

LSB INDUSTRIES INC  
Form POS AM  
April 10, 2007

As filed with the Securities and Exchange Commission on April 10, 2007

Registration No. 333-134111

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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

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**LSB INDUSTRIES, INC.**  
(Exact Name of Registrant)

DELAWARE (State or other jurisdiction of incorporation or organization)	2810 (Primary Standard Industrial Classification Code Number)	73-1015226 (I.R.S. Employer Identification Number)
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16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
(405) 235-4546

(Address, including zip code, and telephone number of registrant's principal executive offices)

**David M. Shear, Esq.**  
LSB Industries, Inc.  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
(405) 235-4546

(Name, address, including zip code and telephone number, including area code of Agent for Service)

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COPIES TO:  
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Approximate date of commencement of proposed sale to the public: **As soon as practicable after the effective date of this Registration Statement.**

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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 check the following box: /  /

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 post-effective amendment filed pursuant to Rule 462(d) 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. //

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**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.**

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**EXPLANATORY NOTE**

This Post-Effective Amendment No.1 to the Registration Statement incorporates by reference the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006, as filed with the Securities and Exchange Commission on March 27, 2007, except as otherwise modified by the terms of this Registration Statement. See "Incorporation by Reference."

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**The information in this prospectus is not complete and may be changed. The selling security holders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

SUBJECT TO COMPLETION, DATED APRIL 10, 2007

**PROSPECTUS**

**LSB INDUSTRIES, INC.**

**7% Convertible Senior Subordinated Debentures Due 2011  
2,542,500 Shares of Common Stock**

The debentures and shares of our common stock will be offered and sold by the Selling Security Holders named in this prospectus or in any amendment or supplement to this prospectus. See "Selling Security Holders" beginning on page . We will not receive any of the proceeds from the sale by the Selling Security Holders of these securities.

Our common stock is listed on the American Stock Exchange under the symbol "LXU." The last reported sale price of our common stock on the American Stock Exchange on April 4, 2007 was \$15.15 per share. There is no established market for the debentures and we do not intend to apply for listing of the debentures on any securities exchange or for quotation of the debentures through any automated quotation system.

The Selling Security Holders may sell the securities offered by this prospectus from time to time on any exchange on which the securities are listed. They may also sell the securities in private sales or through dealers or agents. The Selling Security Holders may sell the securities at prevailing market prices or at prices negotiated with buyers. The Selling Security Holders will be responsible for any commissions due to brokers, dealers or agents. We will pay all expenses of the registration of the debentures and the common stock and certain other expenses as set forth in the registration rights agreement described in this prospectus.

**Investing in the debentures or in our common stock involves risks.  
See "Risk Factors" beginning on page 6.**

**Neither the Securities and Exchange Commission nor any state securities commission**

**has approved or disapproved of these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is April [ ], 2007.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission. The securities described in this prospectus may be offered and sold by the Selling Security Holders using this prospectus from time to time as described the “Plan of Distribution” beginning on page 48. You should carefully read this prospectus and the information described under the heading “Incorporation by Reference” beginning on page and “Where You Can Find More Information” on page .

**You should rely only on the information contained in, or incorporated by reference in, this document. We have not authorized anyone to provide you with information that is different. This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document.**

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## PROSPECTUS SUMMARY

*This summary highlights certain information concerning our business and this offering. It does not contain all of the information that may be important to you and to your investment decision and is qualified in its entirety by, and should be read in conjunction with, the more detailed information about us and the debenture in this prospectus, including the section entitled “Risk Factors,” along with our business information, our financial information and other documents incorporated by reference in this prospectus.*

### LSB Industries, Inc.

LSB Industries, Inc. (the “Company,” “we,” “us,” or “our”) was formed in 1968 as an Oklahoma corporation, and became a Delaware corporation in 1977. We are a diversified holding company operating through our subsidiaries. Our wholly-owned subsidiary, ThermaClime, Inc. (“ThermaClime”) through its subsidiaries, owns substantially all of our core businesses consisting of the:

- Climate Control Business, which is engaged in the manufacturing and selling of a broad range of heating, ventilation and air conditioning products used in commercial and residential new building construction, renovation of existing buildings and replacement of existing systems; and
- Chemical Business, which is engaged in the manufacturing and selling of chemical products produced from three plants in Texas, Arkansas and Alabama for the industrial, mining and agricultural markets.

### Company Information

Our executive offices are located at 16 South Pennsylvania Avenue, Oklahoma City, Oklahoma 73107, telephone (405) 235-4546. Our Web site is located at [www.lsb-okc.com](http://www.lsb-okc.com). The information on our Web site is not part of this prospectus and should not be considered in your decision to invest in the debentures or our common stock.

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## THE OFFERING

Issuer	LSB Industries, Inc.
Selling Security Holders	The securities to be offered and sold using this prospectus will be offered and sold by the Selling Security Holders named in this prospectus, or in any amendment or supplement to this prospectus. See "Selling Security Holders."
Securities covered by this prospectus	\$1,000,000 aggregate principal amount of 7% convertible senior subordinated debentures due 2011. A total of \$18,000,000 aggregate principal amount of the debentures were included in the original prospectus included in the registration statement, and \$17,000,000 aggregate principal amount of such debentures were converted prior to the date of this prospectus into shares of common stock. In connection with certain of the prior conversions, we agreed to pay certain holders interest through the March 1, 2007, interest payment date, although the debentures owned by them were converted prior to such time. Only \$1,000,000 aggregate principal amount of the debentures remain outstanding as of the date of this prospectus. We have been informed by the holder of the remaining \$1,000,000 principal amount of debentures that it intends to convert the debentures into common stock. See "Recent Development."
	2,542,500 shares of common stock, par value \$0.10 per share. Of such number, 2,401,248 shares have been issued upon conversion of \$17,000,000 aggregate principal amount of the debentures.
Maturity date of debentures	March 1, 2011, unless earlier converted, redeemed or repurchased.
Interest on debentures	7% per annum on the principal amount, from March 3, 2006, payable semi-annually in arrears in cash on March 1 and September 1 of each year, beginning September 1, 2006.
Ranking of debentures	The debentures are unsecured and subordinated in right of payment to the prior payment in full of all of our existing and future senior indebtedness and effectively subordinated to the indebtedness and all of the other liabilities, including trade payables, of our subsidiaries. As of December 31, 2006, we had approximately \$116.4 million of senior indebtedness outstanding, including approximately \$91.5 million of indebtedness of our subsidiaries which we have guaranteed. The debentures will also effectively be subordinated to all other present or future liabilities, including our subsidiaries' trade payables, which as of December 31, 2006, totaled approximately \$45.7 million. Therefore, as of December 31, 2006, the debentures are effectively subordinate to a total of \$162.1 million of senior indebtedness, including the liabilities of our subsidiaries. Additionally, the debentures may be subordinated to approximately \$6.95 million senior unsecured debentures due 2007 which the Company owned as of December 31, 2006. See "Risk Factors." Neither we nor our subsidiaries are prohibited from incurring additional debt, including senior indebtedness, under the indenture.
Conversion of debentures	The debentures are convertible by holders in whole or in part into shares of our common stock, at any time prior to their maturity on March 1, 2011. The conversion rate of debentures for holders electing to convert all or any portion of a debenture prior to September 1, 2006, was 125 shares per \$1,000 principal amount of debentures (representing a conversion price of \$8.00 per share) and the conversation rate for the period from September 1, 2006 to February 28, 2007 was 141.25 shares per \$1,000 principal amount of debentures (representing a conversion price of approximately \$7.08 per share). Holders of debentures electing to convert all or any portion of a debenture on or after March 1, 2007, and before March 1, 2009, will obtain the following conversion rate per \$1,000



principal amount of debentures during the dates indicated: March 1, 2007 to August 31, 2007, 141.04 shares (representing a conversion price of approximately \$7.09 per share); September 1, 2007 to February 29, 2008, 137.27 shares (representing a conversion price of approximately \$7.28 per share); March 1, 2008 to August 31, 2008, 133.32 shares (representing a conversion price of approximately \$7.50 per share); and September 1, 2008 to February 28, 2009 is 129.23 shares (representing a conversion price of approximately \$7.74 per share). On March 1, 2009, the conversion rate returns to 125 shares per \$1,000 principal amount of debentures (representing a conversion price of \$8.00 per share), until their maturity on March 1, 2011. The conversion rate is subject to adjustment. See “Description of Debentures—Conversion of debentures.”

If a holder elects to convert its debentures in connection with certain changes in control, as defined herein, which occur prior to the maturity date, the holder will be entitled to receive additional shares of our common stock as a make-whole premium upon conversion under certain circumstances. See “Description of Debentures — Conversion of debentures.”

Sinking fund as to debentures                      None.

Optional redemption of debentures      Beginning March 1, 2009, we may redeem the debentures either in whole or in part, upon at least 30 and not more than 60 days’ notice, at a redemption price, payable at our option in cash or, subject to certain conditions (see “— Payment of debentures in shares” below), shares of our common stock, equal to 100% of the principal amount of the debentures to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the redemption date, if: (1) the closing sale prices of our common stock for at least 20 of the 30 consecutive trading days ending on the trading day prior to the date we mail a notice of redemption, exceeds 115% of the adjusted conversion price of the debenture; (2) our common stock is listed on a U.S. national securities exchange or the NASDAQ Stock Market; and (3) a registration statement covering resales of the debentures and the common stock issuable upon conversion of the debentures is effective and expected to remain effective and available for use during the 30 days following the redemption date, unless registration is no longer required. See “Description of Debentures — Optional redemption by LSB.”

Payment of debentures in shares      We may elect to pay the redemption price in shares of our common stock if, on the date of redemption: (1) our common stock is listed on a U.S. national securities exchange or the NASDAQ Stock Market; (2) the shares used to pay the redemption price are freely tradeable; and (3) we receive certain required opinions of counsel. Payments made with shares of our common stock will be valued at 95% of the weighted average of the closing sale prices of our common stock for the 20 consecutive trading days ending on the fifth trading day prior to the redemption date. We will publicly announce the number of shares of our common stock to be paid as the redemption price, per each \$1,000 principal amount of debentures to be redeemed, not later than the fourth trading day prior to the redemption date.

We may elect to pay, at maturity, up to 50% of the principal amount of the debentures, plus accrued and unpaid interest due thereon at maturity, in shares of our common stock if, on the maturity date: (1) our common stock continues to be listed on a U.S. national securities exchange or the NASDAQ Stock Market, (2) the shares used to pay the debentures and any interest thereon are freely tradeable, and (3) we receive certain required opinions of counsel. Payments made with our shares of common stock will be valued at 95% of the weighted average of the closing prices of our common stock for the 20 consecutive trading days ending on the fifth trading day prior to the maturity date. We will publicly announce the number of shares of our common stock to be paid per



each \$1,000 principal amount of debentures on the maturity date, not later than the fourth trading day prior to the maturity date.

Repurchase of debentures at the option

of the holder If a designated event (as described under “Description of Debentures — Repurchase at option of the holder upon a designated event”) occurs prior to maturity, holders may require us to purchase, in cash, all or part of the holder’s debentures at a repurchase price equal to 101% of their principal amount, plus accrued and unpaid interest thereon to, but excluding, the repurchase date.

Make-whole premium of debentures

If a fundamental change occurs on or before September 1, 2009, we will pay a make-whole premium on the debentures converted in connection with the fundamental change, payable in shares of our common stock or the consideration into which our common stock has been converted or exchanged in connection with the fundamental change. The amount of the make-whole premium, if any, will be based on the stock price in the fundamental change transaction and the date of the fundamental change transaction. A description of how the make-whole premium will be determined and a table showing the make-whole premium that would apply at various stock prices and effective dates is set forth under “Description of Debentures - Conversion of debentures—Make-whole premium.”

No proceeds

We will not receive any proceeds from the sale made from time to time under this prospectus by the Selling Security Holders of the debentures or our common stock. See “No Proceeds.”

Registration rights

We entered into a registration rights agreement with each Selling Security Holder and filed a registration statement with the SEC covering the resale of the debentures and the common stock issuable upon conversion of the debentures. The registration statement was declared effective by the SEC on May 26, 2006. We agreed to use commercially reasonable efforts to keep the registration statement effective until the earlier of the date that all registrable securities have ceased to be registrable securities or three years following the closing of the issuance of the debentures, which is March 3, 2009. This prospectus is part of the registration statement. See “Description of Debentures — Registration rights of the debenture holders.”

Absence of a Public Market for the Debentures

We cannot assure you that any active or liquid market will develop for the debentures. See “Plan of Distribution.”

Trading

We do not intend to apply to list the debentures on any national securities exchange or to include the debentures in any automated quotation system. Qualified institutional buyers may trade the debentures in the Private Offerings, Resale and Trading through Automated Linkages Market, commonly referred to as the PORTAL Market. The debentures sold using this prospectus, however, will no longer be eligible for trading in the PORTAL Market.

Trustee, Paying Agent and Custodian Agent for debentures

UMB Bank, n.a.

American Stock Exchange Symbol

for our common stock Our common stock is quoted on the American Stock Exchange under the symbol “LXU.”

Transfer Agent for our common stock

UMB Bank, n.a.

Risk Factors     You should read the “Risk Factors” section, beginning on page 6 of this prospectus, to understand the risks associated with an investment in the debentures or our common stock.

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## **RISK FACTORS**

### **Risks Related to Us and Our Business**

#### ***Cost and availability of raw materials could materially affect our profitability and liquidity.***

Our Chemical Business' sales and profits are heavily affected by the costs and availability of its primary raw materials. Anhydrous ammonia and natural gas, which are purchased from unrelated third parties, represent the primary raw material feedstocks in the production of most of the products of the Chemical Business. The primary material utilized in anhydrous ammonia production is natural gas, and fluctuations in the price of natural gas can have a significant effect on the cost of anhydrous ammonia. Historically, there has been volatility in the cost of anhydrous ammonia and natural gas, and in many instances, we were unable to increase our sales prices to cover all of the higher anhydrous ammonia and natural gas costs incurred. Although our Chemical Business has a program to enter into contracts with certain customers that provide for the pass-through of raw material costs, we have a substantial amount of sales by the Chemical Business that do not provide for these pass-throughs. Thus, in the future, we may not be able to pass along to all of our customers the full amount of any increases in anhydrous ammonia and natural gas costs. We have suspended in the past, and could in the future, from time to time, suspend production at our chemical facilities due to, among other things, the high cost or lack of availability of such primary raw materials. Accordingly, our results of operations and financial condition have in the past been, and may in the future be, materially affected by the cost or unavailability of raw materials, including anhydrous ammonia and natural gas.

In addition, our Climate Control Business depends on raw materials such as copper and steel, which have recently shown considerable price volatility. While we periodically enter into fixed-price contracts on copper to hedge against price increases, there can be no assurance that our Climate Control Business will effectively manage against price fluctuations in copper and other raw materials or that future price fluctuations in copper and other raw materials will not have an adverse effect on our financial condition, liquidity and results of operations. Our Climate Control Business depends on certain suppliers to deliver the key components that are required in the production of its products. Any disruption in such supply could result in lost production or delayed shipments, which could materially affect our operations and cash flow.

#### ***In recent years, our Chemical Business has been unable to generate significant positive cash flows.***

Due, in part, to lower than optimum sales levels, margin problems and extensive capital expenditures, our Chemical Business has not generated significant positive cash flows in recent years. Continuing significant cash flow expenditures by this business could have a material adverse effect on our financial condition and liquidity.

#### ***Our Climate Control Business and its customers are sensitive to economic cycles.***

Our Climate Control Business is affected by cyclical factors, such as interest rates, inflation and economic downturns. Our Climate Control Business depends on sales to customers in the commercial construction and renovation industries, which are particularly sensitive to these factors. A decline in the economic activity in the United States has in the past, and could in the future, have a material adverse effect on our customers in the commercial construction and renovation industries in which our Climate Control Business sells a substantial amount of its products. Such a decline could result in a decrease in revenues and profits, and an increase in bad debts, in our Climate Control Business.

#### ***Weather conditions adversely affect our Chemical Business.***

The agricultural products produced and sold by our Chemical Business have in the past, and could continue in the future, to be materially affected by adverse weather conditions (such as excessive rains or drought) in the primary markets for our fertilizer and related agricultural products. If any of these unusual weather events occur during the primary seasons for sales of our agricultural products (March-June and September-November), this could have a material adverse effect on the agricultural sales of our Chemical Business and our financial condition and results of operation.

***Environmental and regulatory matters entail significant risk for us.***

Our Chemical Business is subject to numerous environmental laws and regulations. The manufacture and distribution of chemical products are activities which entail environmental risks and impose obligations under environmental laws and regulations, many of which provide for substantial fines and potential criminal sanctions for violations. Our Chemical Business has in the past, and may in the future, be subject to fines, penalties and sanctions for violations of environmental laws and substantial expenditures for cleanup costs and other liabilities relating to the handling, manufacture, use, emission,



discharge or disposal of pollutants or other substances at or from the Chemical Business' facilities. Further, a number of our Chemical Business' facilities are dependent on environmental permits to operate, the loss of which could have a material adverse effect on its operations and our financial condition.

***We may be required to expand our security procedures and install additional security equipment for our Chemical Business in order to comply with the Homeland Security Act of 2002 and possible future government regulation.***

The chemical industry in general, and producers and distributors of ammonium nitrate specifically, are scrutinized by the government, industry and public on security issues. Under the Homeland Security Act of 2002, as well as current and proposed regulations, we may be required to incur substantial additional costs relating to security at our chemical facilities and distribution centers and security for the transportation of our products. These costs could have a material impact on our financial condition and results of operation.

***A substantial portion of our sales is dependent upon a limited number of customers.***

During 2006, six customers of our Chemical Business accounted for 54% of its net sales and 29% of our consolidated sales, and our Climate Control Business had one customer that accounted for 16% of its net sales and 7% of our consolidated sales. The loss of, or a material reduction in purchase levels by, one or more of these customers could have a material adverse effect on our business and our results of operations, financial condition and liquidity if we are unable to replace a customer on substantially similar terms.

***Our working capital requirements fluctuate because of the seasonal nature of our Chemical Business' agricultural products.***

Because of the seasonal nature of our Chemical Business' agricultural products, our working capital requirements are significantly higher at certain times of the year due to increases in inventories of ammonium nitrate, UAN and other agricultural products prior to the beginning of each planting season. If additional working capital is required and not available under our revolving credit facility, this could have a negative impact on our other operations, including our Climate Control Business.

***There is intense competition in the Climate Control and Chemical industries.***

Substantially all of the markets in which we participate are highly competitive with respect to product quality, price, design innovations, distribution, service, warranties, reliability and efficiency. We compete with a number of established companies that have greater financial, marketing and other resources than we have and are less highly leveraged than we are. Competitive factors could require us to reduce prices or increase spending on product development, marketing and sales that would have a material adverse effect on our business, results of operation and financial condition.

***We are effectively controlled by the Golsen Group.***

Jack E. Golsen, our Chairman of the Board and Chief Executive Officer ("CEO"), members of his immediate family (spouse and certain children), including Barry H. Golsen, our Vice Chairman and President, entities owned by them and trusts for which they possess voting or dispositive power as trustee (collectively, the "Golsen Group") beneficially owned as of March 29, 2007, an aggregate of 3,457,423 shares of our common stock and 1,020,000 shares of our voting preferred stock (1,000,000 of which shares have .875 votes per share, or 875,000 votes), which together votes as a class and represented approximately 21.4% of the voting power of our issued and outstanding voting securities as of that date. At such date, the Golsen Group also beneficially owned options, rights and other convertible preferred stock that allowed its members to acquire an additional 392,926 shares of our common stock within 60 days of March 29, 2007. Thus, the Golsen Group may be considered to effectively control us. As a result, the ability of other

stockholders to influence our management and policies could be limited.

***Loss of key personnel could negatively affect our business.***

We believe that our performance has been and will continue to be dependent upon the efforts of our principal executive officers. We cannot promise you that our principal executive officers will continue to be available. Jack E. Golsen has an employment agreement with us. No other principal executive has an employment agreement with us. The loss of some of our principal executive officers could have a material adverse effect on us. We believe that our future success will depend in large part on our continued ability to attract and retain highly skilled and qualified personnel.

***We may have inadequate insurance.***

While we maintain liability insurance, including certain coverage for environmental contamination, it is subject to coverage limits and policies may exclude coverage for some types of damages. Although there may currently be sources from which such coverage may be obtained, it may not continue to be available to us on commercially reasonable terms or the possible types of liabilities that may be incurred by us may not be covered by our insurance. In addition, our insurance carriers may not be able to meet their obligations under the policies or the dollar amount of the liabilities may exceed our policy limits. Even a partially uninsured claim, if successful and of significant magnitude, could have a material adverse effect on our business, results of operations, financial condition and liquidity.

***Our warranty claims are not generally covered by our insurance.***

The development, manufacture, sale and use of products by our Climate Control Business involve a risk of warranty and product liability claims. Warranty claims are not generally covered by our product liability insurance and there may be types of product liability claims that are not covered by our product liability insurance. A successful warranty or product liability claim not covered by our insurance could have a material adverse effect on our business, results of operations, financial condition and liquidity.

***Terrorist attacks and other acts of violence or war, and natural disasters (such as hurricanes, pandemic health crisis, etc.), have and could negatively impact the U.S. and foreign companies, the financial markets, the industries where we operate, our operations and profitability.***

Terrorist attacks and natural disasters (such as hurricanes) have in the past, and can in the future, negatively affect our operations. We cannot predict further terrorist attacks and natural disasters in the United States and elsewhere. These attacks or natural disasters have contributed to economic instability in the United States and elsewhere, and further acts of terrorism, violence, war or natural disasters could further affect the industries where we operate, our ability to purchase raw materials, our business, results of operations and financial condition. In addition, terrorist attacks and natural disasters may directly impact our physical facilities, especially our chemical facilities, or those of our suppliers or customers and could impact our sales, our production capability and our ability to deliver products to our customers. In the past, hurricanes affecting the Gulf Coast of the United States have resulted in damages to, or shutdown of, the gas pipeline to Cherokee, resulting in that facility being shutdown for several weeks. The consequences of any terrorist attacks or hostilities or natural disasters are unpredictable, and we may not be able to foresee events that could have an adverse effect on our operations.

***Our net loss carryovers are subject to various limitations and have not been approved by the Internal Revenue Service.***

Our net loss carryovers have resulted from certain losses, and we anticipate they may be used to reduce the federal income tax payments which we would otherwise be required to make with respect to income, if any, generated in future years. We had available regular-tax net operating loss carryovers of approximately \$49.3 million at December 31, 2006. The use of the net operating loss carryovers is, however, subject to certain limitations and will expire to the extent not utilized beginning in 2019. In addition, the amount of these carryovers has not been audited or approved by the Internal Revenue Service, and, accordingly, we cannot promise that such carryovers will not be reduced as a result of audits in the future.

***Restatements and amendments to our 2004 audited financial statements and certain matters related to our disclosure controls and procedures may present a risk of future restatements and could in turn lead to legal exposure.***

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In response to comments from the SEC to our 2004 Form 10-K, and as a result of changes we made internally, we restated and amended our 2004 audited financial statements and on December 30, 2005, filed a Form 10-K/A (Amendment No. 1) for year ended December 31, 2004. As a result of the restatement and amendments to our 2004 audited financial statements and SEC comments, we also filed on December 30, 2005, an amended Form 10-Q/A for each of the quarters ended March 31, 2005 and June 30, 2005.

As a result of this restatement to our 2004 financial statements, we also revised our 2004 Form 10-K and first two quarters 2005 Form 10-Qs to provide that our disclosure controls and procedures were not effective as of December 31, 2004, March 31, 2005 and June 30, 2005, in our Form 10-K/A and Forms 10-Q/A, as a result of assessing that the change from the LIFO method to the FIFO method of accounting was not material resulting in the decision at the time of the change not to disclose and not to restate the prior years financial statements. We believe that during December 2005, we corrected the weakness to our disclosure controls and procedures by, among other things, establishing a Disclosure Committee to maintain oversight activities and to examine and reevaluate our policies, procedures and criteria to determine materiality of items relative to our financial statements taken as a whole. Restatements by others have, in some cases, resulted in the filing of

class action lawsuits against such companies and their management and further inquiries from the SEC. Any similar lawsuit against us could result in substantial defense and/or liability costs and would likely consume a material amount of management's attention that might otherwise be applied to our business. Under certain circumstances, these costs might not be covered by, or might exceed the limits of, our insurance coverage.

In addition, by letter received in August 2006 from the SEC, the SEC has made an informal inquiry of us relating to the change in inventory accounting from LIFO to FIFO resulting in the restatement of our financial statements, and, at this time, we do not know if the informal inquiry:

- will rise to the level of an investigation or proceeding, or

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