

KMG CHEMICALS INC  
Form 10-K/A  
November 09, 2012

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-K/A**

(Mark one)

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

For the fiscal year ended July 31, 2012

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: 001-35577

**KMG CHEMICALS, INC.**

(Exact name of registrant as specified in its charter)

Edgar Filing: KMG CHEMICALS INC - Form 10-K/A

**Texas** **75-2640529**  
(State or other jurisdiction of **(I.R.S. Employer**  
incorporation or organization) **Identification No.)**  
**9555 W. Sam Houston Parkway S., Suite 600**

**Houston, Texas 77099**

(Address of principal executive offices, including zip code)

**(713) 600-3800**

(Registrant's telephone number, including area code)

**SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE EXCHANGE ACT:**

| <b>Title of Each Class</b>    | <b>Name of each Exchange on which Registered</b> |
|-------------------------------|--------------------------------------------------|
| Common Stock, \$.01 par value | The New York Stock Exchange                      |

**SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE EXCHANGE ACT:**

| <b>Title of Each Class</b> | <b>Name of each Exchange on which Registered</b> |
|----------------------------|--------------------------------------------------|
| None                       |                                                  |

Indicate by a check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by a check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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  No

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 Regulations S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

|                                                  |                                                       |
|--------------------------------------------------|-------------------------------------------------------|
| Large Accelerated Filer <input type="checkbox"/> | Accelerated Filer <input checked="" type="checkbox"/> |
| Non-Accelerated Filer <input type="checkbox"/>   | Smaller Reporting Company <input type="checkbox"/>    |

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

## Edgar Filing: KMG CHEMICALS INC - Form 10-K/A

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant computed by reference to the closing price of \$18.41 on The Nasdaq Global Market as of the last business day of our most recently completed second fiscal quarter (January 31, 2012) was \$144,276,000.

As of October 12, 2012, there were 11,412,400 shares of the registrant's common stock, par value \$0.01, per share outstanding.

### **DOCUMENTS INCORPORATED BY REFERENCE**

The proxy statement pertaining to our annual meeting of shareholders is incorporated by reference in Part III of this report.

Explanatory Note

The sole purpose of this Amendment No. 1 to KMG Chemicals, Inc.'s Annual Report on Form 10-K for the period ended July 31, 2012, filed with the Securities and Exchange Commission dated October 15, 2012 (the "Form 10-K"), is to furnish Exhibit 101 to the Form 10-K in accordance with Rule 405(a)(2) of Regulation S-T. Exhibit 101 consists of the interactive data files that were not included with the Form 10-K as allowed by the 30-day grace period of the first period in which financial statement detail tagging is required.

This Amendment No. 1 does not otherwise change or update the disclosures set forth in the Form 10-K as originally filed, and does not otherwise reflect events occurring after the original filing of the Form 10-K.

Pursuant to Rule 406T of Regulation S-T, the interactive data files contained in Exhibit 101 are not deemed filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under these sections.

---

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 10-K**

- (a) The financial statements and financial statement schedules filed as part of this report in Item 8 are listed in the Index to Financial Statements contained in that item.
- (b) The following documents are filed as exhibits. Documents marked with an asterisk (\*) are management contracts or compensatory plans, and portions of documents marked with a dagger ( † ) have been granted confidential treatment.

All exhibits other than Exhibit 101 were previously filed or furnished, as applicable, as an exhibit to the periodic or other reports of KMG Chemicals, Inc. including its Annual Report on Form 10-K (File No. 001-35577) filed with the SEC, and are incorporated in this report.

- 3.1 Restated and Amended Articles of Incorporation filed as Exhibit 3(i) to the company's Form 10-QSB12G filed December 6, 1996, incorporated in this report.
- 3.2 Bylaws filed as Exhibit 3(ii) to the company's Form 10-QSB12G filed December 6, 1996, incorporated in this report.
- 3.3 Articles of Amendment to Restated and Amended Articles of Incorporation, filed December 11, 1997 filed as Exhibit 3 to the company's second quarter 1998 report on Form 10-QSB filed December 12, 1997, incorporated in this report.
- 4.1 Form of Common Stock Certificate filed as Exhibit 4.1 to the company's Form 10-QSB12G filed December 6, 1996, incorporated in this report.
- 10.1 Creosote Supply Agreement dated November 1, 1998 between Rütgers and the company filed as Exhibit 10.20 to the company's second quarter 1999 report on Form 10-QSB filed March 12, 1999, incorporated in this report.
- 10.2\* 1996 Stock Option Plan filed as Exhibit 10.4 to the company's Form 10-QSB12G filed December 6, 1996, incorporated in this report.
- 10.3\* Employment Agreement with John V. Sobchak dated June 26, 2001 filed as Exhibit 10.26 to the company's 2001 report on Form 10-K filed October 24, 2001, incorporated in this report.
- 10.4\* Employment Agreement with Roger C. Jackson dated August 1, 2002 filed as Exhibit 10.31 to the company's 2003 report on Form 10-K filed October 23, 2003, incorporated in this report.
- 10.5\* Employment Agreement with J. Neal Butler dated March 8, 2004 filed as Exhibit 10.18 to the company's 2004 report on Form 10-K filed October 15, 2004, and incorporated herein by reference.
- 10.6\* Supplemental Executive Retirement Plan dated effective August 1, 2001 filed as Exhibit 10.27 to the company's 2001 report on Form 10-K filed October 24, 2001, incorporated in this report.
- 10.7\* 2004 Long-Term Incentive Compensation Plan filed as Exhibit 10.21 to the company's report on Form 10-Q filed December 15, 2004, incorporated in this report.
- 10.8\* Performance-Based Restricted Stock Agreement, Series 1 dated September 2, 2005 filed as Exhibit 10.28 to the company's report on Form 8-K filed September 7, 2005.
- 10.9\* Performance-Based Restricted Stock Agreement, Series 2 dated September 2, 2005 filed as Exhibit 10.29 to the company's report on Form 8-K filed September 7, 2005.
- 10.10 Sales Agreement with Koppers, Inc. dated May 8, 2007, filed as Exhibit 10.34 to the company's report on Form 10-Q filed June 5, 2007.
- 10.11 Amended and Restated Credit Agreement with Wachovia Bank, National Association dated December 31, 2007 initially filed as Exhibit 10.39 to the company's report on Form 8-K filed January 7, 2008, and re-filed on March 12, 2010 to the company's report on Form 10-Q, and incorporated herein by this reference.

## Edgar Filing: KMG CHEMICALS INC - Form 10-K/A

- 10.12 Note Purchase Agreement with The Prudential Insurance Company of America dated December 31, 2007 filed as Exhibit 10.40 to the company's report on Form 8-K filed January 7, 2008, and incorporated herein by this reference.
- 10.13 Agreement with Acme Chemical Marketing, LLC dated February 14, 2008 filed as Exhibit 10.41, to the company's report on Form 10-Q filed March 17, 2008, and incorporated herein.
- 10.14\* Executive Severance Plan, dated October 10, 2008, by and between the Company and its Eligible Employees filed as Exhibit 10.42, to the company's report on Form 8-K filed October 13, 2008, and incorporated herein by this reference.

## Edgar Filing: KMG CHEMICALS INC - Form 10-K/A

- 
- 10.15 First Amendment to Amended and Restated Credit Agreement and Amended Pledge Agreement with Wachovia Bank, National Association dated effective January 30, 2009 filed as Exhibit 10.43, to the company's report on Form 10-Q filed on March 12, 2009, and incorporated herein by this reference.
- 10.16 Amendment No. 1 to Note Purchase Agreement with The Prudential Insurance Company of America dated effective January 30, 2009 filed as Exhibit 10.44, to the company's report on Form 10-Q filed on March 12, 2009, and incorporated herein by this reference.
- 10.17 Purchase Agreement dated December 31, 2007 with Intel Corporation filed as Exhibit 10.45 to the company's report on Form 8-K filed May 13, 2009, incorporated herein by this reference.
- 10.18\* 2009 Long Term Incentive Plan of the Company, filed as Exhibit 10.46 to the company's report on Form 10-K filed October 14, 2009 and incorporated herein by this reference.
- 10.19 Second Amendment to Amended and Restated Credit Agreement with Wachovia Bank, National Association dated March 18, 2010 filed as Exhibit 10.47, to the company's report on Form 8-K filed on March 30, 2010, and incorporated herein by this reference.
- 10.20 Amendment No. 2 to Note Purchase Agreement and Limited Consent with The Prudential Insurance Company of America dated March 18, 2010 filed as Exhibit 10.48, to the company's report on Form 8-K filed on March 30, 2010, and incorporated herein by this reference.
- 10.21 Third Amendment to Amended and Restated Credit Agreement with Wells Fargo Bank, National Association, Bank of America, N.A., The Prudential Insurance Company of America, and Pruco Life Insurance Company dated November 23, 2011 filed as Exhibit 10.49, to the company's report on Form 8-K filed on November 23, 2011, and incorporated herein by this reference.
- 10.22 Amendment No. 3 to Note Purchase Agreement and limited consent with The Prudential Insurance Company of America, and Pruco Life Insurance Company dated November 32, 2011 filed as Exhibit 10.50, to the company's report on Form 8-K filed on November 23, 2011, and incorporated herein by this reference.
- 21.1 Subsidiaries of the company.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of UHY LLP.
- 31 Certificates under Section 302 the Sarbanes-Oxley Act of 2002 of the Chief Executive Officer and the Chief Financial Officer.
- 32 Certificates under Section 906 of the Sarbanes-Oxley Act of 2002 of the Chief Executive Officer and the Chief Financial Officer.
- 101.INS^ XBRL Instance Document
- 101.SCH^ XBRL Schema Document
- 101.CAL^ XBRL Calculation Linkbase Document
- 101.DEF^ XBRL Definition Linkbase Document
- 101.LAB^ XBRL Label Linkbase Document
- 101.PRE^ XBRL Presentation Linkbase Document

^ Pursuant to applicable securities laws and regulations, we are deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and are not subject to liability under any anti-fraud provisions of the federal securities laws as long as we have made a good faith attempt to comply with the submission requirements and promptly amend the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. Users of this data are advised pursuant to Rule 406T of Regulation S-T that this interactive data file is deemed not filed or part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise is not subject to liability under these sections.

**SIGNATURES**

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.

KMG CHEMICALS, INC.

By: /s/ J. Neal Butler  
J. Neal Butler, President,

Date: November 9, 2012

Chief Executive Officer and Director

Pursuant to the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By: /s/ John V. Sobchak  
John V. Sobchak, Vice President and

Date: November 9, 2012

Chief Financial Officer

By: /s/ Jack M. North  
Jack M. North, Controller and

Date: November 9, 2012

Chief Accounting Officer

By: /s/ David L. Hatcher  
David L. Hatcher,

Date: November 9, 2012

Director and Chairman of the Board

By: /s/ Gerald G. Ermentrout  
Gerald G. Ermentrout, Director

Date: November 9, 2012

By: /s/ Christopher T. Fraser  
Christopher T. Fraser, Director

Date: November 9, 2012

By: /s/ George W. Gilman  
George W. Gilman, Director

Date: November 9, 2012

By: /s/ John C. Hunter, III  
John C. Hunter, III, Director

Date: November 9, 2012

By: /s/ Fred C. Leonard  
Fred C. Leonard III, Director

Date: November 9, 2012

By: /s/ Stephen A. Thorington  
Stephen A. Thorington, Director

Date: November 9, 2012

By: /s/ Karen A. Twitchell  
Karen A. Twitchell, Director

Date: November 9, 2012

By: /s/ Richard L. Urbanowski  
Richard L. Urbanowski, Director

Date: November 9, 2012



