

Great Lakes Dredge & Dock CORP
Form S-8
December 07, 2012

As filed with the Securities and Exchange Commission on December 7, 2012

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT
UNDER THE
SECURITIES ACT OF 1933

GREAT LAKES DREDGE & DOCK CORPORATION

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

20-5336063
(I.R.S. Employer
Identification Number)

2122 York Road

Oak Brook, Illinois
(Address of Principal Executive Offices)

60523
(Zip Code)

Great Lakes Dredge & Dock Corporation

Employee Stock Purchase Plan

(Full Title of the Plan)

Maryann A. Waryjas

Senior Vice President, Chief Legal Officer and Secretary

Great Lakes Dredge & Dock Corporation

2122 York Road, Suite 200

Oak Brook, IL 60523

(630) 574-3000

(Name, Address and Telephone Number, Including Area Code, 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. (Check one):

| | | | |
|-------------------------|--------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input checked="" type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |

Calculation of Registration Fee

| Title of Securities to be | | Proposed Maximum | Proposed Maximum | |
|----------------------------------|----------------------|--------------------|--------------------|------------------|
| Registered | Amount to be | Offering Price Per | Aggregate Offering | Amount of |
| | Registered (1) | Share (2) | Price (2) | Registration Fee |
| Common Stock, \$0.0001 par value | 2,500,000 shares (1) | \$8.74 (2) | \$21,850,000 (2) | \$2,980.34 |

- (1) Great Lakes Dredge & Dock Corporation is filing this Registration Statement to register the issuance of 2,500,000 shares of Common Stock authorized for issuance under the Great Lakes Dredge & Dock Corporation Employee Stock Purchase Plan (the Plan). Pursuant to Rule 416 of the Securities Act of 1933, as amended, this Registration Statement also covers such additional and indeterminate number of shares as may become issuable pursuant to the provisions of the Plan relating to adjustments for changes resulting from a stock dividend, stock split or similar change.
- (2) Estimated in accordance with Rules 457(c) and (h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee. The price of \$8.74 per share represents the average of the high and low sales prices of the Common Stock as reported on the Nasdaq Stock Market on December 5, 2012.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Great Lakes Dredge & Dock Corporation, a Delaware corporation (the **Company**), hereby incorporates by reference in this Registration Statement the following documents and information previously filed with the Securities and Exchange Commission (the **Commission**):

- (1) The **Company** 's annual report on Form 10-K for the fiscal year ended December 31, 2011, filed with the **Commission** on March 9, 2012;
- (2) The **Company** 's quarterly report on Form 10-Q for the quarter ended March 31, 2012, filed with the **Commission** on May 4, 2012;
- (3) The **Company** 's quarterly report on Form 10-Q for the quarter ended June 30, 2012, filed with the **Commission** on August 7, 2012;
- (4) The **Company** 's quarterly report on Form 10-Q for the quarter ended September 30, 2012, filed with the **Commission** on November 7, 2012;
- (5) The **Company** 's current reports on Form 8-K, filed with the **Commission** on January 17, 2012, February 22, 2012, February 28, 2012, April 13, 2012, May 2, 2012, May 14, 2012, May 29, 2012, June 7, 2012, August 3, 2012, August 17, 2012 and August 28, 2012 (other than the portions of such documents deemed not to be filed); and
- (6) The description of the Common Stock of the **Company** contained in its Registration Statement on Form 8-A filed under the Securities Exchange Act of 1934, as amended (the **Exchange Act**), which became effective as of December 26, 2006, including any amendment(s) or report(s) filed for the purpose of updating such description.

All documents subsequently filed by the **Company** with the **Commission** pursuant to Sections 13(a), 13(c), 14 and 15(d) of the **Exchange Act**, after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the respective dates of filing of such documents (such documents, and the documents enumerated above, being hereinafter referred to as **Incorporated Documents**).

Any statement contained in an **Incorporated Document** shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed **Incorporated Document** modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify any person who was or is a party 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 the person 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 the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 that the person's conduct was unlawful. Section 145 of the DGCL further provides that a corporation similarly may 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 the person 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 the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner that the person 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 Delaware Court of Chancery or such other 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 Delaware Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL also provides that a corporation has the power to purchase and maintain insurance on behalf of any person who 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 any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

Certificate of Incorporation and By-Laws

The Company's amended and restated certificate of incorporation and its by-laws provide for the indemnification of officers and directors to the fullest extent permitted by the DGCL.

Insurance

The Company's directors and officers are covered under directors' and officers' liability insurance policies maintained by the Company against certain liabilities taken in their capacities as such, including liabilities under the Securities Act of 1933, as amended (the "Securities Act").

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The Exhibits accompanying this Registration Statement are listed on the accompanying Exhibit Index.

Item 9. Undertakings.

(a) The Company 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;

(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; and

(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) 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 Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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 Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Company 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 Village of Oak Brook, State of Illinois, on the 7th day of December, 2012.

GREAT LAKES DREDGE & DOCK CORPORATION

By: /s/ William S. Steckel
William S. Steckel
Senior Vice President and Chief Financial Officer

POWER OF ATTORNEY AND ADDITIONAL SIGNATURES

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William S. Steckel and Maryann A. Waryjas, and each of them, his/her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to sign, execute and file with the Securities and Exchange Commission (or any other governmental or regulatory authority), for us and in our names in the capacities indicated below, this registration statement on Form S-8 (including all amendments thereto) with all exhibits and any and all documents required to be filed with respect thereto, granting unto said attorneys-in-fact and agents and each of them, full power and authority to do and to perform each and every act and thing necessary and/or desirable to be done in and about the premises in order to effectuate the same as fully to all intents and purposes as he himself/she herself might or could do if personally present, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, 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 on Form S-8 has been signed on December 7, 2012, by the following persons in the capacities indicated:

| Name | Title |
|------------------------|--|
| /s/ Jonathan W. Berger | Chief Executive Officer and Director (principal executive officer) |
| Jonathan W. Berger | |
| /s/ William S. Steckel | Senior Vice President and Chief Financial Officer (principal financial officer and principal accounting officer) |
| William S. Steckel | |
| /s/ Carl A. Albert | Director |
| Carl A. Albert | |
| /s/ Bruce J. Biemeck | President, Chief Operating Officer and Director |
| Bruce J. Biemeck | |
| /s/ Stephen H. Bittel | Director |
| Stephen H. Bittel | |
| /s/ Peter R. Deutsch | Director |
| Peter R. Deutsch | |
| /s/ Nathan D. Leight | Director |
| Nathan D. Leight | |
| /s/ Douglas B. Mackie | Director |

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Douglas B. Mackie

/s/ Jason G. Weiss

Director

Jason G. Weiss

EXHIBIT INDEX

| Exhibit No. | Description |
|-------------|--|
| 5.1* | Opinion of Sidley Austin LLP |
| 10.1* | Great Lakes Dredge & Dock Corporation Employee Stock Purchase Plan |
| 23.1* | Consent of Independent Registered Public Accounting Firm |
| 23.2* | Consent of Sidley Austin LLP (included in Exhibit 5.1) |
| 24.1* | Power of Attorney (set forth on the signature page of this Registration Statement) |

* Filed herewith.