to raise capital and our future growth. The impact of terrorism on the oil industry in general, and on us in particular, is not known at this time. An act of terror could result in disruptions of crude oil or natural gas supplies and markets, the sources of our products, and our infrastructure facilities or our suppliers could be direct or indirect targets. Terrorist activity may also hinder our ability to transport fuel if the means of supply transportation, such as rail or pipelines, become damaged as a result of an attack. A lower level of economic activity following a terrorist attack could result in a decline in energy consumption, which could adversely affect our revenues or restrict our future growth. Instability in the financial markets as a result of terrorism could also impair our ability to raise capital. Terrorist activity or further instability in the Middle East could also lead to increased volatility in fuel prices, which could adversely affect our business generally.

USE OF PROCEEDS

We will not receive any proceeds from the sale of the Shares by the Selling Stockholders.

SELLING STOCKHOLDERS

We are registering for resale 1,373,000 shares of our common stock. The Selling Stockholders received the Shares in connection with the Recapitalization that was completed on June 29, 2009 and in connection with the Payment in Kind Agreements entered into on May 5, 2009. The Shares now offered for resale in connection with the Recapitalization include (i) 1,056,300 shares of common stock and (ii) 69,444 shares of common stock issuable upon conversion of the Company's Series D Preferred. The Shares now offered for resale in connection with the Payment in Kind Agreements include 246,909 shares of common stock. The following table sets forth certain information regarding the beneficial ownership of the Selling Stockholders, as of August 3, 2009. We have prepared this table based on information furnished to us by or on behalf of the Selling Stockholders as of that date, as adjusted to account for the 1 for 4.5 reverse stock split on October 1, 2009. While we have rounded up the number of post-split shares for each shareholder where required, it is possible that some of the Selling Stockholders hold their shares in multiple accounts or in multiple certificates, in which event additional rounding up shares may have been issued to them, commensurately increasing their post-split shareholdings.

The table below lists the Selling Stockholders and other information regarding the beneficial ownership of common stock by the Selling Stockholders. Beneficial ownership is determined in accordance with Rule 13d-3(d) as promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Beneficial ownership generally includes voting or investment power with respect to securities and also includes any shares that the Selling Stockholders had a right to acquire within 60 days of August 3, 2009. Unless otherwise noted, each person or group identified possesses sole voting and investment power with respect to the offered shares. The percentage of ownership data is based on the split-adjusted 8,153,899 shares of our common stock issued and outstanding as of August 3, 2009. Since the time that the Selling Stockholders provided us with the information below, they may have sold, transferred or otherwise disposed of some or all of their shares in transactions exempt from the registration requirements of the Securities Act.

To the best of our knowledge, none of the Selling Stockholders has had any position, office or other material relationship with us or any of our affiliates within the past three years except as described below:

- Active Investors II, Ltd. and Active Investors III, Ltd., which are investors in our securities, are funds that are managed by Fundamental Management Corporation. Messrs. O'Connor and Picow are two of our directors and are also directors and shareholders of Fundamental Management Corporation. Each of Messrs. O'Connor and Picow disclaim any beneficial ownership in the shares held by these funds, and Fundamental Management Corporation has excluded both directors from any participation, influence or control over the voting, disposition, transfer or purchase of the Company's securities.

- Mr. Gathright is our Chief Executive Officer and President and one of our directors.
- Messrs. Gathright, Beard, Messenbaugh, Shaw, Shore, Vinger and Williams are seven of our executive officers.
- C. Rodney O'Connor is one of our directors.
- Louise P. Lungaro is our Director of Corporate Services and Corporate Secretary and is also the spouse of Mr. Gathright.
-