EnergySolutions, Inc.
Form 10-K/A
April 29, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

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

For the fiscal year ended December 31, 2007

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 001-33830

Energy*Solutions*, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**51-0653027**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)
423 West 300 South, Suite 200 **Salt Lake City, Utah**	**84101**
(Address of principal executive offices)	(Zip Code)

Registrant s telephone number, including area code: **(801) 649-2000**

Securities registered pursuant to Section 12(b) of the Act:

Title of Class		Name of Exchange on which registered
Common Stock, $0.01 par value per share		The New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

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 x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) 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. 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 definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant on June 30, 2007 is not applicable because the registrant was not publicly traded as of June 30, 2007. The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, as of March 31, 2008, was approximately $763.4 million based upon the closing price reported for such date on the New York Stock Exchange. For purposes of this disclosure, shares of common stock held by persons who hold more than 5% of the outstanding shares of common stock and shares held by executive officers and directors of the registrant have been excluded because such persons may be deemed to be affiliates. This determination of executive officer or affiliate status is not necessarily a conclusive determination for other purposes.

As of March 31, 2008, 88,303,500 shares of registrant s common stock were outstanding.

EXPLANATORY NOTE

This amendment on Form 10-K/A to the Annual Report of Energy*Solutions*, Inc. (the Company , we , our or us) on Form 10-K for the fiscal year ended December 31, 2007 (the Annual Report) filed on March 28, 2008 with the Securities and Exchange Commission (SEC) is being filed solely for the purpose of including information required by Items 11, 12, 13 and 14 of Part III of Form 10-K. In addition, in connection with the filing of this Amendment and pursuant to Rules 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, we are including with this Amendment certain currently dated certifications. Except as described above, no other amendments are being made to the Annual Report. This Form 10-K/A does not reflect events occurring after the March 28, 2008 filing of our Annual Report, and does not modify or update the disclosure contained in the Annual Report in any way other than as required to reflect the amendments discussed above and reflected below.

ENERGY*SOLUTIONS*, INC.

ANNUAL REPORT ON FORM 10-K/A

For Fiscal Year Ended December 31, 2007

INDEX

PART III.

PART III

Item 11. Executive Compensation.

COMPENSATION DISCUSSION AND ANALYSIS

The goal of our named executive officer compensation program is the same as our goal for operating the company to create long-term value for our stockholders. To this end, we have designed and implemented our compensation programs for our named executives to reward them for sustained financial and operating performance and leadership excellence, to align their interests with those of our stockholders and to encourage them to remain with the Company for long and productive careers. Most of our compensation elements simultaneously fulfill one or more of our performance, alignment and retention objectives. These elements consist of salary and annual bonus, equity incentive compensation, a long-term performance program driven by the achievement of objective financial performance criteria, retirement and other benefits. In deciding on the type and amount of compensation for each executive, we focus on both current pay and the opportunity for future compensation. We combine the compensation elements for each executive in a manner we believe optimizes the executive s contribution to the Company.

Executive Summary

This section explains the executive compensation program of Energy*Solutions*, Inc. as it relates to the following named executive officers:

R Steve Creamer	Chief Executive Officer
Philip O. Strawbridge	Executive Vice President and Chief Financial Officer
J.I. Everest, II	Vice Chairman
Raul J. Deju	President and Chief Administrative Officer
Alan M. Parker	Executive Vice President and Chief Operating Officer

In 2005, Lindsay Goldberg & Bessemer L.P., Peterson Partners, L.P., Creamer Investments, Inc., and certain of our senior employees formed a limited liability company, ENV Holdings LLC (ENV). ENV acquired Envirocare of Utah, Inc., predecessor in interest to Energy*Solutions*, LLC, which thereafter acquired several enterprises engaged in the nuclear waste and nuclear fuel industries. The acquired companies now comprise the business operations of Energy*Solutions*, Inc. In late 2007, the Company was formed and ENV converted its ownership of Energy*Solutions,* LLC into Company shares, selling a portion of its shares in the Company s initial public offering in November 2007 (the IPO). ENV currently owns approximately 62% of the Company s common stock and ENV s sole asset is its shares of Company common stock, other than cash which is used to pay for legal, accounting and other administrative expenses and to make tax distributions to certain members.

Prior to the IPO, each of the named executive officers was employed by Energy*Solutions*, LLC, 100% of whose equity was owned by ENV. In 2005 and 2006, the named executive officers acquired Membership Units or were granted Profit Interests in ENV pursuant to their individual Employment Agreements (defined below). Membership Units refers to the number of partnership units an individual owns in ENV, i.e., one Membership Unit is essentially the equivalent of one share of ownership in ENV. Profit Interests refers to ownership interests in ENV that entitle an individual only to a percentage of the future profits and future appreciation of ENV. The Profit Interests allocate a percentage of the cash distributions above certain cumulative cash distribution thresholds. Therefore, the aggregate economic ownership by each member varies based on the Company s stock price, which will determine if certain thresholds are met. While these Membership Units and Profit Interests are not directly convertible into common stock of the Company or any other equity security of the Company, it is likely that upon liquidation of ENV, the Company s stock could be distributed to holders of Membership Units and Profit Interests. The Board of Directors of the Company considered each of the named executive officer s current Membership Units and/or Profit Interests in ENV in determining the equity awards to be granted to each such executive officer at the time of the IPO.

Since the named executive officers hold significant Membership Units and/or Profit Interests in ENV and/or in entities above ENV whose only asset is ownership of ENV, their equity interests in the Company are substantial. The following table identifies each named executive officer s percentage equity ownership in ENV, including ownership in entities above ENV whose only asset is ownership in ENV, and the resulting percentage beneficial ownership of the Company s common stock:

Name	**Equity Ownership in ENV (%) (1)(2)**	**Approximate Beneficial Ownership in Company Stock (%) (3)**
R Steve Creamer	10.29(4)	6.41
Philip O. Strawbridge	0.39	0.24
J.I. Everest, II	5.37(4)	3.35
Raul J. Deju	0.68	0.42
Alan M. Parker	0.36	0.22

(1) Percentage of equity interests in ENV calculated using the closing share price of the Company s common stock as of December 31, 2007, which was $26.99.
(2) Includes beneficial ownership in entities whose only asset is ownership in ENV.
(3) Calculated based on the number of common shares outstanding as of December 31, 2007.
(4) Mr. Creamer s and Mr. Everest s Membership Units are held by Creamer Investments, Inc., of which Mr. Creamer owns 35%, Mr. Creamer s children own a total of 45%, and Mr. Everest owns 20%. Mr. Creamer s and Mr. Everest s Profit Interests are held in trust.

Due to their significant interest in ENV, the named executive officers have a large beneficial ownership in the Company which encourages them to drive performance of the Company and create stockholder value. The interests of the named executive officers are directly linked to how well the Company performs and, thus, are directly tied to stockholders interests.

The components forming the Company s executive compensation program for the named executive officers consist of Membership Units and/or Profit Interests in ENV, equity awards (Equity Awards) pursuant to the Energy*Solutions*, Inc. 2007 Equity Incentive Plan (the 2007 Plan), other incentive compensation, and base salaries. Prior to the Company s IPO, compensation for the named executive officers was determined by the board of managers of Energy*Solutions*, LLC, the Company s predecessor, subject to an individual employment agreement with each named executive officer. For each year subsequent to 2007, the Compensation Committee of the Board of Directors of the Company (the Compensation Committee) will determine, subject to the Employment Agreements, the compensation for the named executive officers, including Equity Awards, if any, that each will be granted pursuant to the 2007 Plan and annual incentive compensation pursuant to the Company s Executive Bonus Plan, if approved by stockholders. At the time of this report, the only Equity Awards granted to the named executive officers have been non-qualified stock options (the Option Grants) granted at the time of the IPO.

Executive Compensation Objectives

The Company s goal for executive compensation is to attract and retain a talented, entrepreneurial and creative team of executives who will provide the leadership for the Company s growth and success in its dynamic, highly-specialized markets.

Executive Compensation Overview

Four Components

The compensation program for the named executive officers consists of the following four components:

- Membership Units and/or Profit Interests held in ENV;
- Equity Awards issued pursuant to the 2007 Plan;
- Other incentive compensation; and
- Base salary.

The named executive officers are also eligible to participate in the Company s health and welfare programs, 401(k) Plan, and other employee recognition programs on the same basis as other employees. Messrs. Creamer, Everest and Strawbridge were also paid an automobile allowance in fiscal 2007. These market competitive perquisites were provided as part of the negotiation to hire and retain these individuals in their current positions.

Employment Agreements with Named Executive Officers

The Company entered into the Employment Agreements to attract the named executive officers to their current positions and assure their continued employment to provide stability in executive management through the infancy and high-growth phase of the Company. Each agreement identifies a minimum base salary to be paid to the officer in each of the Company s fiscal years covered by the agreement and the maximum percentage of annual incentive compensation the officer is eligible to receive based on the Company s performance. The following table sets forth the base salary and maximum percentage of annual incentive compensation for 2007 allowed pursuant to each named executive officer s Employment Agreement, and the respective date of expiration:

Name	**Base Salary ($)**	**Maximum Annual Incentive Compensation as a Percentage of Base Salary**	**Expiration Date**
R Steve Creamer	500,000	200	1/31/2010
Philip O. Strawbridge	450,000	120	3/23/2009(1)
J.I. Everest, II	300,000	200	1/31/2010
Raul J. Deju	450,000	100(2)	10/9/2009(1)
Alan M. Parker	450,000	120	11/14/2009(1)

(1) In April 2008, the Compensation Committee approved an amendment to Messrs. Strawbridge s, Deju s and Parker s Employment Agreements to extend the term through December 31, 2011.
(2) In April 2008, the Compensation Committee approved an amendment to Dr. Deju s Employment Agreement to increase the maximum percentage of base salary that could be paid as annual incentive compensation to 120%.

As further incentive to attract and retain the named executive officers, each named executive officer s Employment Agreement provides that if his employment is terminated without cause or if he terminates his employment for good reason (as defined in his Employment Agreement), he will be entitled to receive his then current base salary for 12 months (other than Mr. Parker, who will receive his current base salary for 18 months and Mr. Strawbridge, who will receive his current base salary for 24 months), a pro-rata portion of his annual incentive compensation for the year of termination, and continued coverage for 12 months (18 months in the case of Mr. Parker and 24 months in the case of Mr. Strawbridge) under the Company s medical, dental and life insurance plans. Table 1.1 under Executive Compensation sets forth the base salary, incentive compensation, and other compensation paid to each named executive officer in 2007.

CEO Compensation

Mr. Creamer beneficially owns Membership Units and Profit Interests that equate to a beneficial ownership interest in the Company of approximately 6.4%, which incentivizes him to drive stockholder value and align his interests with those of stockholders. Mr. Creamer s compensation programs are designed to reward Mr. Creamer for excellent performance, recognizing Mr. Creamer s unique leadership in successfully acquiring and integrating multiple companies, orchestrating the Company s negotiation and execution of significant contractual relationships, and successfully completing the IPO in 2007.

Executive Compensation Program Design and Implementation

Compensation Committee Determines All Executive Compensation

Prior to the IPO in November 2007, the board of managers of Energy*Solutions*, LLC determined the compensation for the named executive officers. Beginning with fiscal year 2008, the Compensation Committee, subject to the terms of each officer s Employment Agreement, will determine all compensation for the named executive officers.

Beginning in 2009, the Compensation Committee will periodically conduct an evaluation of the performance of each named executive officer to determine if any changes in the officer s compensation are appropriate based on the considerations described below. The CEO will not participate in the Compensation Committee s deliberations or decision with regard to his own compensation. At the Compensation Committee s request, the CEO will review with the Compensation Committee the performance of the other four named executive officers, but no other named executive officer has any input into executive compensation decisions. The Compensation Committee will give considerable weight to the CEO s evaluation of the other named executive officers because of his direct knowledge of each officer s performance and contributions. For each officer, the Compensation Committee members will independently determine any adjustments to base salary, the incentive compensation, subject to the terms of the officer s Employment Agreement, and whether any Equity Awards should be made based on their collective assessment of the officer s performance as well as the Company s overall financial performance.

The Important Role of Equity Holdings and Long-Term Equity Awards

Overview. As reflected in their substantial ownership through their holdings in ENV and Option Grants awarded at the IPO, the Compensation Committee believes that equity holdings and Equity Awards are the most effective way to attract and retain a strong executive team. As a result, executive compensation is heavily weighted toward equity ownership and long-term Equity Awards rather than cash compensation.

In granting long-term Equity Awards, the Compensation Committee seeks to maximize their effectiveness in accomplishing the Company s compensation objectives while recognizing the Board s duty to the Company s stockholders to limit equity dilution. The Compensation Committee believes this balance has been achieved as follows:

- *The Named Executive Officers Membership Units and Profit Interests in ENV Align Their Interests with the Interests of Stockholders.* ENV is the Company s largest and controlling stockholder. Other than cash used to pay expenses and taxes, ENV s only asset is the shares of Company common stock that it owns. The financial performance of the Company has a direct impact on the value of each named executive officer s Membership Units and/or Profit Interests in ENV, which creates an incentive on the part of each named executive officer to achieve strong financial performance that will increase the value of the Company s shares. Membership Units are owned and are not subject to a vesting period. Currently, 33 1/3% of Mr. Strawbridge s Profit Interests and 66 2/3% of Messrs. Deju s and Parker s Profit Interests, respectively, are unvested.

- *Option Grants Align Officers Actions with Stockholder Interests.* The Company utilizes Equity Awards to ensure that the named executive officers have a continuing stake in the Company s long-term success and to align their interests with the interests of the Company s stockholders. Because the Option Grants were issued with an exercise price equal to the fair market value of the Company s common stock on the date of grant, the determination of which is discussed below, these options will have value to the named executive officers only if the market price of the Company s common stock increases after the grant date.

In determining the number of Option Grants awarded to each named executive officer in 2007, the Compensation Committee considered the Company s performance against the strategic plan, individual performance against the individual s objectives, the individual s Membership Units and/or Profit Interests in ENV, and the recommendation of the Chief Executive Officer with respect to other members of management. Because of their substantial ownership interests in ENV, the Compensation Committee decided not to award Messrs. Creamer and Everest Option Grants in 2007.

All Option Grants to the named executive officers and other employees were and will be granted with exercise prices equal to or exceeding the fair value of the Company s common stock on the grant date. The Company does not have any program, plan or practice that requires it to grant equity-based awards to the named executive officers on specified dates and the Company has not made grants of such awards that were timed to precede or follow the release or withholding of material non-public information. The Company does not have any equity security ownership guidelines or requirements for the named executive officers.

• *Long Vesting Intervals to Maximize Retention.* Since all unvested options are forfeited upon the named executive officer s termination of employment for any reason, the four-year vesting schedule of the Option Grants awarded to the named executive officers in 2007 is designed to incentivize the named executive officer to continue his employment at least through the vesting period. With the exception of a special Option Grant awarded to Philip Strawbridge pursuant to his Employment Agreement, which provided for the immediate vesting on the grant date of one-sixth of the Option Grant shares (the Strawbridge Vested Options), Option Grants to each of the named executive officers vest ratably on each anniversary of the grant date over a period of four years, with all shares becoming fully vested on the fourth anniversary of the grant date. Vesting the options over a four year period is intended to create a strong incentive for the named executive to continue his employment with the Company.

• *Frequency and Size of Equity Awards.* The Compensation Committee will periodically review Option Grants previously awarded to the named executive officers and determine whether additional Option Grants should be awarded. To determine the size of any additional Option Grant awards, the Compensation Committee will first establish a target compensation value that it wants to deliver to the named executive officers through Equity Awards. In doing so, the Compensation Committee considers various factors, including the following:

- The heavy weight placed on equity in the mix of total compensation
- The officer s experience and performance
- The scope, responsibility and business impact of the officer s position
- The perceived retention value of the total compensation package in light of the competitive environment

Once the target value has been established, the Compensation Committee will determine the number of shares by reference to the current fair market value of the Company s common stock.

• *Limited Acceleration of Option Vesting.* In the event of a termination without cause, in the case of Option Grants a change in control, the unvested portion of the named executives Profit Interests and Option Grants will vest immediately. This acceleration of vesting encourages the executives to support a successful change in control, while easing the administrative burden of converting outstanding awards to the new company stock. These are the only circumstances where the vesting of Profit Interests or Option Grants will be accelerated.

The Role of Cash Compensation

Base Salaries. The Compensation Committee believes that base salaries are less important than incentive compensation and Equity Awards in meeting the Company s compensation objectives. Base salaries are a market competitive practice that is used to compensate the named executives for services rendered during the fiscal year. No named executive officer s base salary was increased in 2007, except for Mr. Strawbridge, whose base salary was increased upon his acceptance of the position of Chief Financial Officer. The increased base salary for Mr. Strawbridge was based on the increase in responsibilities in his role, market competitive practices, and internal equity considerations.

Incentive Compensation. In fiscal 2007 prior to the IPO, the Board approved discretionary incentive payments to Messrs. Everest, Strawbridge, Deju and Parker to compensate them for their success in, among other things, acquiring and merging several entities important to the long-term strategy of the Company. In addition to the discretionary incentive payments described above, the Company paid Messrs. Creamer and Everest the one-time, lump-sum contractual payments of $2,344,000 and $2,051,000, respectively, as consideration for their agreement to terminate their participation in the Excess Performance Bonus Pool previously set forth in their Employment Agreements. No additional incentive compensation for 2007 was paid to the named executive officers since the IPO.

Going forward, the Compensation Committee intends to pay future incentive compensation pursuant to the Executive Bonus Plan (the Bonus Plan), which is being presented for the approval of the stockholders of the Company at our next Annual Meeting and would authorize the Compensation Committee to issue plan-based cash incentive awards to compensate officers for achieving specific financial objectives that are established by the Compensation Committee. The Compensation Committee believes that incentive compensation aligns the officer s interests with those of the Company s stockholders and is an important component of executive compensation, as reflected by the following:

- Payment of incentive compensation would be determined based on attainment of specific written performance goals approved by the Compensation Committee and the Board of Directors.

- The performance goals would generally be based upon the Company achieving a specified EBITDA (earnings before interest, taxes, depreciation and amortization) target, but may include other criteria such as net income, operating income, earnings per share of the Company s common stock, book value per share of the Company s common stock, and return on stockholders equity.

- Officers would not receive 100% of their incentive compensation if the Company s target goals are not met, as shown in the table below.

- Officers would be eligible for above target opportunities should the Company exceed its target performance goals.

At the end of the year, the Compensation Committee would determine the amount of the incentive compensation to be paid to each officer by comparing actual results to the performance goals. The Compensation Committee may adjust the amount paid to any individual based on the officer s overall performance or unique and specific events that may have occurred during the year as described in the Bonus Plan. The Bonus Plan will not provide for the adjustment or recovery of an award paid to a named executive officer if the results in a previous year are subsequently restated or adjusted in a manner that would have originally resulted in a smaller or larger award.

Pursuant to the Bonus Plan, the Compensation Committee expects to establish an EBITDA or adjusted EBITDA performance goal for fiscal 2008, which will entitle each of the named executive officers to receive incentive compensation equal to a percentage of base salary as set forth in the following table:

	EBITDA Performance for Fiscal Year (payout as a % of base salary)		
Name	**Threshold (%)**	**Target (%)**	**Maximum (%)**