Vulcan Materials CO
Form 10-Q
May 05, 2009

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2009

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from __________ to __________

Commission File Number 001-33841

VULCAN MATERIALS COMPANY

(Exact name of registrant as specified in its charter)

New Jersey	**20-8579133**
(State or other jurisdiction of incorporation)	(I.R.S. Employer Identification No.)
1200 Urban Center Drive, Birmingham, Alabama	**35242**
(Address of principal executive offices)	(zip code)

(205) 298-3000

(Registrant s telephone number including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
Yes o No o

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 þ	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes o No þ

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date:

Class	Shares outstanding at March 31, 2009

Common Stock, $1 Par Value	110,556,809

VULCAN MATERIALS COMPANY
FORM 10-Q
QUARTER ENDED MARCH 31, 2009

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements
Vulcan Materials Company
and Subsidiary Companies

	(Amounts in thousands)		
Consolidated Balance Sheets (Condensed and unaudited)	**March 31 2009**	**December 31 2008**	**March 31 2008**
Assets			
Cash and cash equivalents	$ 47,446	$ 10,194	$ 51,023
Medium-term investments	11,530	36,734	0
Accounts and notes receivable			
Accounts and notes receivable, gross	339,197	365,688	444,406
Less: Allowance for doubtful accounts	(9,134)	(8,711)	(7,131)
Accounts and notes receivable, net	330,063	356,977	437,275
Inventories			
Finished products	292,776	295,525	310,316
Raw materials	29,023	28,568	31,872
Products in process	4,857	4,475	4,356
Operating supplies and other	35,164	35,743	38,292
Inventories	361,820	364,311	384,836
Deferred income taxes	70,442	71,205	68,522
Prepaid expenses	60,840	54,469	69,537
Assets held for sale	0	0	148,727
Total current assets	882,141	893,890	1,159,920
Investments and long-term receivables	28,011	27,998	24,743
Property, plant & equipment			
Property, plant & equipment, cost	6,649,867	6,635,873	5,956,433
Less: Reserve for depr., depl. & amort.	(2,560,199)	(2,480,061)	(2,267,613)
Property, plant & equipment, net	4,089,668	4,155,812	3,688,820
Goodwill	3,082,467	3,083,013	3,900,360
Other intangible assets, net	672,871	673,792	121,802
Other assets	80,406	79,664	164,360
Total assets	$ 8,835,564	$ 8,914,169	$ 9,060,005
Liabilities and Shareholders Equity			
Current maturities of long-term debt	$ 311,689	$ 311,685	$ 34,834
Short-term borrowings	667,000	1,082,500	2,192,689
Trade payables and accruals	138,939	147,104	197,529
Other current liabilities	154,432	121,777	183,778
Liabilities of assets held for sale	0	0	6,434

Total current liabilities	1,272,060	1,663,066	2,615,264
Long-term debt	2,536,211	2,153,588	1,529,672
Deferred income taxes	954,577	949,036	675,425
Other noncurrent liabilities	619,386	625,743	492,625
Total liabilities	5,382,234	5,391,433	5,312,986
Other commitments and contingencies (Notes 13 & 19)			
Shareholders equity			
Common stock, $1 par value	110,556	110,270	109,441
Capital in excess of par value	1,750,688	1,734,835	1,671,162
Retained earnings	1,775,587	1,862,913	2,040,864
Accumulated other comprehensive loss	(183,501)	(185,282)	(74,448)
Shareholders equity	3,453,330	3,522,736	3,747,019
Total liabilities and shareholders equity	$ 8,835,564	$ 8,914,169	$ 9,060,005

See accompanying Notes to Condensed Consolidated Financial Statements

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Vulcan Materials Company
and Subsidiary Companies
(Amounts and shares in thousands, except per share data)

Consolidated Statements of Earnings (Condensed and unaudited)	**Three Months Ended March 31** **2009**	**2008**
Net sales	$ 567,895	$ 771,762
Delivery revenues	32,399	45,577
Total revenues	600,294	817,339
Cost of goods sold	490,288	617,312
Delivery costs	32,399	45,577
Cost of revenues	522,687	662,889
Gross profit	77,607	154,450
Selling, administrative and general expenses	79,717	92,576
Gain on sale of property, plant & equipment and businesses, net	2,503	3,945
Other operating (income) expense, net	1,719	(939)
Operating earnings (loss)	(1,326)	66,758
Other income (expense), net	(1,075)	(2,651)
Interest income	795	671
Interest expense	43,919	43,458
Earnings (loss) from continuing operations before income taxes	(45,525)	21,320
Provision (benefit) for income taxes	(13,270)	6,835
Earnings (loss) from continuing operations	(32,255)	14,485
Loss on discontinued operations, net of tax (Note 2)	(525)	(552)
Net earnings (loss)	($32,780)	$ 13,933
Basic earnings (loss) per share		
Continuing operations	($0.29)	$ 0.13
Discontinued operations	(0.01)	0.00
Net earnings (loss) per share	($0.30)	$ 0.13
Diluted earnings (loss) per share		
Continuing operations	($0.29)	$ 0.13
Discontinued operations	(0.01)	0.00

Net earnings (loss) per share	($0.30)	$ 0.13
Weighted-average common shares outstanding		
Basic	110,598	108,644
Assuming dilution	110,598	109,898
Cash dividends declared per share of common stock	$ 0.49	$ 0.49
Depreciation, depletion, accretion and amortization from continuing operations	$ 99,315	$ 95,856
Effective tax rate from continuing operations	29.1%	32.1%

See accompanying Notes to Condensed Consolidated Financial Statements

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Vulcan Materials Company
and Subsidiary Companies

Consolidated Statements of Cash Flows (Condensed and unaudited)	(Amounts in thousands) **Three Months Ended March 31** **2009**	**2008** **(As Restated See Note 1)**
Operating Activities		
Net earnings (loss)	($32,780)	$ 13,933
Adjustments to reconcile net earnings (loss) to net cash provided by operating activities		
Depreciation, depletion, accretion and amortization	99,315	95,856
Net gain on sale of property, plant & equipment and businesses	(3,227)	(3,945)
Contributions to pension plans	(1,131)	(738)
Share-based compensation	5,791	4,219
Excess tax benefit from share-based compensation	(196)	(3,162)
Deferred tax provision	2,619	1,620
Changes in assets and liabilities before initial effects of business acquisitions and dispositions	36,311	(90,689)
Other, net	(1,604)	(4,177)
Net cash provided by operating activities	$ 105,098	$ 12,917
Investing Activities		
Purchases of property, plant & equipment	($25,638)	($109,286)
Proceeds from sale of property, plant & equipment	3,070	6,588
Proceeds from sale of businesses	11,537	17,514
Payment for businesses acquired, net of acquired cash	0	(55,885)
Redemption of medium-term investments	25,203	0
Proceeds from loan on life insurance policies	0	28,646
Withdrawal from nonconsolidated companies, net	113	519
Other, net	323	4,599
Net cash provided by (used for) investing activities	$ 14,608	($107,305)
Financing Activities		
Net short-term borrowings (payments)	($417,475)	$ 101,189
Payment of short-term debt and current maturities	(15,083)	(403)
Proceeds from issuance of long-term debt, net of discounts	397,660	0
Debt issuance costs	(3,033)	(100)
Proceeds from issuance of common stock	6,800	55,078
Dividends paid	(54,069)	(53,177)
Proceeds from exercise of stock options	2,755	4,199
Excess tax benefit from share-based compensation	196	3,162

Other, net		(205)		575
Net cash provided by (used for) financing activities		($82,454)	$	110,523
Net increase in cash and cash equivalents		37,252		16,135
Cash and cash equivalents at beginning of year		10,194		34,888
Cash and cash equivalents at end of period	$	47,446	$	51,023

See accompanying Notes to Condensed Consolidated Financial Statements

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VULCAN MATERIALS COMPANY AND SUBSIDIARY COMPANIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation

Our accompanying unaudited condensed consolidated financial statements were prepared in compliance with the instructions to Form 10-Q and Article 10 of Regulation S-X and thus do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. In the opinion of our management, the statements reflect all adjustments, including those of a normal recurring nature, necessary to present fairly the results of the reported interim periods. Operating results for the three month period ended March 31, 2009 are not necessarily indicative of the results that may be expected for the year ended December 31, 2009. For further information, refer to the consolidated financial statements and footnotes included in our most recent Annual Report on Form 10-K.

Due to the 2005 sale of our Chemicals business, as presented in Note 2, the operating results of the Chemicals business are presented as discontinued operations in the accompanying Condensed Consolidated Statements of Earnings.

Correction of Cash Flows from Operating Activities and Investing Activities

As disclosed in our Annual Report on Form 10-K for the year ended December 31, 2008, we discovered an error in our reporting of cash flows from operating activities and investing activities in our Quarterly Reports on Form 10-Q for the three, six and nine months ended March 31, 2008, June 30, 2008 and September 30, 2008, respectively. This error resulted from the misclassification of certain noncash amounts included in various swap transactions associated with the divestiture of assets required as part of the Florida Rock acquisition. The error solely affected the classification of these amounts between cash used for investing activities and cash provided by operating activities in the Unaudited Condensed Consolidated Statements of Cash Flows, but had no effect on net cash flows. In addition, the error had no effect on our Unaudited Condensed Consolidated Balance Sheet or Unaudited Condensed Consolidated Statement of Earnings for the period ended March 31, 2008. Accordingly, our total revenues, net earnings, earnings per share, total cash flows, cash and cash equivalents, liquidity and shareholders equity remain unchanged. Our compliance with any financial covenants under our borrowing facilities also was not affected.

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A summary of the effects of the correction of this error for the three months ended March 31, 2008 is as follows (in thousands of dollars):

	Three Months Ended March 31, 2008			
	As Reported	Correction	Reclassifications[1]	As Restated
Statement of Cash Flows				
Excess tax benefits from share-based compensation	$ 0	$ 0	($3,162)	($3,162)
Deferred tax provision	0	0	1,620	1,620
Changes in assets and liabilities before initial effects of business acquisitions and dispositions	(72,853)	(19,378)	1,542	(90,689)
Net cash provided by operating activities	$ 32,295	($19,378)	$ 0	$ 12,917
Purchases of property, plant & equipment	($128,664)	$ 19,378	$ 0	($109,286)
Net cash used for investing activities	($126,683)	$ 19,378	$ 0	($107,305)

[1] We have reclassified certain amounts from prior periods to conform to the 2009 presentation.

2. Discontinued Operations

In June 2005, we sold substantially all the assets of our Chemicals business, known as Vulcan Chemicals, to Basic Chemicals, a subsidiary of Occidental Chemical Corporation. In addition to the initial cash proceeds, Basic Chemicals was required to make payments under two earn-out agreements subject to certain conditions. During 2007, we received the final payment under the ECU (electrochemical unit) earn-out.

Proceeds under the second earn-out agreement are determined based on the performance of the hydrochlorocarbon product HCC-240fa (commonly referred to as 5CP) from the closing of the transaction through December 31, 2012 (5CP earn-out). Under this earn-out agreement, cash plant margin for 5CP, as defined in the Asset Purchase Agreement, in excess of an annual threshold amount is shared equally between Vulcan and Basic Chemicals. The primary determinant of the value for this earn-out is the level of growth in 5CP sales volume.

At the closing date, the fair value of the consideration received in connection with the sale of the Chemicals business, including anticipated cash flows from the two earn-out agreements, was expected to exceed the net carrying value of the assets and liabilities sold. However, pursuant to Statement of Financial Accounting Standards (SFAS) No. 5, Accounting for Contingencies, since the proceeds under the earn-out agreements were contingent in nature, no gain was recognized on the Chemicals sale and the value recorded at the June 7, 2005 closing date referable to these two earn-outs was limited to $128,167,000. Furthermore, under the Securities and Exchange Commission (SEC) Staff Accounting Bulletin Topic 5:Z:5, Classification and Disclosure of

Contingencies Relating to Discontinued Operations (SAB Topic 5:Z:5), upward adjustments to the fair value of the ECU earn-out subsequent to closing, which totaled $51,070,000, were reported in continuing operations, and therefore did not contribute to the gain or loss on the sale of the Chemicals business. A gain on disposal of the Chemicals business is recognized to the extent cumulative cash receipts under the 5CP earn-out exceed the initial value recorded.

In March 2009, we received a payment of $11,537,000 under the 5CP earn-out related to the year ended December 31, 2008. As this cash receipt exceeded the carrying amount of the 5CP receivable, we recorded a gain on disposal of discontinued operations of $723,000. Any future payments received pursuant to the 5CP earn-out will be recorded as additional gain on disposal of discontinued operations. During 2008, we received a payment of $10,014,000 under the 5CP earn-out related to the year ended December 31, 2007.

We are liable for a cash transaction bonus payable to certain key former Chemicals employees. This

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transaction bonus is payable if cash receipts realized from the two earn-out agreements described above exceed an established minimum threshold. Amounts due are payable annually based on the prior year s results. Based on the amount of the 5CP payment received in March 2009, we expect the 2009 payout will be approximately $700,000 and have accrued this amount as of March 31, 2009.

There were no net sales or revenues from discontinued operations during the three month periods ended March 31, 2009 or March 31, 2008. Results from discontinued operations are as follows (in thousands of dollars):

	Three Months Ended March 31	
	2009	**2008**
Loss from results of discontinued operations	($1,599)	($920)
Gain on disposal of discontinued operations	723	0
Income tax benefit	351	368
Loss on discontinued operations, net of tax	($525)	($552)

The pretax losses from discontinued operations primarily reflect charges related to general and product liability costs, including legal defense costs, environmental remediation costs associated with our former Chemicals businesses, and charges related to the cash transaction bonus as noted above.

3. Earnings Per Share (EPS)

We report two earnings (loss) per share numbers, basic and diluted. These are computed by dividing net earnings (loss) by the weighted-average common shares outstanding (basic EPS) or weighted-average common shares outstanding assuming dilution (diluted EPS) as set forth below (in thousands of shares):

	Three Months Ended March 31	
	2009	**2008**
Weighted-average common shares outstanding	110,598	108,644
Dilutive effect of		
Stock options	0	973
Other stock compensation plans	0	281
Weighted-average common shares outstanding, assuming dilution	110,598	109,898

All dilutive common stock equivalents are reflected in our earnings (loss) per share calculations. Antidilutive common stock equivalents are not included in our earnings per share calculations. The number of antidilutive common stock equivalents are as follows (in thousands of shares):

	Three Months Ended March 31	
	2009	**2008**
Antidilutive common stock equivalents	3,838	974

4. Income Taxes

Our effective tax rate is based on expected income, statutory tax rates and tax planning opportunities available in the various jurisdictions in which we operate. For interim financial reporting, we estimate the annual tax rate based on projected taxable income for the full year and record a quarterly income tax provision in accordance with the anticipated annual rate. As the year progresses, we refine the estimates of the year s taxable income as new information becomes available, including year-to-date financial results. This continual estimation process often results in a change to our expected effective tax rate for the year. When this occurs, we adjust the income tax provision during the quarter in which the change in estimate occurs so that the year-to-date provision reflects the expected annual tax rate. Significant judgment is required in determining our effective tax rate and in evaluating our tax positions.

In accordance with FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109, we recognize a tax benefit associated with an uncertain tax position when, in our judgment, it is more likely than not that the position will be sustained upon examination by a taxing authority. For a tax position that meets the more-likely-than-not recognition threshold, we initially and subsequently measure the tax benefit as the largest amount that we judge to have a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority. Our liability associated with unrecognized tax benefits is adjusted periodically due to changing circumstances, such as the progress of tax audits, case law developments and new or emerging legislation. Such adjustments are recognized entirely in the period in which they are identified. Our effective tax rate includes the net impact of changes in the liability for unrecognized tax benefits and subsequent adjustments as considered appropriate by management.

The effective tax rates from continuing operations for the three months ended March 31, 2009 and 2008 were 29.1% and 32.1%, respectively. These rates include discrete adjustments in the first quarter of 2009 for the reversal of uncertain tax position accruals for which the statute of limitations has expired. The projected effective tax rate from continuing operations for the first quarter of 2009, excluding discrete adjustments, is 24.2%, a decrease of 6.0 percentage points from the 30.2% projected effective tax rate for the first quarter of 2008, also excluding discrete adjustments. The decrease in the effective tax rate primarily results from a greater benefit from statutory depletion partially offset by an increase in state taxes.

5. Medium-term Investments

At March 31, 2009 and December 31, 2008, we held investments with a principal balance totaling approximately $13,633,000 and $38,837,000, respectively, in money market and other money funds at The Reserve, an investment management company specializing in such funds. The substantial majority of our investment was held in the Reserve International Liquidity Fund, Ltd. On September 15, 2008, Lehman Brothers Holdings Inc. filed for bankruptcy protection. In the following days, The Reserve announced that it was closing all of its money funds, some of which owned Lehman Brothers securities, and was suspending redemptions from and purchases of its funds, including the Reserve International Liquidity Fund. As a result of the temporary suspension of redemptions and the uncertainty as to the timing of such redemptions, we have classified our investments in The Reserve funds as medium-term investments. Based on public statements issued by The Reserve and the maturity dates of the underlying investments, we believe that proceeds from the liquidation of the money funds in which we have investments will be received within one year from the date of the accompanying Condensed Consolidated Balance Sheets, and therefore, such investments are classified as current.

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During the first quarter of 2009 and the fourth quarter of 2008, The Reserve redeemed $25,203,000 and $258,000, respectively, of our investment. In addition, during the third quarter of 2008 we recognized a charge of $2,103,000 (included in other income (expense), net) to reduce the principal balance to an estimate of the fair value of our investment in these funds. This reduction resulted in balances as of March 31, 2009 and December 31, 2008 of $11,530,000 and $36,734,000, respectively, as reported on our accompanying Condensed Consolidated Balance Sheets. See Note 7 for further discussion of the fair value determination. Our investment in these funds as of March 31, 2008 amounted to $43,240,000 and was classified as cash equivalents in the accompanying Condensed Consolidated Balance Sheets at such date.

6. Derivative Instruments

During the normal course of operations, we are exposed to market risks including fluctuations in interest rates, fluctuations in foreign currency exchange rates and changes in commodity pricing. From time to time, and consistent with our risk management policies, we use derivative instruments to hedge against these market risks. We do not utilize derivative instruments for trading or other speculative purposes. The interest rate swap agreements described below were designated as cash flow hedges of future interest payments pursuant to SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133).

In December 2007, we issued $325,000,000 of 3-year floating (variable) rate notes that bear interest at 3-month London Interbank Offered Rate (LIBOR) plus 1.25% per annum. Concurrently, we entered into a 3-year interest rate swap agreement in the stated (notional) amount of $325,000,000. Under this agreement, we pay a fixed interest rate of 5.25% and receive 3-month LIBOR plus 1.25% per annum. Concurrent with each quarterly interest payment, the portion of this swap related to that interest payment is settled and the associated realized gain or loss is recognized. For the 12-month period ending March 31, 2010, we estimate that $9,177,000 of the loss accumulated in Other Comprehensive Income (OCI) will be reclassified to earnings.

Additionally, during 2007, we entered into fifteen forward starting interest rate swap agreements for a total notional amount of $1,500,000,000. On December 11, 2007, upon the issuance of the related fixed-rate debt, we terminated and settled for a cash payment of $57,303,000 a portion of these forward starting swaps with an aggregate notional amount of $900,000,000 ($300,000,000 5-year, $350,000,000 10-year and $250,000,000 30-year).

In December 2007, the remaining forward starting swaps on an aggregate notional amount of $600,000,000 were extended to August 29, 2008. On June 20, 2008, upon the issuance of $650,000,000 of related fixed-rate debt, we terminated and settled for a cash payment of $32,474,000 the remaining forward starting swaps.

Amounts accumulated in other comprehensive loss related to the highly effective portion of the fifteen forward starting interest rate swaps will be amortized to interest expense over the remaining term of the related debt. For the 12-month period ending March 31, 2010, we estimate that $7,219,000 of the loss accumulated in OCI will be reclassified to earnings.

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FAS 133 requires the recognition of all derivative instruments at fair value in the balance sheet. Fair values of derivative instruments designated as hedging instruments are summarized as follows (in thousands of dollars):