Clean Energy Fuels Corp.
Form 10-Q
November 09, 2012
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF

THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2012

Commission File Number: 001-33480

CLEAN ENERGY FUELS CORP.

(Exact name of registrant as specified in its charter)

Delaware	**33-0968580**
(State or other jurisdiction of incorporation)	(IRS Employer Identification No.)

3020 Old Ranch Parkway, Suite 400, Seal Beach CA 90740

(Address of principal executive offices, including zip code)

(562) 493-2804

(Registrant s telephone number, including area code)

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. x

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232,405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No 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 x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

As of October 29, 2012, there were 87,550,153 shares of the registrant s common stock, par value $0.0001 per share, issued and outstanding.

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CLEAN ENERGY FUELS CORP. AND SUBSIDIARIES

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited)

Clean Energy Fuels Corp. and Subsidiaries

Condensed Consolidated Balance Sheets

As of December 31, 2011 and September 30, 2012

(Unaudited)

(In thousands, except share data)

	December 31, 2011	September 30, 2012
Assets		
Current assets:		
Cash and cash equivalents	$ 238,125	$ 149,068
Restricted cash	4,792	8,434
Short-term investments	33,329	29,660
Accounts receivable, net of allowance for doubtful accounts of $712 and $878 as of December 31, 2011 and September 30, 2012, respectively	56,455	65,993
Other receivables	19,601	24,171
Inventory, net	35,287	37,343
Prepaid expenses and other current assets	22,252	30,754
Total current assets	409,841	345,423
Land, property and equipment, net	257,463	376,012
Restricted cash	54,804	46,865
Notes receivable and other long-term assets	16,650	15,126
Investments in other entities	16,459	17,106
Goodwill	73,741	73,741
Intangible assets, net	102,103	97,873
Total assets	$ 931,061	$ 972,146
Liabilities and Stockholders Equity		
Current liabilities:		
Current portion of long-term debt and capital lease obligations	$ 22,925	$ 34,068
Accounts payable	36,668	38,131
Accrued liabilities	28,255	30,565

Deferred revenue		9,621		33,287
Total current liabilities		97,469		136,051
Long-term debt and capital lease obligations, less current portion		266,497		303,926
Other long-term liabilities		22,687		17,768
Total liabilities		386,653		457,745
Commitments and contingencies (Note 16)				
Stockholders equity:				
Preferred stock, $0.0001 par value. Authorized 1,000,000 shares; issued and outstanding no shares				
Common stock, $0.0001 par value. Authorized 149,000,000 shares; issued and outstanding 85,433,258 shares and 87,232,094 shares at December 31, 2011 and September 30, 2012, respectively		9		9
Additional paid-in capital		741,650		771,135
Accumulated deficit		(199,559)		(259,079)
Accumulated other comprehensive loss		(1,216)		(1,521)
Total Clean Energy Fuels Corp. stockholders equity		540,884		510,544
Noncontrolling interest in subsidiary		3,524		3,857
Total stockholders equity		544,408		514,401
Total liabilities and stockholders equity	$	931,061	$	972,146

See accompanying notes to condensed consolidated financial statements.

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Clean Energy Fuels Corp. and Subsidiaries

Condensed Consolidated Statements of Operations

For the Three Months and Nine Months Ended September 30, 2011 and 2012

(Unaudited)

(In thousands, except share and per share data)

	Three Months Ended September 30, 2011	Three Months Ended September 30, 2012	Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2012
Revenue:				
Product revenues	$ 64,237	$ 82,720	$ 184,292	$ 206,201
Service revenues	7,845	8,739	22,244	28,734
Total revenue	72,082	91,459	206,536	234,935
Operating expenses:				
Cost of sales:				
Product cost of sales	48,853	67,392	139,591	162,985
Service cost of sales	3,901	3,839	10,591	12,662
Derivative gains:				
Series I warrant valuation	(1,524)	(5,692)	(3,059)	(1,085)
Selling, general and administrative	20,140	30,557	59,823	83,323
Depreciation and amortization	7,554	9,047	22,396	26,098
Total operating expenses	78,924	105,143	229,342	283,983
Operating loss	(6,842)	(13,684)	(22,806)	(49,048)
Interest expense, net	(3,194)	(4,314)	(5,520)	(11,337)
Other income (expense), net	(2,450)	1,914	(1,662)	1,578
Income from equity method investments	99	152	474	315
Loss before income taxes	(12,387)	(15,932)	(29,514)	(58,492)
Income tax benefit (expense)	960	(277)	2,872	(695)
Net loss	(11,427)	(16,209)	(26,642)	(59,187)
Loss (income) of noncontrolling interest	73	(112)	(84)	(333)
Net loss attributable to Clean Energy Fuels Corp.	$ (11,354)	(16,321)	$ (26,726)	(59,520)
Loss per share attributable to Clean Energy Fuels Corp.				
Basic	$ (0.16)	(0.19)	$ (0.38)	(0.69)
Diluted	$ (0.16)	(0.19)	$ (0.38)	(0.69)
Weighted average common shares outstanding				
Basic	70,364,202	87,006,024	70,255,311	86,441,196
Diluted	70,364,202	87,006,024	70,255,311	86,441,196

See accompanying notes to condensed consolidated financial statements.

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Clean Energy Fuels Corp. and Subsidiaries

Condensed Consolidated Statements of Comprehensive Income (Loss)

For the Three Months and Nine Months Ended September 30, 2011 and 2012

(Unaudited)

(In thousands)

	Clean Energy Fuels Corp. Three Months Ended September 30, 2011	Clean Energy Fuels Corp. Three Months Ended September 30, 2012	Noncontrolling Interest Three Months Ended September 30, 2011	Noncontrolling Interest Three Months Ended September 30, 2012	Total Three Months Ended September 30, 2011	Total Three Months Ended September 30, 2012
Net income (loss)	$ (11,354)	(16,321)	$ (73)	112	$ (11,427)	(16,209)
Other comprehensive income, net of tax:						
Foreign currency translation adjustments	2,803	(1,941)			2,803	(1,941)
Unrealized gains on available-for sale securities		38				38
Unrecognized gains on derivatives	476	157			476	157
Total other comprehensive income, net of tax	3,279	(1,746)			3,279	(1,746)
Comprehensive income (loss)	$ (8,075)	(18,067)	(73)	112	(8,148)	(17,955)

	Clean Energy Fuels Corp. Nine Months Ended September 30, 2011	Clean Energy Fuels Corp. Nine Months Ended September 30, 2012	Noncontrolling Interest Nine Months Ended September 30, 2011	Noncontrolling Interest Nine Months Ended September 30, 2012	Total Nine Months Ended September 30, 2011	Total Nine Months Ended September 30, 2012
Net income (loss)	$ (26,726)	(59,520)	$ 84	333	$ (26,642)	(59,187)
Other comprehensive income, net of tax:						
Foreign currency translation adjustments	2,105	(2,250)			2,105	(2,250)
Unrealized losses on available-for sale securities		(178)				(178)
Unrecognized gains on derivatives	1,689	2,123			1,689	2,123
Total other comprehensive income, net of tax	3,794	(305)			3,794	(305)

Comprehensive income (loss)	$	(22,932)	(59,825)	$	84	333	$	(22,848)	(59,492)

See accompanying notes to condensed consolidated financial statements.

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Clean Energy Fuels Corp. and Subsidiaries

Condensed Consolidated Statements of Cash Flows

For the Nine Months Ended September 30, 2011 and 2012

(Unaudited)

(In thousands)

	Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2012
Cash flows from operating activities:		
Net loss	$ (26,642)	$ (59,187)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	22,396	26,098
Provision for doubtful accounts and notes	335	469
Derivative (gain) loss	(3,059)	(1,085)
Stock-based compensation expense	10,093	16,492
Amortization of debt issuance cost	2,060	352
Accretion of notes payable	238	1,523
Gain on contingent consideration for acquisitions	(2,554)	(3,994)
Changes in operating assets and liabilities, net of assets and liabilities acquired:		
Accounts and other receivables	15,855	(10,123)
Inventory	(11,943)	(1,498)
Margin deposits on futures contracts	2,981	3,000
Prepaid expenses and other assets	(13,130)	(14,375)
Accounts payable	(5,878)	(2,409)
Accrued expenses and other	3,251	25,817
Net cash provided by (used in) operating activities	(5,997)	(18,920)
Cash flows from investing activities:		
Purchases of short-term investments		(24,015)
Maturities of short-term investments		27,506
Purchases of property and equipment	(39,869)	(132,840)
Loans made to customers	(2,709)	(7,657)
Payments on and proceeds from sales of loans receivable	1,007	7,220
Change in restricted cash	(70,941)	4,297
Investments in other entities	(4,712)	(1,024)
Net cash used in investing activities	(117,224)	(126,513)
Cash flows from financing activities:		
Proceeds from issuance of common stock and exercise of stock options	1,197	8,373
Proceeds from capital lease obligations and debt instruments	242,730	559
Contingent consideration paid relating to business acquisitions	(2,396)	(350)

Proceeds from revolving line of credit		34,383		31,701
Proceeds from minority interest DCE equity contribution		417		
Proceeds from Chesapeake note				50,000
Payments for debt issuance costs		(3,053)		
Repayment of borrowing under revolving line of credit		(29,882)		(27,819)
Repayment of capital lease obligations and debt instruments		(15,854)		(6,774)
Net cash provided by financing activities		227,542		55,690
Effect of exchange rates on cash and cash equivalents		(512)		686
Net increase (decrease) in cash		103,809		(89,057)
Cash, beginning of period		55,194		238,125
Cash, end of period	$	159,003	$	149,068
Supplemental disclosure of cash flow information:				
Income taxes paid	$	873	$	753
Interest paid, net of approximately $319 and $4,821 capitalized, respectively		2,551		9,224

See accompanying notes to condensed consolidated financial statements.

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Clean Energy Fuels Corp. and Subsidiaries

Notes to Condensed Consolidated Financial Statements

(Unaudited)

(In thousands, except share data)

Note 1 General

Nature of Business: Clean Energy Fuels Corp., together with its majority and wholly owned subsidiaries (hereinafter collectively referred to as the Company) is engaged in the business of selling natural gas fueling solutions to its customers, primarily in the United States. The Company began selling certain equipment and services internationally in 2010 as a result of its acquisition of I.M.W. Industries, Ltd. (IMW).

The Company has a broad customer base in a variety of markets, including trucking, airports, taxis, refuse, and public transit. The Company builds, operates, maintains or supplies approximately 323 natural gas fueling locations in 30 states within the United States, and in British Columbia and Ontario within Canada. The Company also generates revenue through operation and maintenance (O&M) agreements with certain customers, through building and selling or leasing natural gas fueling stations to its customers, and through manufacturing and servicing natural gas fueling compressors and related equipment, providing natural gas vehicle conversions, providing design and engineering services for natural gas engine systems, processing and selling renewable natural gas (RNG), and through financing its customers vehicle purchases.

Basis of Presentation: The accompanying interim unaudited condensed consolidated financial statements include the accounts of the Company and its subsidiaries, and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company s financial position, results of operations and cash flows for the three and nine month periods ended September 30, 2011 and 2012. All intercompany accounts and transactions have been eliminated in consolidation. The three and nine month periods ended September 30, 2011 and 2012 are not necessarily indicative of the results to be expected for the year ending December 31, 2012 or for any other interim period or for any future year.

Certain information and disclosures normally included in the notes to the financial statements have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (the SEC), but the resultant disclosures contained herein are in accordance with accounting principles generally accepted in the United States of America (US GAAP) as they apply to interim reporting. The condensed consolidated financial statements should be read in conjunction with the consolidated financial statements as of and for the year ended December 31, 2011 that are included in the Company s Annual Report on Form 10-K filed with the SEC on March 12, 2012.

Immaterial Revisions to Prior Years Financial Statements

During the third quarter of 2012, the Company identified certain immaterial errors in its previously issued financial statements as follows:

1) Costs associated with fueling stations to be sold to third parties were previously reported on the balance sheets in construction in progress in land, property and equipment and as part of investing activities in the statements of cash flows. The Company has changed the classification for these costs on the balance sheets from land, property and equipment to prepaid expenses and other current assets. Additionally the Company has changed the reporting of advanced billings (deferred revenue on the balance sheet) for these projects to net such advanced billings against the costs of the related projects where costs exceed the billings. Advanced billings that exceed costs have been recorded as a net current liability within deferred revenue. The statements of cash flows have been changed to reflect the costs for these projects as operating activities.

2) Loans made to customers to finance vehicle purchases, net of repayments on the loans, were previously reported as cash flows from operating activities, and the proceeds from the subsequent sale of the loans have been reported as investing activities. The Company considers its loans to customers to finance vehicle purchases as an investment activity and accordingly has changed the reporting of these loans and the repayments thereof from operating activities to investing activities within the statements of cash flows. Repayment amounts have been grouped with proceeds on loan sales as they are immaterial.

3) The Company did not reflect certain non-cash investing activities (principally accrued purchases of property and equipment) in its statements of cash flows, which now have been adjusted.

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The Company assessed the materiality of these errors for each quarterly and annual period and determined that the errors individually and in the aggregate were immaterial to previously reported amounts contained in its periodic reports. Accordingly, the Company has revised its consolidated balance sheets and statements of cash flows for all previously reported periods as noted below. The Company intends to revise its consolidated financial statements for certain quarterly and annual periods through subsequent periodic filings. The particular financial statement captions have been revised as follows:

	For the Year Ended December 31, 2010		**For the Year Ended December 31, 2011**	
	As Reported	**As Revised**	**As Reported**	**As Revised**
Cash flows from operating activities	(4,036)	(10,703)	(11,217)	(27,136)
Cash flows from investing activities	(68,734)	(62,067)	(181,826)	(165,907)
Prepaid expenses and other current assets	10,959	10,959	14,027	22,252
Land, property and equipment, net	211,643	203,174	277,334	257,463
Deferred revenue	17,507	9,038	21,267	9,621

	For the Three Months Ended March 31, 2011		**For the Six Months Ended June 30, 2011**		**For the Nine Months Ended September 30, 2011**	
	As Reported	**As Revised**	**As Reported**	**As Revised**	**As Reported**	**As Revised**
Cash flows from operating activities	9,897	10,867	9,886	10,644	1,978	(5,997)
Cash flows from investing activities	(40,577)	(41,547)	(57,698)	(58,456)	(125,199)	(117,224)
Prepaid expenses and other current assets	11,970	12,645	12,889	14,528	12,345	21,641
Land, property and equipment, net	217,384	209,401	229,074	219,867	246,534	228,576
Deferred revenue	12,466	5,158	12,308	4,740	18,559	9,897

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	For the Three Months Ended March 31, 2012		For the Six Months Ended June 30, 2012	
	As Reported	As Revised	As Reported	As Revised
Cash flows from operating activities	(15,079)	(16,896)	(6,251)	(18,214)
Cash flows from investing activities	(33,859)	(32,042)	(63,067)	(51,104)
Prepaid expenses and other current assets	13,966	28,931	15,132	37,243
Land, property and equipment, net	309,939	287,845	355,017	323,523
Deferred revenue	25,948	18,819	44,389	35,006

Totals as reported on previous consolidated balance sheets have been revised to reflect the above changes.

Use of Estimates: The preparation of consolidated financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and revenues and expenses recorded during the reporting period. Actual results could differ from those estimates. Current economic conditions may require the use of additional estimates and these estimates may be subject to a greater degree of uncertainty as a result of the uncertain economy.

Note 2 Acquisitions

ServoTech

On February 25, 2011 (the Closing Date), the Company paid $1,200 for a 19.9% interest in ServoTech Engineering, Inc. (ServoTech), a company that provides, among other services, design and engineering services for natural gas fueling systems. In connection with the investment, the Company was granted an option to purchase the remaining 80.1% of ServoTech for $2,800 (the Exercise Price) during the 15 month period following the Closing Date (the Purchase Option). On April 30, 2012, the Company exercised the Purchase Option, paid 50% of the Exercise Price, or $1,400, in cash, on that date, and paid the remaining $1,400 of the Exercise Price in cash on October 31, 2012. Through March 31, 2012, the Company accounted for its interest in ServoTech using the equity method of accounting as the Company had the ability to exercise significant influence over ServoTech s operations.

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The Company accounted for this acquisition in accordance with the authoritative guidance for business combinations in stages. The Company re-measured its previously held equity interest in ServoTech at fair value as of April 30, 2012 (its acquisition date) resulting in no gain or loss, and recognized the assets acquired and the liabilities assumed, measured at their fair values, as of the date of acquisition. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed as of the acquisition date:

Current assets	$	2,655
Property & equipment		239
Identifiable intangible assets		3,913
Total assets acquired		6,807
Current liabilities assumed		(2,807)
Total purchase price	$	4,000

The Company identified intangible assets with estimated fair value of $3,913 related to certain customer contracts and technology. The fair value of the identified intangible assets will be amortized on a straight-line basis over their estimated useful lives, ranging from two to seven years.

The results of ServoTech s operations have been included in the Company s consolidated financial statements since April 30, 2012. The historical results of ServoTech s operations were not material to the Company s financial position or historical results of operations.

Note 3 Cash and Cash Equivalents

The Company considers all highly liquid investments with maturities of three months or less on the date of acquisition to be cash equivalents.

Note 4 Restricted Cash

The Company classifies restricted cash as a current asset if the cash is expected to be used in operations within a year or to acquire a current asset. Otherwise, the restricted cash is classified as long-term. Restricted cash consisted of the following as of September 30, 2012:

		December 31, 2011		September 30, 2012
Short-term restricted cash				
Standby letters of credit	$	1,237	$	1,226
DCEMB bonds current operating costs		3,555		7,208
Total short-term restricted cash		4,792		8,434
Chesapeake loans		40,322		45,913
DCEMB bonds long-term plant expansion		14,482		952
Total restricted cash	$	59,596	$	55,299

Note 5 Investments

Available-for-sale investments are carried at fair value, inclusive of unrealized gains and losses. Net unrealized gains and losses are included in other comprehensive income (loss) net of applicable income taxes. Gains or losses on sales of available-for-sale investments are recognized on the specific identification basis.

The Company reviews available-for-sale investments for other-than-temporary declines in fair value below their cost basis each quarter, and whenever events or changes in circumstances indicate that the cost basis of an asset may not be recoverable. This evaluation is based on a number of factors, including the length of time and the extent to which the fair value has been below its cost basis and adverse conditions related specifically to the security, including any changes to the credit rating of the security.

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Short-term investments as of December 31, 2011 are summarized as follows:

	Amortized Cost	Gross Unrealized Losses	Estimated Fair Value
Municipal bonds & notes	$ 19,703	$ (114)	$ 19,589
Zero coupon bonds	712		712
Corporate bonds	3,040	(12)	3,028
Total available-for-sale securities	23,455	(126)	23,329
Certificate of deposits	10,000		10,000
Total short-term investments	$ 33,455	$ (126)	$ 33,329

Short-term investments as of September 30, 2012 are summarized as follows:

	Amortized Cost	Gross Unrealized Losses	Estimated Fair Value
Municipal bonds & notes	$ 17,272	(137)	17,135
Corporate bonds	2,545	(41)	2,504
Total available-for-sale securities	19,817	(178)	19,639
Certificate of deposits	10,021		10,021
Total short-term investments	$ 29,838	(178)	29,660

As of September 30, 2012, all of the investments mature in one year or less.

Note 6 Derivative Transactions

The Company, in an effort to manage its natural gas commodity price risk exposures related to certain contracts, utilizes derivative financial instruments. From time to time, the Company enters into natural gas futures contracts that are over-the-counter swap transactions that convert its index-based gas supply arrangements to fixed price arrangements. As of September 30, 2012, all of the Company s future contracts are being accounted for as cash flow hedges and are being used to mitigate the Company s exposure to changes in the price of natural gas and not for speculative purposes. The Company marks to market its open futures positions at the end of each period and records the net unrealized gain or loss during the period in derivative (gains) losses in the condensed consolidated statements of operations or in accumulated other comprehensive income in the condensed consolidated balance sheets in accordance with the Financial Accounting Standards Board s (FASB) authoritative guidance. For the three month periods ended September 30, 2011 and 2012, the Company recorded unrealized gains of $476 and $157, respectively, in other comprehensive income (loss) related to its futures contracts. For the nine month periods ended September 30, 2011 and 2012, the Company recorded unrealized gains of $1,689 and $2,123, respectively, in other comprehensive income (loss) related to its futures contracts. The Company s net futures contracts liability of $135 at September 30, 2012 was recorded as an asset of $32 in prepaid expenses and other current assets and a liability of $167 in accrued liabilities, which are included in the Company s condensed consolidated balance sheet. Of the $2,661 liability for the Company s futures contracts at September 30, 2011, $2,546 is included in accrued liabilities for the short-term amount, and $115 is included in other long-term liabilities for the long-term amount in the Company s condensed consolidated balance sheet. The Company s ineffectiveness related to its futures contracts during the three and nine month periods ended September 30, 2011 and 2012 was insignificant. For the three months ended September 30, 2011 and 2012, the Company recognized a loss of approximately $864 and $100, respectively, in cost of sales in the accompanying condensed consolidated statements of operations related to its futures contracts that were settled during the respective periods. For the nine months ended September 30, 2011 and 2012, the Company recognized a loss of $2,295 and

$2,403, respectively, in cost of sales in the accompanying condensed consolidated statements of operations related to its futures contracts that were settled during the respective periods. These amounts were reclassified from accumulated other comprehensive income (loss). As of September 30, 2012, the remaining unrecognized loss of $135 is recorded as a component of accumulated other comprehensive income (loss). The Company expects to reclassify such unrecognized loss from accumulated other comprehensive income (loss) as cost of sales through June 30, 2013.

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The following table presents the notional amounts and weighted-average fixed prices per gasoline gallon equivalent of the Company s natural gas futures contracts as of September 30, 2012:

	Gallons		Weighted Average Price Per Gasoline Gallon Equivalent
October to December, 2012	600,000	$	0.54
January to June, 2013	1,140,000	$	0.53

Note 7 Other Receivables

Other receivables at December 31, 2011 and September 30, 2012 consisted of the following:

		December 31, 2011		September 30, 2012
Loans to customers to finance vehicle purchases	$	1,789	$	4,270
Capital lease receivables		310		304
Accrued customer billings		5,860		9,843
Fuel tax and carbon credits		5,912		5,470
Other		5,730		4,284
	$	19,601	$	24,171

Note 8 Inventories

Inventories are stated at the lower of cost or market on a first-in, first-out basis. Management s estimate of market includes a provision for slow-moving or obsolete inventory based upon inventory on hand and forecasted demand.

Inventories consisted of the following as of December 31, 2011 and September 30, 2012:

		December 31, 2011		September 30, 2012
Raw materials and spare parts	$	30,177	$	32,177
Work in process		2,310		3,902
Finished goods		2,800		1,264
Total	$	35,287	$	37,343

Note 9 Land, Property and Equipment

Land, property and equipment at December 31, 2011 and September 30, 2012 are summarized as follows:

	December 31, 2011	September 30, 2012
Land	$ 1,198	$ 1,198
LNG liquefaction plants	93,109	93,357
RNG plants	21,005	23,575
Station equipment	118,613	141,091
LNG trailers	13,532	13,564
Other equipment	26,508	42,930
Construction in progress	66,256	161,692
	340,221	477,407
Less: accumulated depreciation	(82,758)	(101,395)
	$ 257,463	$ 376,012

Note 10 Investments in Other Entities

The Company has invested in The Vehicle Production Group LLC (VPG), a company that is developing a natural gas vehicle made in the United States for taxi and paratransit use. The Company accounts for its investment in VPG under the cost method of accounting as the Company does not have the ability to exercise significant influence over VPG s operations. During the nine months ended September 30, 2012, the Company invested an additional $1,024 in VPG. At September 30, 2012, this investment had a balance of $14,544.

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The Company has invested in Clean Energy del Peru (Peru JV), a joint venture in Lima, Peru that operates CNG stations. The Company accounts for its investment in Peru JV under the equity method of accounting as the Company has the ability to exercise significant influence over Peru JV s operations. At September 30, 2012, this investment had a balance of $2,562.

Note 11 Accrued Liabilities

Accrued liabilities at December 31, 2011 and September 30, 2012 consisted of the following:

		December 31, 2011		September 30, 2012
Salaries and wages	$	5,088	$	9,042
Accrued gas purchases		4,773		8,949
Derivative liabilities		2,259		477
Contingent consideration obligation		378		412
Accrued property and other taxes		3,043		2,569
Accrued professional fees		875		767
Accrued employee benefits		1,431		3,338
Accrued warranty liability		3,130		2,587
Other		7,278		2,424
	$	28,255	$	30,565

Note 12 Warranty Liability

The Company records warranty liabilities at the time of sale for the estimated costs that may be incurred under its standard warranty. Changes in the warranty liability are presented in the following tables:

		September 30, 2011		September 30, 2012
Warranty liability at beginning of year	$	2,338	$	3,130
Costs accrued for new warranty contracts and changes in estimates for pre-existing warranties		1,977		2,836
Service obligations honored		(1,544)		(3,379)
Warranty liability at end of period	$	2,771	$	2,587

Note 13 Long-term Debt

In conjunction with the Company s acquisition of its 70% interest in Dallas Clean Energy, LLC (DCE), on August 15, 2008, the Company entered into a credit agreement (Credit Agreement) with Plains Capital Bank (PCB). The Company borrowed $18,000 (the Facility A Loan) to finance the acquisition of its membership interests in DCE. The Company also obtained a $12,000 line of credit from PCB to finance capital improvements of the DCE processing facility and to pay certain costs and expenses related to the acquisition and the PCB loans (the Facility B Loan).

On October 7, 2009, the Facility A Loan was repaid in full and converted into a $20,000 line of credit (the A Line of Credit) pursuant to an amendment to the Credit Agreement. On August 13, 2010, the Credit Agreement was amended to extend the maturity date of the A Line of Credit to August 14, 2011 and add an unused facility fee. The amendment also provided for a 1-year option to extend the maturity date to August 14, 2012, subject to the Company not being in default on the A Line of Credit. The unused facility fees are to be paid quarterly, in an amount equal to one-tenth of one percent (0.10%) of the unused portion. The Company elected not to renew the A Line of Credit on August 14, 2011 and the Line of Credit expired on that date. The principal amount of the Facility B Loan became due and payable in annual payments commencing on August 1, 2009, and continuing each anniversary date thereafter, with each such payment being in an amount equal to the lesser of twenty percent of the aggregate principal amount of the Facility B Loan then outstanding or $2,800. Pursuant to an amendment to the Facility B loan between the Company and PCB dated November 1, 2010, PCB agreed to forgo the scheduled payment due from the Company in August 2010 in the amount of $2,059 until January 31, 2011, which payment was made on such date. On March 31, 2011, the Company paid in full the remaining principal and interest that was due under the Facility B Loan.

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In conjunction with the DCE acquisition mentioned above, the Company also entered into a Loan Agreement with DCE (the DCE Loan) to provide secured financing of up to $14,000 to DCE for future capital expenditures or other uses as agreed to by the Company, in its sole discretion. On March 31, 2011, the entire amount of unpaid principal and interest due under the DCE Loan was paid to the Company. The interest income related to the DCE Loan has been eliminated in the accompanying condensed consolidated statements of operations.

Revenue Bonds

On March 25, 2011, the Company s 70% owned subsidiary, Dallas Clean Energy McCommas Bluff, LLC, a Delaware limited liability company (DCEMB), arranged for a $40,200 tax-exempt bond issuance (the Revenue Bonds). The Revenue Bonds will be repaid from the revenue generated by DCEMB from the sale of RNG. The Revenue Bonds are secured by the revenue and assets of DCEMB and are non-recourse to DCEMB s direct and indirect parent companies, including the Company. The bond repayments are amortized through December 2024 and the average coupon interest rate on the bonds is 6.60%. The bond issuance closed March 31, 2011.

The bond proceeds will primarily be used to finance further improvements and expansion of the landfill gas processing facility owned by DCEMB at the McCommas Bluff landfill outside of Dallas, Texas. A portion of the proceeds were used to retire the DCE Loan discussed above. The Company, in turn, used the proceeds from the payoff of the DCE Loan to repay approximately $8,000 owed by the Company to PCB under the Facility B Loan on March 31, 2011.

Pursuant to the Loan Agreement, dated as of January 1, 2011 (the Loan Agreement), between DCEMB and the Mission Economic Development Corporation (the Issuer), DCEMB has covenanted with the Issuer to make loan repayments equal to the principal and interest coming due on the Revenue Bonds. DCEMB executed a promissory note, dated March 31, 2011 (the Note), as evidence of its obligations under the Loan Agreement. Pursuant to the Trust Indenture, dated as of January 1, 2011 (the Indenture), the Issuer has pledged and assigned to the Trustee (as defined below) all of the Issuer s right, title and interest in and to the Loan Agreement (with certain specified exceptions) and the Note.

The obligations of DCEMB under the Loan Agreement are secured by a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of January 1, 2011 (the Deed of Trust), executed by DCEMB in favor of the deed of trust trustee named therein for the benefit of the Bank of New York Mellon Trust Company, N.A., as Trustee (the Trustee). In addition, DCEMB executed a Security Agreement (the Security Agreement), as security for its obligations, pursuant to which DCEMB granted to the Trustee a security interest in all right, title and interest of DCEMB to the Collateral (as defined in the Security Agreement), which includes, but is not limited to, DCEMB s rights, title and interest in any gas sale agreements, including the gas sale agreement (the Shell Gas Sale Agreement) with Shell Energy North America (US), L.P. (Shell Energy), and the funds and accounts held under the Indenture.

Pursuant to a Consent and Agreement, by and between Shell Energy, The Bank of New York Mellon Trust Company, N.A., as Depository Bank (the Depository Bank), DCEMB and the Trustee, dated as of January 1, 2011 (the Consent Agreement), Shell Energy agreed to make all payments due to DCEMB under the Shell Gas Sale Agreement to the Depository Bank. In addition, other revenues generated through the sale of gas produced at the facility will be paid directly to the Depository Bank pursuant to a Depository and Control Agreement, dated as of January 1, 2011 (the Depository Agreement), among DCEMB, the Trustee and the Depository Bank.

All payments received by the Depository Bank will be placed into various accounts in accordance with the requirements of the Indenture and the Depository Agreement. The funds in these accounts will be used to service required debt payments, finance further improvements and expansion of the landfill gas processing facility owned by DCEMB, finance the operations and maintenance of DCEMB, finance certain expenses associated with setting up and maintaining the accounts, and other uses as prescribed in the Depository Agreement. The Depository Bank will make payments out of these accounts in accordance with the requirements of the Depository Agreement. At the end of each month after all required account fundings have been fulfilled in accordance with the Depository Agreement, all remaining excess funds will be placed into a surplus account. The funds in the surplus account will be delivered to DCEMB so long as (i) DCEMB s Debt Service Coverage Ratio (as defined) for the most recent four calendar quarters then ended equals or exceeds 1.25:1, (ii) DCEMB s Debt Service Coverage Ratio (as defined) is reasonably projected to equal or exceed 1.25:1 for the next four calendar quarters, (iii) no events of default have occurred as defined by the Indenture and the Loan Agreement, and (iv) after giving effect to the transfer, DCEMB s Minimum Days Cash on Hand (as defined) shall be, or shall at any time be projected to be, more than the lesser of thirty-five Days Cash on Hand (as defined) or $1,300. Due to these restrictions on this cash, the Company has classified all of this cash as restricted cash on the balance sheet. The Company records the restricted cash that is expected to be received and used within the next 12 months from the Depository Bank for working capital and operating purposes as current in its balance sheet, and presents the remaining balance as non-current. At September 30, 2012, $7,208 was recorded as short-term restricted cash and $952 was recorded as long-term restricted cash in the accompanying condensed consolidated balance sheet.

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Pursuant to a Collateral Assignment and Consent Agreement with Atmos Pipeline Texas (Atmos), DCEMB has collaterally assigned to the Trustee, subject to certain reserved rights and the consent of Atmos, the transportation agreements of the Company with Atmos.

The Indenture and the Loan Agreement have certain non-financial debt covenants with which DCEMB must comply. As of September 30, 2012, DCEMB was in compliance with all its debt covenants.

Purchase Notes

In connection with the closing of the Company s acquisition of IMW in September 2010, the Company agreed to make future payments consisting of four annual payments in the amount of $12,500 (collectively the IMW Notes). Each payment under the IMW Notes will consist of $5,000 in cash and $7,500 in cash and/or shares of the Company s common stock (the exact combination of cash and/or stock to be determined at the Company s option). In addition, pursuant to a security agreement executed at closing, the IMW Notes are secured by a subordinate security interest in IMW. In January 2011, the Company paid $5,000 in cash and $7,500 in shares of its common stock. The Company paid $5,000 in cash in January 2012 and $3,750 in shares of its common stock in each of August 2012 and October 2012.

In connection with the closing of the Company s acquisition of Northstar in December 2010, the Company agreed to make five annual payments in the amount of $700 each with the first payment due December 15, 2011. The first payment of $700 was paid on December 15, 2011.

In connection with the closing of the Company s acquisition of the natural gas vehicle fueling infrastructure construction business of Weaver Electric, Inc. in October 2011, the Company paid $1,000 in cash and agreed to make four additional annual payments in the amount of $250 each with the first payment due in October 2012. In May 2012, the Company prepaid $125 of the October 2012 payment, and the remaining amount of such payment was paid in October 2012.

In connection with the closing of the Company s acquisition of ServoTech on April 30, 2012, the Company paid $1,400 in cash at closing and paid an additional $1,400 in cash on October 31, 2012.

The difference between the carrying amount and the face amount of these obligations is being accreted to interest expense over the remaining term of the obligations.

IMW Lines of Credit

Also in connection with the closing of the Company s acquisition of IMW, the Company entered into an Assumption Agreement (the Assumption Agreement) with HSBC Bank Canada (HSBC) pursuant to which the Company assumed the obligations and liabilities of IMW under the following arrangements with HSBC (collectively, the IMW Lines of Credit):

(i) An operating line of credit with a limit of $10,000 in Canadian dollars (CAD) to assist in financing the day-to-day working capital needs of IMW. The interest on amounts outstanding shall be payable at IMW s option at (a) HSBC s Prime Rate plus 1.00% per annum, (b) HSBC s U.S. Base Rate plus 1.00% per annum, or LIBOR plus 2.25% per annum, subject to availability. On July 4, 2012, IMW and HSBC amended the IMW Lines of Credit and increased the limit of the operating line of credit to CAD$13,000 from CAD$10,000.

(ii) A demand revolving line of credit with a limit of CAD$2,000 bearing interest at the same rate as that of the operating line of credit discussed above, to assist in financing IMW s import requirements.

(iii) A demand revolving bank guarantee and standby letter of credit line with a limit of CAD$1,115.

(iv) A bank guarantee line with a limit of CAD$3,000, which allows IMW to provide guarantees and/or standby letters of credit to overseas suppliers or bid/performance deposits on contracts.

(v) A forward exchange contract line with a limit of CAD$13,750 that allows IMW to enter into foreign exchange forward contracts up to the notional limit of CAD$13,750 (no forward exchange contracts were outstanding at September 30, 2012).

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(vii) An operating line of credit with a limit of 5,000 Renminbi (RMB) (CAD$776) bearing interest at the 6 month People s Bank of China rate plus 2.5% and a sub-limit bank guarantee line of 5,000 RMB. The aggregate of the balances in the lines cannot exceed 5,000 RMB.

(viii) A 16,750 Bengali Taka (CAD$197) operating line of credit bearing interest at 14%.

(ix) A 170,000 Columbian Peso (CAD$94) operating line of credit bearing interest at the Colombia benchmark rate plus 7 to 12%.

The IMW Lines of Credit are secured by a general security agreement providing a first priority security interest in all present and after acquired personal property of IMW, including specific charges on all serial numbered goods, inventory and other assets and assignment of risk insurance (the Security). The IMW Lines of Credit contain no fixed repayment terms or mandatory principal payments and are due on demand. Based on the relevant accounting guidance, the Company has classified this debt pursuant to the credit agreement as short-term given that it is due on demand.

The Assumption Agreement with HSBC sets forth certain financial covenants with which IMW must comply, including: 1) its ratio of debt to tangible net worth must be no greater than 3.75 to 1.0 from January 1, 2012 through March 31, 2012, and no greater than 3.5 to 1.0 from April 1, 2012 through June 30, 2012, and no greater than 3.0 to 1.0 on or after July 1, 2012, 2) it must maintain a tangible net worth of at least CAD$7,000 and 3) its ratio of current assets to current liabilities may not be less than 1.15 to 1.0 until March 31, 2012 or less than 1.25 to 1.0 on or after April 1, 2012. IMW was in compliance with the financial covenants as of September 30, 2012.

In addition, the Company and IMW agreed that should the making of any scheduled payment by IMW to the seller of IMW under the IMW Notes result in IMW being in breach of the Assumption Agreement, the IMW Lines of Credit or the Security, the Company shall furnish IMW with the funds needed to make such payment and remain in compliance with the Assumption Agreement, the IMW Lines of Credit and the Security. Further, the Company and IMW agreed that should IMW make any future earn-out payments to the seller of IMW in connection with the acquisition of IMW, and should the making of such earn-out payments result in IMW being in breach of the Assumption Agreement, the IMW Lines of Credit or the Security, then the Company shall furnish IMW with the funds needed to make such earn-out payments and remain in compliance with the Assumption Agreement, the IMW Lines of Credit and the Security.

Chesapeake Notes

On July 11, 2011, the Company entered into a Loan Agreement (the CHK Agreement) with Chesapeake NG Ventures Corporation (Chesapeake), an indirect wholly owned subsidiary of Chesapeake Energy Corporation, whereby Chesapeake agreed to purchase from the Company up to $150,000 of debt securities for the development, construction and operation of liquefied natural gas stations (the CHK Financing) pursuant to the issuance of three convertible promissory notes, each having a principal amount of $50,000 (each a CHK Note and collectively the CHK Notes). Chesapeake Energy Corporation guaranteed Chesapeake s commitment to purchase the CHK Notes under the CHK Agreement.

The first CHK Note was issued on July 11, 2011, the second CHK Note was issued on July 10, 2012, and the Company expects to issue the third Note on or about June 28, 2013. The CHK Notes bear interest at the rate of 7.5% per annum (payable quarterly, in arrears, on March 31, June 30, September 30 and December 31 of each year) and are convertible at Chesapeake s option into shares of the Company s common stock at a conversion price of $15.80 per share (the CHK Conversion Price). Subject to certain restrictions, the Company can force conversion of each CHK Note into shares of the Company s common stock if, following the second anniversary of the issuance of a CHK Note, the Company s shares of common stock trade at a 40% premium to the CHK Conversion Price for at least 20 trading days in any consecutive 30 trading day period. The entire principal balance of each CHK Note is due and payable seven years following its issuance, and the Company may repay each CHK Note in shares of the Company s common stock or cash. The CHK Agreement restricts the use of the CHK Financing proceeds to financing the development, construction and operation of liquefied natural gas stations and payment of certain related expenses. At September 30, 2012, $45,913 of these funds were included in long term restricted cash. The CHK Agreement also provides for customary events of default which, if any of them occurs, would permit or require the principal of, and accrued interest on, the CHK Notes to become, or to be declared, due and payable.

In connection with the CHK Financing, the Company also entered into a Registration Rights Agreement, dated July 11, 2011, with Chesapeake (the CHK Registration Rights Agreement) pursuant to which the Company agreed, subject to the terms and conditions of the CHK Registration Rights Agreement, to (i) file with the Securities and Exchange Commission one or more registration statements relating to the resale of the Company s common stock issuable upon conversion of the CHK Notes, and (ii) at the request of Chesapeake, to participate in one or more underwritten offerings of the Company s common stock issuable upon

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conversion of the CHK Notes. If the Company does not meet certain of its obligations under the CHK Registration Rights Agreement with respect to the registration of the Company s common stock, it will be required to pay monthly liquidated damages of 0.75% of the principal amount of the CHK Note represented by the Company s common stock included (or to be included, as the case may be) in the applicable registration statement until the related obligation is met. As of September 30, 2012, the Company met its obligations under the CHK Registration Rights Agreement.

SLG Notes

On August 24, 2011, the Company entered into Convertible Note Purchase Agreements (each, an SLG Agreement and collectively the SLG Agreements) with each of Springleaf Investments Pte. Ltd., a wholly-owned subsidiary of Temasek Holdings Pte. Ltd., Lionfish Investments Pte. Ltd., an investment vehicle managed by Seatown Holdings International Pte. Ltd., and Greenwich Asset Holding Ltd., a wholly-owned subsidiary of RRJ Capital Master Fund I, L.P. (each, a Purchaser and collectively, the Purchasers), whereby the Purchasers agreed to purchase from the Company $150,000 of 7.5% convertible notes due in August 2016 (each a SLG Note and collectively the SLG Notes). The transaction closed and the SLG Notes were issued on August 30, 2011. On March 1, 2012, Springleaf Investments Pte. LTD transferred $24,000 principal amount of the SLG Notes to Baytree Investments (Mauritius) Pte Ltd.

The SLG Notes bear interest at the rate of 7.5% per annum (payable quarterly, in arrears, on March 31, June 30, September 30 and December 31 of each year) and are convertible at each Purchaser s option into shares of the Company s common stock at a conversion price of $15.00 per share (the SLG Conversion Price). Subject to certain restrictions, the Company can force conversion of each SLG Note into shares of the Company s common stock if, following the second anniversary of the issuance of the SLG Notes, the Company s shares of common stock trade at a 40% premium to the SLG Conversion Price for at least 20 trading days in any consecutive 30 trading day period. The entire principal balance of each SLG Note is due and payable five years following its issuance, and the Company may repay the principal balance of each SLG Note in shares of the Company s common stock or cash. The SLG Agreements also provide for customary events of default which, if any of them occurs, would permit or require the principal of, and accrued interest on, the SLG Notes to become, or to be declared, due and payable. In April 2012, $1,003 of principal and accrued interest under a SLG Note was converted by the holder thereof into 66,888 shares of the Company s common stock.

In connection with the SLG Agreements, the Company also entered into a Registration Rights Agreement, dated August 24, 2011, with each of the Purchasers (the SLG Registration Rights Agreements) pursuant to which the Company agreed, subject to the terms and conditions of the SLG Registration Rights Agreements, to (i) file with the Securities and Exchange Commission one or more registration statements relating to the resale of the Company s common stock issuable upon conversion of the SLG Notes, and (ii) at the request of the Purchasers, participate in one or more underwritten offerings of the Company s common stock issuable upon conversion of the SLG Notes. If the Company does not meet certain of its obligations under the SLG Registration Rights Agreements with respect to the registration of the Company s common stock, it will be required to pay monthly liquidated damages of 0.75% of the principal amount of the SLG Note represented by the Company s common stock included (or to be included, as the case may be) in the applicable registration statement until the related obligation is met, not to exceed 4% of the aggregate principal amount of the SLG Notes per annum. As of September 30, 2012, the Company met its obligations under the SLG Registration Rights Agreement.

Long-term debt at December 31, 2011 and September 30, 2012 consisted of the following:

	December 31, 2011	September 30, 2012
IMW Notes	$ 34,400	$ 27,398

Northstar future payments	2,388	2,510
ServoTech future payment		1,400
DCE Notes	585	585
DCEMB Revenue Bonds (non recourse to the Company)	39,400	39,400
Chesapeake Notes	50,000	100,000
SLG Notes	150,000	149,000
Weaver Electric future payments	872	793
IMW debt	6,657	12,928
Capital lease obligations	5,120	3,980
Total debt and capital lease obligations	289,422	337,994
Less amounts due within one year and short-term borrowings	(22,925)	(34,068)
Total long-term debt and capital lease obligations	$ 266,497	$ 303,926

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Note 14 Earnings Per Share

Basic earnings per share is based upon the weighted-average number of shares outstanding during each period. Diluted earnings per share reflects the impact of assumed exercise of dilutive stock options and warrants. The information required to compute basic and diluted earnings per share is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	**2012**	**2011**	**2012**
Basic and diluted:				
Weighted average number of common shares outstanding	70,364,202	87,006,024	70,255,311	86,441,196

Certain securities were excluded from the diluted earnings per share calculations for the three and nine months ended September 30, 2011 and 2012, respectively, as the inclusion of the securities would be anti-dilutive to the calculation. The amounts outstanding as of September 30, 2011 and 2012 for these instruments are as follows:

	September 30,	
	2011	**2012**
Options	10,753,026	10,468,648
Warrants	17,130,682	2,130,682
Convertible notes	13,164,557	16,262,226
Restricted stock units		