

CLEAN DIESEL TECHNOLOGIES INC
Form S-8
June 08, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S-8
REGISTRATION STATEMENT

Under

the Securities Act of 1933

CLEAN DIESEL TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware	4567 Telephone Road, Suite 100 Ventura,	06-1393453
(State or other jurisdiction of incorporation or organization)	(Address of registrant's principal executive offices, including zip code)	(I.R.S. Employer Identification Number)
CLEAN DIESEL TECHNOLOGIES, INC. STOCK INCENTIVE PLAN (f/k/a 1994 INCENTIVE PLAN)		

NEW EMPLOYEE INDUCEMENT AWARD NONQUALIFIED STOCK OPTION

(Full title of the plan)

Nikhil A. Mehta

Chief Financial Officer and Treasurer

4567 Telephone Road, Suite 100

Ventura, California 93003

(805) 639-9458

(Name, address, and telephone number of agent for service)

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.

Large Accelerated Filer Accelerated Filer
 Non-Accelerated Filer (Do not check if a smaller reporting company.) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01 per share	1,400,000 shares(2)	\$2.14(3)	\$2,996,000	\$343.34
Common Stock, par value \$0.01 per share	176,676 shares(4)	\$2.83	\$499,993.08	\$57.30

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), the shares of Common Stock set forth in the Calculation of Registration Fee table and which may be offered pursuant to this Registration Statement include an indeterminate number of shares of Common Stock that may be issuable by reason of stock splits, stock dividends or similar transactions.
- (2) Represents the total number of shares of Common Stock reserved for issuance under the Clean Diesel Technologies, Inc. Stock Incentive Plan.
- (3) Estimated solely for purpose of calculating the registration fee pursuant to Securities Act Rules 457(c) and 457(h). The proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based on the average of the high and low prices of the Registrant's shares of Common Stock on The Nasdaq Capital Market on June 5, 2012.

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- (4) Represents shares of Common Stock reserved for issuance upon the exercise under the New Employee Inducement Award Nonqualified Stock Option granted on March 8, 2012 to Robert Craig Breese in connection with his employment.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed by Clean Diesel Technologies, Inc. (the Registrant) to register (i) 1,400,000 shares of common stock, par value \$0.01 per share, which represent the aggregate number of shares reserved for issuance under the Clean Diesel Technologies, Inc. Stock Incentive Plan, formerly known as the 1994 Incentive Plan (the Plan); and (ii) 176,676 shares of common stock, par value \$0.01 per share, issuable upon exercise of the previously announced New Employee Inducement Award Nonqualified Stock Option (the Inducement Award) granted on March 8, 2012 to the Registrant's new Chief Executive Officer. The Inducement Award was granted outside of the Plan.

In accordance with General Instruction E to Form S-8, with respect to the Plan only, the contents of (i) the Registrant's registration statement on Form S-8 (Registration No. 333-16939) previously filed by the Registrant with the Securities and Exchange Commission (the Commission) on November 27, 1996, (ii) the Registrant's registration statement on Form S-8 (Registration No. 333-33276) previously filed by the Registrant with the Commission on March 24, 2000, (iii) the Registrant's registration statement on Form S-8 (Registration No. 333-117057) previously filed by the Registrant with the Commission on July 1, 2004, and (iv) the Registrant's registration statement on Form S-8 (Registration No. 333-151777) previously filed by the Registrant with the Commission on June 19, 2008, are incorporated herein by reference, except as amended hereby.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing information specified by Part I, Items 1 and 2 will be sent or given to participants in the Plan and the Inducement Award, in accordance with Form S-8 and Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference into this Registration Statement the following documents that have been filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act):

- (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2011 (including information specifically incorporated by reference into the Form 10-K from the Registrant's definitive proxy statement for the 2012 annual meeting of stockholders, which was filed on April 23, 2012 and amended on April 23, 2012), filed on March 29, 2012;
- (b) Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012, filed on May 10, 2012;
- (c) Current Reports on Form 8-K filed with the SEC on February 17, 2012; February 28, 2012; March 14, 2012; May 7, 2012 and May 24, 2012; and
- (d) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A, filed September 27, 2007, including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of Common Stock offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part thereof from the date of filing such documents.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Rori M. Ridley, general counsel to the Registrant, who has issued an opinion as to the validity of the shares of Common Stock covered by this Registration Statement, is an officer of the Registrant and holds options to purchase 16,176 shares of Common Stock and 5,392 restricted share units under the Plan covered by this Registration Statement.

Item 6. Indemnification of Directors and Officers

Subsection (a) of Section 145 of the Delaware General Corporation Law empowers a corporation to indemnify any person who was or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsection (a) and (b) or in the defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith; that the indemnification provided by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and that the scope of indemnification extends to directors, officers, employees, or agents of a constituent corporation absorbed in a consolidation or merger and persons serving in that capacity at the request of the constituent corporation for another. Section 145 also empowers a corporation to purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the corporation would have the power to indemnify him or her against such liabilities under Section 145.

Article VIII of the Registrant's Amended Certificate of Incorporation, as amended (Certificate of Incorporation), specifies that the Registrant shall indemnify its directors, officers, employees and agents to the full extent that such right of indemnity is permitted by law. This provision is deemed to be a contract between the Registrant and each director and officer who serves in such capacity at any time while such provision and the relevant provisions of the Delaware General Corporation Law are in effect, and any repeal or modification thereof shall not offset any right to indemnification in respect of action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts. The amendment or repeal of such provision of the Certificate of Incorporation may be effected by the affirmative vote of the holders of a majority in interest of all outstanding capital stock of the Registrant entitled to vote, in person or by proxy, at any annual or special meeting in which a quorum is present.

Section 102(b)(7) of the Delaware General Corporation Law enables a corporation in its certificate of incorporation to limit the personal liability of members of its Board of Directors for violation of a director's fiduciary duty of care. This section does not, however, limit the liability of a director for breaching his or her duty of loyalty, failing to act in good faith, engaging in intentional misconduct or knowingly violating a law, authorizing unlawful payments of dividends or unlawful redemptions or stock purchases as contemplated by Section 174 of Delaware General Corporation Law, or from any transaction in which the director derived an improper personal benefit. This section also will have no effect on claims arising under the federal securities laws.

The Registrant's Certificate of Incorporation limits the liability of its directors as authorized by Section 102(b)(7). To amend such provisions the Company would require the affirmative vote of the holders of a majority of the voting power of all outstanding shares of the capital stock of the Registrant.

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The Registrant has obtained liability insurance for the benefit of its directors and officers which provides coverage for losses of directors and officers for liabilities arising out of claims against such persons acting as directors or officers of the Registrant (or any subsidiary thereof) due to any breach of duty, neglect, error, misstatement, misleading statement, omission or act done by such directors and officers, except as prohibited by law.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the Exhibit Index attached to this Registration Statement that is incorporated herein by reference.

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Ventura, State of California, on this 8th day of June, 2012.

CLEAN DIESEL TECHNOLOGIES, INC.

By: /s/ Robert Craig Breese
Robert Craig Breese
President and Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below on this Registration Statement constitutes and appoints Robert Craig Breese and Nikhil A. Mehta, each of whom may act without joinder of the other, as their true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and any and all additional registration statements for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ ROBERT CRAIG BREESE Robert Craig Breese	Director, Chief Executive Officer (Principal Executive Officer)	June 8, 2012
/s/ NIKHIL A. MEHTA Nikhil A. Mehta	Chief Financial Officer (Principal Financial Officer)	June 8, 2012
/s/ DAVID E. SHEA David E. Shea	Controller (Principal Accounting Officer)	June 8, 2012
/s/ ALEXANDER HAP ELLIS III Alexander Hap Ellis III	Chairman of the Board	June 8, 2012
/s/ CHARLES F. CALL Charles F. Call	Vice-Chairman of the Board	June 8, 2012
/s/ BERNARD H. CHERRY	Director	June 8, 2012

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Bernard (Bud) H. Cherry

/s/ CHARLES R. ENGLER, PH.D.

Director

June 8, 2012

Charles R. Engler, Ph.D.

/s/ DEREK R. GRAY

Director

June 8, 2012

Derek R. Gray

/s/ MUNGO PARK

Director

June 8, 2012

Mungo Park

EXHIBIT INDEX

- 4.1 Specimen of Certificate for Clean Diesel Common Stock (incorporated by reference to Exhibit 4.1 to the Registrant's Post-Effective Amendment No. 1 to Form S-4 on Form S-3 (No. 333-166865) filed on November 10, 2010).
- 5.1 Opinion of Rori M. Ridley, Esq.
- 23.1 Consent of KPMG LLP, Independent Registered Public Accounting Firm
- 23.2 Consent of Rori M. Ridley, Esq. (included in Exhibit 5.1)
- 24.0 Powers of Attorney (included on the signature page).