

MILLENNIUM CHEMICALS INC
Form 10-Q/A
September 24, 2004

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Form 10-Q/A
(Amendment No. 3)

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

For the quarterly period ended June 30, 2004

OR

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: 1-12091

MILLENNIUM CHEMICALS INC.
(Exact name of registrant as specified in its charter)

Delaware 22-3436215
(State or other jurisdiction of (I.R.S. Employer Identification No.)
incorporation or organization)

20 Wight Avenue, Suite 100
Hunt Valley, MD 21030
(Address of principal executive offices)

410-229-4400
(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 is required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No .

Indicate by check mark whether the registrant is an accelerated filer as defined in Rule 12b-2 of the Act).

Yes No .

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Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 65,379,892 shares of Common Stock, par value \$.01 per share, as of July 31, 2004, excluding 12,516,694 shares held by the registrant, its subsidiaries and certain Company trusts that are not entitled to vote.

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Explanatory Note

Millennium Chemicals Inc. (the "Company") filed Amendment No. 2 ("Amendment No. 2") to its Quarterly Report on Form 10-Q for the period ended June 30, 2004 (the "Quarterly Report") to provide additional information relating to the Company's material weakness in internal control over financial reporting relating to the computation of deferred income taxes for the Company's investment in Equistar Chemicals, LP; the analysis and re-computation performed by the Company to correct such deferred income tax calculation; and the steps the Company is taking to remediate such material weakness.

This Amendment No. 3 to the Quarterly Report ("Amendment No. 3") contains the text of Amendment No. 2 in its entirety apart from the explanatory note and exhibits thereto. This Amendment No. 3 also includes as exhibits certificates of each of the Chief Executive Officer and Chief Financial Officer that include paragraphs 4 and 5, which were unintentionally omitted from the certificates filed as exhibits to Amendment No. 2.

PART I. FINANCIAL INFORMATION

Item 4. Controls and Procedures

- (a) The Company maintains disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in the Company's filings under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the periods specified in the rules and forms of the Securities and Exchange Commission (the "SEC") and that such information is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

As a result of tax integration activities that began in the second quarter of 2004 with respect to the Company's proposed business combination with Lyondell, the Company determined at the beginning of July 2004 that it had made errors in the computation of its tax basis in Equistar, which in turn had been used to compute the Company's deferred income taxes. In response to the determination that errors had been made, the Company performed a thorough analysis and re-computation of the Company's tax basis in Equistar. In late July 2004, the Company completed the analysis and re-computation necessary to verify and quantify the errors and prepare a restatement to correct the errors, which restatement was reflected in Amendment No. 2 to the Company's Annual Report on Form 10-K for the fiscal

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year ended December 31, 2003, filed with the SEC on August 9, 2004, Amendment No. 1 to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 2004, and the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2004 ("June 10-Q"), filed with the SEC on August 9, 2004.

The restatement of prior periods' financial statements that resulted from the analysis and recomputation discussed above decreased the Company's liability for deferred income taxes and shareholders' deficit at June 30, 2004, March 31, 2004, and December 31, 2003 and 2002 by \$15 million. The restatement similarly decreased liabilities for deferred income taxes and increased shareholders' equity at December 31, 2001 and 2000 by \$15 million. The restatement did not affect the Company's cash flow or operating income in any period.

The errors corrected in the restatement were the result of (i) an incorrect computation by the Company in 1998 of the Company's original tax basis in the net assets it contributed to Equistar upon the joint venture's formation in December 1997 and (ii) incorrect computations by the Company for 1998 and 1999 of changes in the amount of such tax basis. The Company also discovered a de minimis error made in 2001. The Company believes that the errors were attributable to a material weakness in internal control over financial reporting relating to the computation by the Company of deferred income taxes for the Company's investment in Equistar. The material weakness consisted of (i) inadequate review and verification by the Company in 1998 of tax basis data relating to net assets contributed by the Company to Equistar in December 1997, and (ii) incorrect interpretation by the Company of Equistar tax return information provided by the "tax matters partner" of Equistar and used by Millennium to compute changes in its tax basis in Equistar for 1998 and 1999. Under Equistar's partnership agreement, Lyondell serves as the tax matters partner and, as such, prepares and files Equistar's tax returns.

In order to remediate the material weakness in internal control over financial reporting, the Company is documenting the procedures used to analyze and re-compute the Company's tax basis in Equistar in July 2004 for

implementation with respect to the third quarter of 2004 and subsequent reporting periods. These procedures include (i) the detailed review by the Company's Director-Tax and its Vice President-Tax of estimates of tax return data provided quarterly by Equistar's tax matters partner, (ii) followed by discussions of the results of such review with the tax matters partner to confirm the correctness of the Company's interpretation of the estimated tax return data provided by the tax matters partner and (iii) thereafter, review of the results of these procedures by the Company's Corporate Controller and Chief Financial Officer. Although these procedures will be implemented for the third quarter of 2004, the material weakness will not be considered remediated until these procedures operate for a period of time, are tested and it is concluded that such procedures are operating effectively.

The Company completed in early August 2004, prior to filing the June 10-Q, an evaluation under the supervision and with the participation of the

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Company's management, including the Company's principal executive officer and principal financial officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of June 30, 2004. Based on this evaluation, the Company's principal executive officer and principal financial officer concluded that, solely as a result of the material weakness referred to above, the Company's disclosure controls and procedures were not effective at the reasonable assurance level as of June 30, 2004. However, as a result of the analysis and re-computation discussed above, management believes that the financial statements included in the June 10-Q fairly present in all material respects the Company's financial condition, results of operations and cash flows for the fiscal periods presented.

- (b) There were no changes in the Company's internal control over financial reporting that occurred during the most recent fiscal quarter covered by this Quarterly Report that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

As a result of Section 404 of the Sarbanes-Oxley Act of 2002 and the rules issued thereunder (the "Section 404 Requirements"), the Company will be required to include in its Annual Report on Form 10-K for the year ending December 31, 2004 a report on management's assessment of the effectiveness of the Company's internal control over financial reporting. As part of the process of preparing for compliance with the Section 404 Requirements, in 2003, the Company initiated a review of its internal control over financial reporting. This review is being conducted under the direction of senior management. As a result, management has made improvements to the Company's internal control through the date of the filing of this Amendment No. 2 as part of its normal review process. The Company's management does not believe these changes have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. The Company anticipates that improvements will continue to be made as part of the ongoing review.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits -

- 10.1 Fifth Amendment dated as of July 7, 2004 to the Credit Agreement dated as of June 18, 2001 among Millennium America Inc., as Borrower, Millennium Inorganic Chemicals Limited, as Borrower, certain borrowing subsidiaries of Millennium Chemicals Inc. from time to time party thereto, Millennium Chemicals Inc., as Guarantor, the lenders from time to time party thereto, Bank of America, N.A., as Syndication Agent and JP Morgan Chase Bank, as Administrative Agent and as Collateral Agent.*
- 31.1 Certificate of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.**
- 31.2 Certificate of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.**
- 32.1 Certificate of Principal Executive Officer pursuant to Section

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906 of the Sarbanes-Oxley Act of 2002 (Furnished, not filed, in accordance with Item 601(b)(32)(ii) of Regulation S-K, 17 CFR 229.601(b)(32)(ii)).*

- 32.2 Certificate of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Furnished, not filed, in accordance with Item 601(b)(32)(ii) of Regulation S-K, 17 CFR 229.601(b)(32)(ii)).*

* Filed or furnished with Amendment No. 1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004.

** Filed or furnished herewith.

(b) Reports on Form 8-K.

Current Reports on Form 8-K dated May 17, 2004, May 18, 2004, July 29, 2004 and August 9, 2004 were filed or furnished during the quarter ended June 30, 2004 and through the date hereof. Such Current Reports either filed or furnished information to the Securities and Exchange Commission.

SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MILLENNIUM CHEMICALS INC.

Date: September 24, 2004

By: /s/ JOHN E. LUSHEFSKI

John E. Lushefski
Executive Vice President
and Chief Financial Officer
(as duly authorized officer and
principal financial officer)

Exhibit Index

Exhibit Number	Description of Document
31.1	Certificate of Principal Executive Officer pursuant to Section 302 of

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the Sarbanes-Oxley Act of 2002.

31.2 Certificate of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.