

Edgar Filing: BION ENVIRONMENTAL TECHNOLOGIES INC - Form SC 13D

BION ENVIRONMENTAL TECHNOLOGIES INC
Form SC 13D
February 19, 2002

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

SCHEDULE 13D

INFORMATION TO BE INCLUDED IN THE STATEMENTS FILED PURSUANT
TO RULE 13D-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO RULE 13D-2(a)
Amendment No. 1

BION ENVIRONMENTAL TECHNOLOGIES, INC.

(Name of Issuer)

Common Stock

(Title of Class of Securities)

09061Q 10 9

(CUSIP Number)

Copy to:

David J. Mitchell
18 East 50th Street, 10th Floor
New York, NY 10022
(212) 758-6622

Stanley F. Freedman
Krys Boyle Freedman & Sawyer, P.C.
600 17th Street, #2700S
Denver, Colorado 80202
(303) 893-2300

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

January 15, 2002

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box [].

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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CUSIP No. 09061Q 10 9

1 Names of Reporting Persons.
I.R.S Identification Nos. of above persons (entities only)

D2 Co., LLC 13-4113345

2 Check the Appropriate Box if a Member of a Group (See Instructions)

(a)

(b)

3 SEC Use Only

4 Source of Funds (See Instructions) 00

5 Check if Disclosure of Legal Proceedings Is Required Pursuant to Items
2(d) or 2(e)

6 Citizenship or Place of Organization Delaware

7 Sole Voting Power 7,718,401

Number Of
Shares Bene-
ficially
Owned by Each
Reporting
Person With

8 Shared Voting Power 594,835

9 Sole Dispositive Power 557,326

10 Shared Dispositive Power 594,835

11 Aggregate Amount Beneficially Owned by Each Reporting Person: 8,313,236
shares

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See
Instructions)

13 Percent of Class Represented by Amount in Row (11) 15.8%

14 Type of Reporting Person (See Instructions)
00

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CUSIP No. 09061Q 10 9

1 Names of Reporting Persons.
I.R.S Identification Nos. of above persons (entities only)

David J. Mitchell

2 Check the Appropriate Box if a Member of a Group (See Instructions)

(a)

(b)

3 SEC Use Only

4 Source of Funds (See Instructions) 00

5 Check if Disclosure of Legal Proceedings Is Required Pursuant to Items
2(d) or 2(e)

6 Citizenship or Place of Organization United States

Number Of Shares Bene- ficially Owned by Each Reporting Person With	7	Sole Voting Power	18,111,828
	8	Shared Voting Power	594,835
	9	Sole Dispositive Power	10,950,753
	10	Shared Dispositive Power	594,835

11 Aggregate Amount Beneficially Owned by Each Reporting Person: 18,706,663
shares

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See
Instructions)

13 Percent of Class Represented by Amount in Row (11) 29.7%

14 Type of Reporting Person (See Instructions)
IN

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1 Names of Reporting Persons.
I.R.S Identification Nos. of above persons (entities only)

Atlantic Partners LLC

2 Check the Appropriate Box if a Member of a Group (See Instructions)

(a)

(b)

3 SEC Use Only

4 Source of Funds (See Instructions) OO

5 Check if Disclosure of Legal Proceedings Is Required Pursuant to Items
2(d) or 2(e)

6 Citizenship or Place of Organization Delaware

7 Sole Voting Power 10,373,427

Number Of
Shares Bene-
ficially
Owned by Each
Reporting
Person With

8 Shared Voting Power 0

9 Sole Dispositive Power 10,373,427

10 Shared Dispositive Power 0

11 Aggregate Amount Beneficially Owned by Each Reporting Person: 10,373,427
shares

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See
Instructions)

13 Percent of Class Represented by Amount in Row (11) 16.5%

14 Type of Reporting Person (See Instructions)
OO

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EXPLANATORY NOTE

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This amended Schedule 13D, dated January 15, 2002, relates to the beneficial ownership of D2 Co., LLC and Atlantic Partners LLC, of which David Mitchell is the sole member, of the Common Stock of Bion Environmental Technologies, Inc.

In January 15, 2002, as a result of significant transactions in which Bion Technologies, Inc. was involved, certain Convertible Notes held by or for the benefit of the Reporting Persons were automatically converted into common stock, and the terms of certain warrants were changed. This Amendment reflects these changes, and also updates other information concerning the beneficial ownership of the Reporting Persons.

ITEM 1. SECURITY AND ISSUER

The title of the class of equity securities to which this statement relates is Common Stock, no par value per share (the "Common Stock"), of Bion Environmental Technologies, Inc., a Colorado corporation, which has its principal executive offices at 18 East 50th Street, 10th Floor, New York, New York 10022 (the "Issuer" or "Bion").

ITEM 2. IDENTITY AND BACKGROUND

The information set forth herein is given with respect to (1) D2 Co., LLC ("D2"), a Delaware limited liability company, (2) Atlantic Partners LLC ("Atlantic"), a Delaware limited liability company, and (3) David Mitchell, a U.S. citizen, the sole member of D2 and Atlantic. D2 and Atlantic are engaged in the investment in and management of other companies. David Mitchell is currently Chairman, President, CEO and a Director of Bion. During the last five years, none of these persons or any executive officer, director or controlling person of such person, has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors). In addition, during the last five years, none of these persons, or any executive officer, director or controlling person of such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or state securities laws or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The funds used by D2 and Atlantic to purchase the notes and warrants referred to herein consisted of the capital contributions of David Mitchell and general working capital. In addition, some of the notes were received for management services performed.

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ITEM 4. PURPOSE OF TRANSACTION

As a result of transactions in which Bion was involved on January 15,

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2002, notes held by D2 and a trust for D2 were converted into the Issuer's Common Stock. In addition, the terms of warrants held by D2 and Atlantic were changed. The conversions and changes were in compliance with the terms of the related notes and warrants.

The notes and warrants had been acquired by the Reporting Persons for the purpose of obtaining a significant investment in the Issuer. The notes were acquired pursuant to the terms of a management agreement between D2 and Bion. Under the terms of the management agreement, D2 obtained the right to name three designees to the Board of Directors of Bion, and certain other rights.

Giving effect to the conversion and changes, D2, Atlantic and David Mitchell now have beneficial ownership of shares of Bion's Common Stock as set forth in Item 5 hereof. D2 will also receive additional shares of Bion's Common Stock pursuant to the terms of a management agreement with Bion for services to be provided by D2. Under this agreement, D2 receives shares of Common Stock for management services equal in value to \$600,000 for the calendar year 2002 and \$750,000 for the calendar year 2003.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

(a) The following sets forth the aggregate number and percentage (based on 52,671,128 shares of Common Stock outstanding as of January 31, 2002) of shares of Common Stock owned beneficially by D2, Atlantic and David Mitchell as of January 31, 2002:

	Shares of Common Stock Beneficially Owned	Percentage of Shares of Common Stock Beneficially Owned
	-----	-----
D2 Co., LLC	8,313,236 (1)	15.8%
Atlantic Partners LLC	10,373,427 (2)	16.5%
David J. Mitchell	18,706,663 (3)	29.7%

- (1) Consists of 527,326 shares held directly by D2; 594,835 shares held by the Trust Under Deferred Compensation Plan for D2 Co., LLC, for the benefit of D2; 30,000 shares underlying warrants held by D2; and 7,161,075 shares over which D2 has voting control pursuant to a Stock Voting Agreement dated August 1, 2001, with Mark A. Smith, Kelly Smith, LoTayLingKyur, Inc., LoTayLingKyur Foundation and Dublin Holding Ltd.
- (2) Represents shares issuable upon exercise of SV1 and SV2 warrants held by Atlantic.
- (3) Includes the shares described in Notes (1) and (2) above, and 20,000 shares held by a minor child of David Mitchell.

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(b) David J. Mitchell, as sole member of D2 and Atlantic has sole power to vote and dispose of all 527,326 shares Common Stock by D2 and all 10,373,427 shares underlying the warrants held by Atlantic. With regard to

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594,835 shares of Common Stock held by the Trust Under Deferred Compensation Plan for D2 Co., LLC, the trustee Sam Spitz, CPA holds the power to vote and dispose of the shares. Mr. Spitz was selected by David J. Mitchell to serve as trustee and would be expected to act in accordance with Mr. Mitchell's wishes. As a result, Mr. Mitchell and D2 may be considered as sharing the power to vote and dispose of the shares held by the trust.

With regard to the 7,161,075 shares over which D2 and Mr. Mitchell have the sole power to vote pursuant to a Stock Voting Agreement dated August 1, 2001, the power to dispose of the shares has been retained by the record holders. The record holders are as follows:

Name ----	Number of Shares -----
Mark A. Smith and Kelly Smith, Jointly	476,226
Mark A. Smith Rollover IRA	596,822
Kelly Smith Rollover IRA	509,036
Dublin Holding Ltd.	2,805,653
LoTayLingKyur, Inc.	57,152
LoTayLingKyur Foundation	2,716,186

(c) The following transactions in the securities of Bion were effected in the last 60 days by the persons listed under (a) above:

(i) On January 15, 2002, the principal and accrued interest of notes held by D2 Co., LLC aggregating \$277,658 were converted into 370,211 shares of Common Stock at a conversion price of \$0.75 per share.

(ii) On January 15, 2002, the principal and accrued interest of notes held by the Trust Under Deferred Compensation Plan for D2 Co., LLC aggregating \$270,477 were converted into 360,636 shares of Common Stock at a conversion price of \$0.75 per share.

(iii) On December 31, 2001, 153,215 shares of Common Stock were issued to the Trust Under Deferred Compensation Plan for D2 Co., LLC for management fees earned during the quarter ended December 31, 2001, of \$125,000.

(iv) On January 15, 2002, the warrants held by Atlantic Partners LLC were restructured in conformance with the terms of the warrants to make them exercisable at \$0.75 per share for 10,373,427 shares of Common Stock. During December 2001, Atlantic Partners LLC acquired these warrants from Southview, Inc., a corporation wholly owned by David J. Mitchell.

(d) Not applicable.

(e) Not applicable.

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ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Under the terms of the agreement relating to the warrants held by

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Atlantic, Bion is required to file a registration statement with the Securities and Exchange Commission to register the shares issuable on exercise of the warrants for resale by Atlantic. The registration statement is required to be filed within six months after any exercise of the warrants.

Under the terms of a Stock Voting Agreement dated August 1, 2001, with Mark A. Smith, Kelly Smith LoTayLingKyur, Inc., LoTayLingKyur Foundation and Dublin Holdings Ltd., D2 has the right to vote all of the shares held by these persons or in certain IRA accounts held by them, at all meetings of Bion's shareholders through December 31, 2005. The voting rights extended to all matters except the approval of a merger or a sale of all or substantially all of Bion's assets. The Stock Voting Agreement also places certain restrictions on the sale of the shares covered by the agreement. As of January 31, 2002, a total of 7,161,075 shares were subject to this agreement.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS

The following documents are filed as exhibits:

Exhibit -----	Description -----
1	Joint Filing Agreement, dated as of January 30, 2002, among D2 Co., LLC, Atlantic, Inc. and David Mitchell
2	Warrant Purchase Agreement, dated December 23, 1999, by and between D2 Co., LLC and Bion Environmental Technologies, Inc. (1)
3	Management Agreement, dated December 23, 1999, by and between D2 Co., LLC and Bion Environmental Technologies (1)
4	Form of Note and Warrant Purchase Agreement, dated March 31, 2000, by and between D2 Co., LLC and Bion Environmental Technologies (2)
5	Form of Bridge Note, dated March 31, 2000, payable by Bion Environmental Technologies, Inc. to D2 Co., LLC (2)
6	Form of Bridge Warrant, dated March 31, 2000, issued by Bion Environmental Technologies, Inc. to D2 Co., LLC (2)
7	Shareholders' Agreement, dated December 23, 1999, by and among D2 Co., LLC, Mark A. Smith, Jere Northrop, Jon Northrop, Lotaylingkyur, Inc., LTLK Defined Benefit Plan and Dublin Holding, Ltd. (1)

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8	Stock Voting Agreement dated August 1, 2002 (3)
9	Agreement between Atlantic, Inc. and Bion Environmental Technologies, Inc. dated February 7, 2001 (4)
10	Agreement between D2 Co., LLC and Bion Environmental

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Technologies, Inc. dated August 1, 2001 (5)

11 Amendment to Management Agreement between D2 Co., LLC
and Bion Environmental Technologies, Inc. dated
February 27, 2001 (6)

-
- (1) Incorporated by reference to Exhibits 10.2, 10.1 and 10.3, respectively, to the Form 8-K filed with the Securities and Exchange Commission on December 23, 1999.
 - (2) Previously filed.
 - (3) Incorporated by reference to Exhibit 10.9 to the Report on Form 8-K dated September 6, 2001, filed by Bion Environmental Technologies, Inc., SEC File No. 0-19333.
 - (4) Incorporated by reference to Exhibit 99.2 to the Report on Form 8-K dated December 1, 2000, filed by Bion Environmental Technologies, Inc., SEC File No. 0-19333.
 - (5) Incorporated by reference to Exhibit 10.11 to the Report on Form 8-K dated September 6, 2001, filed by Bion Environmental Technologies, Inc., SEC File No. 0-19333.
 - (6) Incorporated by reference to Exhibit 99.1 to the Report on Form 8-K dated December 1, 2000, filed by Bion Environmental Technologies, Inc., SEC File No. 0-19333.

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SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: February 13, 2002

D2 CO., LLC

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By: /s/ David J. Mitchell
Name: David J. Mitchell
Title: Sole Member

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS (SEE 18 U.S.C. 1001).

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: February 13, 2002 /s/ David J. Mitchell
David J. Mitchell

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS (SEE 18 U.S.C. 1001).

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: February 13, 2002 ATLANTIC PARTNERS LLC

By: /s/ David J. Mitchell
Name: David J. Mitchell
Title: Sole Member

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS (SEE 18 U.S.C. 1001).

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JOINT FILING AGREEMENT

In accordance with Rule 13d-1(f) under the Securities Exchange Act of 1934, as amended, the undersigned hereby agrees to the joint filing on behalf of each of them of a statement on Schedule 13D (including amendments thereto) with respect to the no par value Common Stock of Bion Environmental Technologies, Inc. and that this agreement be included as an Exhibit to such joint filing. This agreement may be executed in any number of counterparts

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all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned hereby executes this agreement this
31st day of January 2002.

D2CO., LLC

By:/s/ David J. Mitchell
Name: David J. Mitchell
Title: Sole Member

/s/ David J. Mitchell
David J. Mitchell

ATLANTIC PARTNERS LLC

By:/s/ David J. Mitchell
Name: David J. Mitchell
Title: Sole Member

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