

RSP Permian, Inc.
Form 425
March 28, 2018

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): March 27, 2018

Concho Resources Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-33615
(Commission
File Number)

76-0818600
(I.R.S. Employer
Identification No.)

79701

One Concho Center
600 West Illinois Avenue
Midland, Texas
(Address of Principal Executive Offices) **(Zip Code)**
Registrant's telephone number, including area code: (432) 683-7443

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Agreement and Plan of Merger

On March 27, 2018, Concho Resources Inc., a Delaware corporation (the Company), entered into an Agreement and Plan of Merger (the Merger Agreement) with RSP Permian, Inc., a Delaware corporation (RSP), and Green Merger Sub Inc., a Delaware corporation and wholly owned subsidiary of the Company (Merger Sub), pursuant to which Merger Sub will merge with and into RSP (the Merger), with RSP surviving the Merger as a wholly owned subsidiary of the Company.

On the terms and subject to the conditions set forth in the Merger Agreement, upon consummation of the Merger, each share of RSP common stock, par value \$0.01 per share, issued and outstanding immediately prior to the effective time of the Merger (the Effective Time) (excluding certain Excluded Shares (as defined in the Merger Agreement)) shall be converted into the right to receive from the Company 0.320 fully-paid and nonassessable shares of common stock, par value \$0.001 per share, of the Company (Company Shares).

The Merger Agreement contains customary representations and warranties of the Company and RSP relating to their respective businesses, financial statements and public filings, in each case generally subject to customary materiality qualifiers. Additionally, the Merger Agreement provides for customary pre-closing covenants of the Company and RSP, including covenants relating to conducting their respective businesses in the ordinary course and to refrain from taking certain actions without the other party's consent. The Merger Agreement also contains covenants of RSP not to solicit proposals relating to alternative transactions or, subject to certain exceptions, enter into discussions concerning or provide information in connection with alternative transactions and, subject to certain exceptions, to recommend that its stockholders adopt the Merger Agreement. The Merger Agreement also contains covenants of the Company not to solicit proposals relating to alternative transactions and, subject to certain exceptions, to recommend that its stockholders approve the issuance of the Company Shares in connection with the Merger.

The completion of the Merger is subject to certain customary mutual conditions, including (i) the receipt of the required approvals from RSP's and the Company's stockholders, (ii) the expiration or termination of the waiting period under the Hart-Scott-Rodino Act, (iii) the absence of any governmental order or law that makes consummation of the Merger illegal or otherwise prohibited, (iv) the Company's registration statement on Form S-4 having been declared effective by the U.S. Securities and Exchange Commission (the SEC) under the Securities Act of 1933, as amended, (v) the Company Shares issuable in connection with the Merger having been authorized for listing on the New York Stock Exchange, upon official notice of issuance, and (vi) the receipt by each party of a customary opinion that the Merger will qualify as a reorganization within the meaning of Section 368(a) of the U.S. tax code. The obligation of each party to consummate the Merger is also conditioned upon the other party's representations and warranties being true and correct (subject to certain materiality exceptions), the absence of a material adverse effect on the other party and the other party having performed in all material respects its obligations under the Merger Agreement.

Prior to, but not after, the approval of the issuance of the Company Shares in connection with the Merger by the Company's stockholders, the board of directors of the Company (the Company Board) may withhold, withdraw, qualify or modify its recommendation that the Company's stockholders approve the issuance of the Company Shares in connection with the Merger as result of a Parent Intervening Event (as defined in the Merger Agreement), if the Company Board determines that the failure to make such a change of recommendation would be inconsistent with the fiduciary duties owed by the Company Board to the Company's stockholders under applicable law, subject to complying with certain notice and other specified conditions, including giving RSP the opportunity to propose revisions to the terms of the Merger Agreement during a match right period and the payment of a termination fee in connection with such termination.

Prior to, but not after, the adoption of the Merger Agreement by RSP's stockholders, the board of directors of RSP (the RSP Board) may withhold, withdraw, qualify or modify its recommendation that RSP's stockholders adopt the Merger Agreement as result of a Company Superior Proposal or a Company Intervening Event (as each is defined in the Merger Agreement), if the RSP Board determines that the failure to make such a change of recommendation would be inconsistent with the fiduciary duties owed by the RSP Board to RSP's stockholders under applicable law, subject to complying with certain notice and other specified conditions, including giving the Company the opportunity to propose revisions to the Merger Agreement during a match right period and the payment of a termination fee in connection with such termination.

The Merger Agreement contains termination rights for each of the Company and RSP, including, among others, if the consummation of the Merger does not occur on or before October 31, 2018. Upon termination of the Merger Agreement under specified circumstances, including the termination by RSP in the event of a change of recommendation by the Company Board, the Company would be required to pay RSP a termination fee of \$350 million. Upon termination of the Merger Agreement under specified circumstances, including, generally, the termination by the Company in the event of a change of recommendation by the RSP Board or the termination by RSP to enter into an alternative acquisition agreement providing for a Company Superior Proposal, RSP would be required to pay the Company a termination fee of \$250 million.

Prior to the Effective Time, the Company is required to take all necessary corporate action so that upon and after the Effective Time, the size of the Company Board is increased by one member, and, prior to the consummation of the Merger, one member of the RSP Board (determined to be independent by the Company Board and mutually agreed upon between RSP and the Company) is appointed to the Company Board to fill the vacancy created by such increase. The Company is required to take all necessary action to nominate such director for election to the Company Board in the proxy statement relating to the first annual meeting of the Company's stockholders following the consummation of the Merger.

The foregoing description of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by the actual Merger Agreement, a copy of which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

The Merger Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company, RSP or their respective subsidiaries or affiliates or to modify or supplement any factual disclosures about the Company or RSP included in their public reports filed with the SEC. The representations, warranties and covenants contained in the Merger Agreement were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the respective parties to such agreements, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the respective parties to such agreements instead of establishing these matters as facts, and may be subject to standards of materiality that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or of any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

No Offer or Solicitation

This communication relates to a proposed business combination transaction (the Transaction) between RSP Permian, Inc. (RSP) and Concho Resources Inc. (Concho). This communication is for informational purposes only and does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, in any jurisdiction, pursuant to the Transaction or otherwise, nor shall there be any sale, issuance, exchange or transfer of the securities referred to in this document in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Additional Information and Where to Find It

In connection with the Transaction, Concho will file with the U.S. Securities and Exchange Commission (SEC) a registration statement on Form S-4, that will include a joint proxy statement of RSP and Concho that also constitutes a prospectus of Concho. RSP and Concho may also file other documents with the SEC regarding the Transaction. The definitive joint proxy statement/prospectus will be sent to the stockholders of Concho and RSP. This document is not a substitute for the registration statement and joint proxy statement/prospectus that will be filed with the SEC or any other documents that Concho or RSP may file with the SEC or send to stockholders of Concho or RSP in connection with the Transaction. **INVESTORS AND SECURITY HOLDERS OF RSP AND CONCHO ARE URGED TO READ THE REGISTRATION STATEMENT, THE JOINT PROXY STATEMENT/PROSPECTUS AND ALL OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE TRANSACTION AND RELATED MATTERS.**

Investors and security holders will be able to obtain free copies of the registration statement and the joint proxy statement/prospectus (when available) and all other documents filed or that will be filed with the SEC by Concho or RSP through the website maintained by the SEC at www.sec.gov. Copies of documents filed with the SEC by RSP will be made available free of charge on RSP's website at <http://www.rsppermian.com> under the heading SEC Filings or by contacting RSP's Investor Relations Department by phone at 214-252-2790. Copies of documents filed with the SEC by Concho will be made available free of charge on Concho's website at <http://www.concho.com/investors> or by contacting Concho's Investor Relations Department by phone at 432-221-0477.

Participants in Solicitation

Concho, RSP and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the holders of Concho's common stock and RSP's common stock in respect to the Transaction.

Information regarding RSP's directors and executive officers is contained in the proxy statement for RSP's 2017 Annual Meeting of Stockholders filed with the SEC on April 28, 2017 and in the other documents filed after the date thereof by RSP with the SEC. You can obtain a free copy of this document at the SEC's website at www.sec.gov or by accessing RSP's website at <http://www.rsppermian.com>. Information regarding Concho's executive officers and directors is contained in the proxy statement for Concho's 2017 Annual Meeting of Stockholders filed with the SEC on April 5, 2017 and in the other documents filed after the date thereof by Concho with the SEC. You can obtain a free copy of this document at the SEC's website at www.sec.gov or by accessing Concho's website at <http://www.concho.com/investors>.

Investors may obtain additional information regarding the interests of those persons and other persons who may be deemed participants in the Transaction by reading the joint proxy statement/prospectus regarding the Transaction when it becomes available. You may obtain free copies of this document as described above.

Forward-Looking Statements and Cautionary Statements

The foregoing contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements, other than statements of historical fact, included in this communication that address activities, events or developments that Concho or RSP expects, believes or anticipates will or may occur in the future are forward-looking statements. Words such as estimate, project, predict, believe, expect, anticipate, potential, create, intend, could, may, foresee, plan, will, guidance, future, assume, forecast, build, focus, work, continue or the negative of such terms or other variations thereof and words and terms of similar substance used in connection with any discussion of future plans, actions, or events identify forward-looking statements. However, the absence of these words does not mean that the statements are not forward-looking. These forward-looking statements include, but are not limited to, statements regarding the Transaction, pro forma descriptions of the combined company and its operations, integration and transition plans, synergies, opportunities and anticipated future performance. There are a number of risks and uncertainties that could cause actual results to differ materially from the forward-looking statements included in this communication. These include the expected timing and likelihood of completion of the Transaction, including the timing, receipt and terms and conditions of any required governmental and regulatory approvals of the Transaction that could reduce anticipated benefits or cause the parties to abandon the Transaction, the ability to successfully integrate the businesses, the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement, the possibility that stockholders of Concho may not approve the issuance of new shares of common stock in the Transaction or that stockholders of RSP may not approve the merger agreement, the risk that the parties may not be able to satisfy the conditions to the Transaction in a timely manner or at all, risks related to disruption of management time from ongoing business operations due to the Transaction, the risk that any announcements relating to the Transaction could have adverse effects on the market price of Concho's common stock or RSP's common stock, the risk that the Transaction and its announcement could have an adverse effect on the ability of Concho and RSP to retain customers and retain and hire key personnel and maintain relationships with their suppliers and customers and on their operating results and businesses generally, the risk the pending Transaction could distract management of both entities and they will incur substantial costs, the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected, the risk that the combined company may be unable to achieve synergies or it may take longer than expected to achieve those synergies and other important factors that could cause actual results to differ materially from those projected. All such factors are difficult to predict and are beyond Concho's or RSP's control, including those detailed in Concho's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on its website at <http://www.concho.com> and on the SEC's website at <http://www.sec.gov>, and those detailed in RSP's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on RSP's website at <http://www.rsppermian.com> and on the SEC's website at <http://www.sec.gov>. All forward-looking statements are based on assumptions that Concho or RSP believe to be reasonable but that may not prove to be accurate. Any forward-looking statement speaks only as of the date on which such statement is made, and Concho and RSP undertake no obligation to correct or update any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by applicable law. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

Cautionary Statements Regarding Resource

Concho may use the term "resource potential" and similar phrases to describe estimates of potentially recoverable hydrocarbons that SEC rules prohibit from being included in filings with the SEC. These are based on analogy to Concho's existing models applied to additional acres, additional zones and tighter spacing and are Concho's internal estimates of hydrocarbon quantities that may be potentially discovered through exploratory drilling or recovered with additional drilling or recovery techniques. These quantities may not constitute "reserves" within the meaning of the Society of Petroleum Engineers Petroleum Resource Management System or SEC rules. Such estimates and identified drilling locations have not been fully risked by Concho management and are inherently more speculative than proved reserves estimates. Actual locations drilled and quantities that may be ultimately recovered from Concho's interests could differ substantially from these estimates. There is no commitment by Concho to drill all of the drilling locations that have been attributed to these quantities. Factors affecting ultimate recovery include the scope of Concho's ongoing drilling program, which will be directly affected by the availability of capital, drilling and production costs, availability of drilling services and equipment, drilling results, lease expirations, transportation constraints, regulatory approvals, actual drilling results, including geological and mechanical factors affecting recovery rates, and other factors. Such estimates may change significantly as development of Concho's oil and natural gas assets provide additional data. Concho's production forecasts and expectations for future periods are dependent upon many assumptions, including estimates of production decline rates from existing wells and the undertaking and outcome of future drilling activity, which may be affected by significant commodity price declines or drilling cost increases or other factors that are beyond Concho's control. Concho's use of the term "premium resource" refers to assets with the capacity to produce at an internal rate of return that is greater than thirty-five percent based on fifty-five dollar oil and three dollar gas.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
2.1*	<u>Agreement and Plan of Merger among Concho Resources Inc., RSP Permian, Inc. and Green Merger Sub Inc., dated as of March 27, 2018.</u>

* Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Concho Resources Inc. agrees to furnish supplementally a copy of such schedules, or any section thereof, to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CONCHO RESOURCES INC.

By: /s/ Travis L. Counts

Name: Travis L. Counts

Title: Senior Vice President, General
Counsel and Corporate Secretary

Date: March 28, 2018