

ENVIRONMENTAL POWER CORP

Form 10-K/A

April 30, 2010

Table of Contents

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**Form 10-K/A**

**FOR ANNUAL AND TRANSITION REPORTS PURSUANT TO SECTION 13 OR 15(d)**  
**OF THE SECURITIES EXCHANGE ACT OF 1934**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2009**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from** \_\_\_\_\_ **to** \_\_\_\_\_

**Commission file number: 001-32393**

**ENVIRONMENTAL POWER CORPORATION**

(Exact name of registrant as specified in its charter)

Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

**Delaware**  
*(State or other jurisdiction of*

**75-3117389**  
*(IRS Employer*

*incorporation or organization)*

*Identification Number)*

**120 White Plains Road, 6<sup>th</sup> Floor, Tarrytown New York**  
*(Address of principal executive offices)*

**10591**  
*(Zip Code)*

**Registrant's telephone number, including area code:**

**(914) 631-1435**

**Securities registered pursuant to Section 12(b) of the Act:**

<b>Title of Each Class</b>	<b>Name of Exchange on Which Registered</b>
<b>Common Stock, \$0.01 par value per share</b>	<b>The NASDAQ Stock Market LLC</b>

**Securities registered pursuant to Section 12(g) of the Act:**

**None**

*(Title of Class)*

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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 "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one).

Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2009, was approximately \$7.3 million based on \$0.52, the price at which the registrant's common stock was last sold on June 30, 2009, the last business day of the registrant's most recently completed second fiscal quarter.

As of February 28, 2010, the registrant had 15,708,591 shares of common stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Not Applicable.

**Table of Contents**

**EXPLANATORY NOTE**

This amendment on Form 10-K/A to the Annual Report of Environmental Power Corporation on Form 10-K for the fiscal year ended December 31, 2009 (the Annual Report) of Environmental Power Corporation ( we, us, the Company or EPC ) filed on March 30, 2010 with Securities & Exchange Commission (the SEC ) is being filed solely for the purpose of including information that was to be incorporated by reference from the Company's definitive proxy statement pursuant to Regulation 14A of the Securities and Exchange Act of 1934. The Company will not file its proxy statement within 120 days of its fiscal year ended December 31, 2009 and is, therefore, amending and restating in their entirety Items 10, 11, 12, 13 and 14 of Part III of the Annual Report. In addition, in connection with the filing of this Amendment and pursuant to Rules 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, we are including with this Amendment certain currently dated certifications.

Except as described above, no other amendments are being made to the Annual Report. This Form 10-K/A does not reflect events occurring after the March 30, 2010 filing of our Annual Report, and does not modify or update the disclosure contained in the Annual Report in any way other than as required to reflect the amendments discussed above and reflected below.

**Table of Contents**

**ENVIRONMENTAL POWER CORPORATION**

**ANNUAL REPORT**

**ON FORM 10-K/A**

**INDEX**

**PART III**

Item 10.	<u>Directors, Executive Officers and Corporate Governance</u>	1
Item 11.	<u>Executive Compensation</u>	4
Item 12.	<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	19
Item 13.	<u>Certain Relationships and Related Transactions, and Director Independence</u>	23
Item 14.	<u>Principal Accountant Fees and Services</u>	24
	<u>SIGNATURES</u>	26

**Table of Contents****PART III****ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE****Directors**

**Roger S. Ballentine**, age 47, has been a director since 2007. Mr. Ballentine has been the President and principal consultant of Green Strategies Inc., an energy and environmental policy consulting firm, since February 2001. Previously, Mr. Ballentine served in the Clinton Administration, serving from 1999 until early 2001 as Chairman of the White House Climate Change Task Force and Deputy Assistant to the President for Environmental Initiatives, and from 1998 to 1999 as Special Assistant to the President for Legislative Affairs. Prior to that time, Mr. Ballentine was a partner with the Washington, D.C. law firm Patton, Boggs, L.L.P. Mr. Ballentine is a member of the boards of directors of the American Council on Renewable Energy, the Biomass Energy Research Center, the Solar Electric Light Fund and the American Bird Conservancy, all of which are non-profit organizations. Mr. Ballentine received a B.A. in Economics, *magna cum laude*, from the University of Connecticut, and a J.D., *cum laude*, from Harvard Law School. In 2008, Mr. Ballentine was a visiting lecturer at the Harvard Law School. Mr. Ballentine served on the Board of Directors of China Energy Recovery, Inc., a publicly traded company, from 2007 through 2009. Mr. Ballentine was chosen to serve as a director due to his extensive experience with respect to environmental matters and renewable energy, in particular during his government service.

**John R. Cooper**, age 62, has been a director since 2003. Since 2004, Mr. Cooper has been a principal, director and Chief Financial Officer of Ocean Renewable Power Company, LLC, a venture developing technology and projects to produce electric power from ocean tidal and river currents. Prior to 2002, Mr. Cooper was Senior Vice President and Chief Financial Officer of PG&E National Energy Group (and predecessor companies), where he oversaw all aspects of the structuring and arranging of financing for the construction and acquisition of 8,500 MW of fossil, hydro and renewable electric generating projects and gas pipelines. During his 14 year tenure, these financings were awarded 10 deal of the year citations. Previously, he spent eight years with Bechtel Financing Services, Inc., where he was responsible for structuring and arranging financing for large infrastructure and energy projects. He spent three years as chief financial officer of a European oil, shipping, banking and venture capital group in Geneva, Switzerland. He is currently a Director of MachGen, LLC, TUUSSO, LLC, SkyFuel, LLC and Ocean Renewable Power Company, LLC and an advisory director of Republic Financial Corporation's private equity group. Mr. Cooper holds a bachelor's degree from Trinity College (Connecticut), a master's degree in development economics and international studies from the Johns Hopkins Nitze School of Advanced International Studies, and a MBA in finance from the Kellogg Graduate School of Management at Northwestern University. Mr. Cooper was chosen to serve as a director due to his extensive financial accounting experience as well as his experience with the development and financing of power projects.

**Joseph E. Cresci**, age 67, is a founder of our company and has served as our Chairman since its inception in 1982 and as Chief Executive Officer from 1982 to July 2003. Mr. Cresci's role as Chairman became a non-executive position in June 2006, and he retired from employment with our company in September 2006. Mr. Cresci now serves as an independent consultant in the area of energy project development. Prior to founding Environmental Power, Mr. Cresci held other senior management positions including CEO/Owner of a distribution business and President/COO of a subsidiary of a New York Stock Exchange listed company. Mr. Cresci holds an A.B. degree from Princeton University and a law degree from Cornell Law School and was a member of the Pennsylvania and Massachusetts bars. In continuing to nominate Mr. Cresci to serve as a director, the Company values the perspective and experience developed over 28 years as a director of the Company that Mr. Cresci brings to his service on the board.

**Lon Hatamiya**, age 51, has been a director since 2005. Mr. Hatamiya has been a Director of Navigant Consulting, Inc., a publicly traded, specialized, independent consulting firm providing litigation, financial, healthcare, energy and operational consulting services to government agencies, legal counsel and large companies, since July 2007. From January 2004 to July 2007, Mr. Hatamiya was a Director of LEGC, LLC, an international expert consulting firm serving businesses and public agencies specializing in economic analysis and development, intellectual property valuation, international trade and related matters. From December 2003 to March 2004, he was an advisor to Declare Yourself, a non-profit, non-partisan organization focused on motivating young voters. From January 1999 to November 2003, Mr. Hatamiya was Secretary of the State of California's Technology, Trade and Commerce Agency and Chairman of the Board of the California Infrastructure and Economic Development Bank. From September 1993 to January 1999, Mr. Hatamiya held various positions in the United States Department of Agriculture, including being Vice President of the Credit Commodity Corporation, and Administrator of the Agricultural Marketing Service and the Foreign Agricultural Service. He also practiced law with the international

## Table of Contents

firm of Orrick, Herrington and Sutcliffe. Mr. Hatamiya holds a B.A. in Economics from Harvard University, an M.B.A. in International Business and Entrepreneurial Studies from the UCLA Anderson Graduate School of Management, and a J.D. from the UCLA School of Law. Mr. Hatamiya was chosen to serve as a director due to his experience as a consultant to a wide variety of enterprises as well as his knowledge of and experience with economics, finance and agriculture.

**Richard E. Kessel**, age 60, has been our President and Chief Executive Officer since July 2006 and a director since 2007. From October 2003 to July 2006, Mr. Kessel was President and Chief Executive Officer of Bedford Partners, a consulting firm assisting private equity firms in acquiring energy, water, waste and other service related enterprises. From July 2002 to September 2003, Mr. Kessel served as the President and Chief Executive Officer for North America, and a Senior Vice President, of Suez Environment, an international company focused on water, wastewater and waste services. The North American operations overseen by Mr. Kessel were comprised of five companies with over 9,200 employees, \$1.3 billion in annual revenues and \$1.5 billion in assets. Mr. Kessel served as President and Chief Executive Officer of Trigen Energy Corporation, an energy services company with \$1 billion in assets, \$533 million in annual revenue and 34 operating facilities in 22 states, from April 1, 2000 to June 30, 2002, after serving as its Executive Vice President and Chief Operating Officer from December 1993 to March 31, 2000. Previously, Mr. Kessel was President and Chief Executive Officer of United Thermal Corporation (acquired by Trigen), which owned and operated the district energy systems in Baltimore, Boston, Philadelphia and St. Louis, and Chief Operating Officer of Sithe Energies, Inc., a developer of independent power projects in the United States and global markets. Mr. Kessel serves on the board of directors of ISO New England, Inc., the operator of the New England region's bulk power system and wholesale electricity markets. Mr. Kessel holds a B.S. in electrical engineering from Manhattan College, completed the course work for a masters in finance from New York University's Stern School of Business and received an advanced management degree from the Wharton School of Business Executive Program. We are required by the terms of Mr. Kessel's employment agreement to nominate him for election as a director at each annual meeting of stockholders held during his tenure as President and Chief Executive Officer. Nevertheless, we believe that Mr. Kessel's business acumen and perspective and insights into our company as a result of his service as President and Chief Executive Officer make him especially well-suited to service as a director.

**Steven Kessner**, age 57, has been a director since 2005. Mr. Kessner has been the Chairman of the Board and President of The R.E. Group since 1981. In this capacity, Mr. Kessner has overseen the management and operation of the various real estate holding companies and construction and management companies of which The R.E. Group is the parent. Mr. Kessner is the founder of Uncle Steve's Camp, a non-profit organization for underprivileged children. Mr. Kessner has served on various non-profit boards and has been a volunteer fundraiser for numerous organizations throughout his career. Mr. Kessner holds a B.S. in Economics from Dartmouth College and served as President of his Dartmouth College class. Mr. Kessner was chosen to serve as a director due to his demonstrated business judgment over a successful career in real estate.

**August Schumacher, Jr.**, age 70, has been a director since 2002. Since January 2003, Mr. Schumacher has served as a consultant to W.K. Kellogg Foundation, a consultant advisor to SJH & Company, Inc. and development advisor to Cantera Partners, LLC. Mr. Schumacher served as the third-highest ranking official in the United States Department of Agriculture in the Farm and Foreign Agricultural Service from 1997 to 2001. During this time, he was also President of the USDA's Commodity Credit Corporation. Prior to his appointment, he directed the Department's Foreign Agricultural Service. Earlier, Mr. Schumacher was the Senior Agricultural Project Manager for World Bank and also served as the Commissioner of Food and Agriculture for the Commonwealth of Massachusetts. Mr. Schumacher is currently a member of the 21<sup>st</sup> Century Sustainable Agriculture Task Force of the National Academy of Sciences. In 2007, Mr. Schumacher, among others, oversaw the preparation of the Task Force Report of the Chicago Council of Global Affairs, titled *Modernizing America's Food and Farm Policy: Vision for a New Direction*. Mr. Schumacher is also chairman of the Wholesome Wave Foundation of Westport, Connecticut, a non-profit organization, and serves on the board of GrainPro, LLC of Concord, Massachusetts, a privately held company. Mr. Schumacher was chosen to serve as a director due to his extensive experience with agriculture, a key constituency for our business, and its interactions with government.

**Kamlesh R. Tejwani**, age 49, has served as a director since 2003 and has been our non-executive Vice Chairman since July 2006. Since July 2008, Mr. Tejwani has served as Chairman and Chief Executive Officer of AllGreen Energy Pte Ltd., a company focused on the development of renewable energy projects in India designed to generate electricity from biomass. From July 2003 to July 2006, Mr. Tejwani served as our President and Chief Executive Officer. Mr. Tejwani served as President of Target Capital Corporation, a private equity firm, from May

## **Table of Contents**

1996 to June 2003. His responsibilities included structuring and implementing investments for an offshore investment fund and assisting operating companies in operational and strategic planning. From April 1990 until December 1995, he served as the Chairman and Chief Executive Officer of Air-Cure Technologies, Inc., a manufacturer and marketer of air pollution control systems. Mr. Tejwani was originally elected to our board in connection with his employment as our President and Chief Executive Officer, and continues to be selected to serve on our board given his long-standing relationship with our company and his demonstrated experience in the development of renewable energy projects.

**Robert I. Weisberg**, age 63, has been a director since 1994. From 2004 to 2008, Mr. Weisberg was Chairman and CEO of Oceans Casino Cruises, Inc., an operator of casino cruise ships. From 1996 to 2004, he was President and Chief Executive Officer of Alco Financial Services, LLC, a commercial asset-based lending company. Mr. Weisberg was the former President and Chief Executive Officer of Pro-Care Financial Group, Inc., and has held the positions of President and CEO of Fleet Credit Corporation and Executive Vice-President of Fleet Financial Group. A graduate of Northeastern University, he received the Executive Award from a joint program sponsored by Williams College and the Harvard Graduate School of Business. Past Chairman and President of the Commercial Finance Association, he is presently a member of the Commercial Finance Association's Education Foundation. Mr. Weisberg has served on numerous other public, corporate and non-profit community boards. Mr. Weisberg continues to be selected to serve on our board due to the perspective and experience developed over his more than 16-year relationship with our company as well as his expertise and experience in finance.

### ***Executive Officers***

Information regarding our executive officers may be found under the caption "Executive Officers of the Registrant" appearing at the end of Part I of our Annual Report on Form 10-K for the year ended December 31, 2009, to which this Form 10-K/A relates. Such information is incorporated herein by reference.

### ***Audit Committee***

We have a separately designated standing Audit Committee established in accordance with Section 3(a) (58) (A) of the Exchange Act. The members of the Audit Committee for 2009 were Messrs. Cooper, Hatamiya and Ballentine. Mr. Cooper serves as chair of the Audit Committee.

### ***Audit Committee Financial Expert***

The Board of Directors has determined that John R. Cooper is, and has designated Mr. Cooper as, the Audit Committee Financial Expert as defined by Item 407(d)(5)(ii) of Regulation S-K of the Exchange Act and determined that he is independent within the meaning of Item 407(a) of Regulation S-K of the Exchange Act.

### ***Section 16(a) Beneficial Ownership Reporting Compliance***

Section 16(a) of the Securities Exchange Act of 1934 requires our directors, executive officers and the holders of more than 10% of our common stock to file with the SEC initial reports of ownership of our common stock and other equity securities on a Form 3 and reports of changes in such ownership on a Form 4 or Form 5. Officers, directors and 10% stockholders are required by SEC regulations to furnish us with copies of all Section 16(a) forms they file. To our knowledge, based solely upon a review of the copies of such forms furnished to us for the year ended December 31, 2009, and the information provided to us by those persons required to file such reports, no such person failed to file the forms required by Section 16(a) of the Exchange Act on a timely basis, except as follows:

Mr. Weisberg filed a Form 4 on April 3, 2009 with respect to his purchase of 3,400 shares of our common stock on March 31, 2009.

Each of Mr. Kessel, Mr. Thomas and Mr. Haines filed a Form 4 on June 30, 2009, with respect to the surrender to us of 2,733, 829 and 903 shares, respectively, of our common stock on May 1, 2009 to satisfy certain income tax withholding obligations in connection with the vesting of restricted stock awards.

### ***Code of Ethics***

We have adopted a code of business conduct and ethics that applies to our directors, officers (including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions) and our employees. A copy of our code of



business conduct and ethics is available on

## **Table of Contents**

our website at [www.environmentalpower.com](http://www.environmentalpower.com) under Investor Relations Corporate Governance . We intend to post on our website all disclosures that are required by applicable law, the rules of the Securities and Exchange Commission or NASDAQ listing standards concerning any amendment to, or waiver from, our code of business conduct and ethics.

### **ITEM 11. EXECUTIVE COMPENSATION INFORMATION ABOUT EXECUTIVE AND DIRECTOR COMPENSATION**

#### **Compensation Discussion and Analysis**

This compensation discussion describes the material elements of compensation for the fiscal year ending December 31, 2009, that was awarded to, earned by, or paid to each of our current and former executive officers identified in the Summary Compensation Table below as our named executive officers. This compensation discussion primarily focuses on the last completed fiscal year, but we also describe certain compensation actions taken before or after the last completed fiscal year to enhance the understanding of this disclosure.

The Compensation Committee of our Board of Directors oversees our executive compensation program. In this role, the Compensation Committee reviews and approves, or recommends for approval by the full Board, all compensation decisions relating to our executive officers. The Committee also oversees our stock-based compensation plans and programs.

#### ***Objectives and Philosophy of Our Executive Compensation Program***

The objective of our executive compensation program is to align the interests of management with the interests of stockholders by tying a substantial portion of overall compensation opportunities provided to executive officers to the achievement of business objectives and individual performance. Our policy is to offer competitive compensation packages that will permit us to attract and retain individuals with superior abilities, and to motivate and reward such individuals on the basis of corporate performance in an appropriate fashion that is in the long-term interests of Environmental Power and its stockholders.

Our company continues to develop. As it does, we have been working to design and implement formal criteria and programs to reward executive officers based upon an assessment of corporate, business-unit and individual performance. As a result of these efforts, in March 2008, our Compensation Committee adopted our Annual Incentive Management Plan and our Long-Term Incentive Plan, in which our executive officers participate, in addition to various compensation plans for other employees other than our executive officers. The Annual Incentive Management Plan and the Long-Term Incentive Plan are described in more detail below. Pursuant to these plans, we expect to evaluate corporate- and business unit-performance by reviewing the extent to which strategic and business-plan goals are met, including such factors as maintaining capital and operating budgets and timely accomplishment of business-development objectives, as applicable. We expect to evaluate individual performance by reviewing attainment of specified personal objectives and the degree to which teamwork and our other values are fostered.

As a result of our recent efforts to formalize compensation practices, we have committed to the following compensation philosophy, to the extent consistent with financial resources:

We will strive to provide competitive compensation programs that will help to attract highly qualified individuals necessary to grow our company, and then to retain and motivate these individuals to achieve higher levels of performance.

Compensation programs will emphasize a pay-for-performance concept, in which an individual's future compensation growth and career advancement are dependent upon maintaining and exceeding our recognized levels of quality and performance while supporting our strategic goals. Future monetary growth is dependent upon company performance as well as individual performance.

We will provide a compensation package consisting of base salary, incentives, and benefits that are consistent with similar positions in recognized competitors and start-up/growth companies, with each component addressing individual, team and company performance, competitive conditions and our overall financial performance. Our goal is to attract the most qualified applicants to fuel our growth. Future salary increases will be based on an individual's evaluated performance against pre-established objectives, as well

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

as our performance and ability to pay.

Base salary programs will be targeted at market (50th percentile), and total cash compensation will be targeted aggressive to market (up to the 75th percentile) in order to recognize our employees direct impact on our business goals.

## **Table of Contents**

Our core belief is that the opportunity to earn competitive incentives will help drive the focus of business. Competitive incentive compensation will be based upon the achievement of expected performance targets, with upside potential tied to exceptional contribution and surpassing goals. Measurable performance goals and objectives will be developed by our executive management team and approved by the Compensation Committee of the Board of Directors, consistent with our identified business strategies and financial objectives.

We will provide a quality and supportive work environment with challenging career opportunities and the necessary resources to enhance growth in order to attract, retain, and motivate a highly qualified and experienced staff. Compensation programs shall encourage employees to maximize their capabilities through personal growth and job development in order to foster a culture that is team focused and rewards both individual and business success.

This compensation philosophy will apply to all employees, including our executive officers. We believe that this compensation philosophy will serve as the basis for the development of new or modified compensation programs and will be used as a tool to help meet identified needs relating to motivation and retention. In practice, we expect that the implementation of this philosophy will have the following implications:

The marketplace must be considered with regard to establishing competitive compensation levels, including base salary, benefits and incentives. See the discussion under *Comparative Compensation Review Process and Benchmarking*, below.

Employees should have the ability to earn total cash compensation above market levels based on exceptional performance. Incentive payouts, where applicable, must be determined in a manner that is ethical, and is reflective of performance achieved against objective measures.

We must develop and maintain clear salary administration plan documents to ensure the consistent and proper application of all programs.

Except for contractual obligations, performance should be the primary determinant of salary increases and incentive bonuses. Increases should be based on objective, quantifiable performance measures, where possible, with a minor portion based on discretionary factors so that subjectivity is limited.

Only those employees whose performance meets acceptable standards will receive increases, and the size of the increase will be dependent upon the individual's evaluated performance.

Specific, measurable performance criteria for each job must be set on an annual basis, consistent with our strategic corporate objectives, and the achievement of results for each criteria must be tracked, in order to improve accountability for end results due to the individual's ability to directly affect the amount of his/her salary increases.

A formal performance appraisal tool must be maintained that offers uniform, dependable evaluations that outline the desired performance expectations and accurately reflects each employee's contribution and performance, and which is monitored to make sure the program is consistently applied and equitable to all employees.

Management must be regularly trained in the use of the performance evaluation program and be held accountable for completing evaluations both accurately and on a timely basis.

### ***Comparative Compensation Review Process and Benchmarking***

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

We do not believe that compensation levels should be controlled by benchmarking. However, we believe that information regarding pay practices at other companies is useful in two respects. First, our compensation practices need to be competitive in the marketplace. Second, marketplace information is one of the many factors that we consider in assessing the reasonableness of compensation. Accordingly, from time to time we have compared our compensation packages including levels, components, and mix of compensation types with those of other companies in the alternative energy industry, through reviews of survey data and information gleaned from filings of publicly traded companies and through information compiled and analyzed by others. Going forward, we intend to compare the compensation of our employees to the marketplace within two specific peer groups: (1) alternative energy, energy development and production and water/wastewater treatment companies and (2) start-up and emerging bio-technology companies, and to perform these comparisons at least every two or three years. In addition, we intend to identify a peer group and maintain updated job descriptions for each unique job in order to benchmark positions appropriately.

## **Table of Contents**

While such information may be a useful guide for comparative purposes, we believe that a successful compensation program also requires the application of judgment and subjective determinations of individual performance. Review of this information and these factors forms the basis of management's compensation recommendations to the Compensation Committee and the Committee's decision-making.

### *Use of Consultants*

The Compensation Committee's charter grants it the authority to retain outside advisors, including compensation consultants, and approve their compensation. Environmental Power is obligated to pay the Compensation Committee's advisors and consultants. Although management is involved in coordinating with these advisors with respect to the provision of their services, these advisors and consultants report directly to the Compensation Committee. With respect to non-employee director compensation, the full Board of Directors has acted directly.

Thus, in 2007, the Compensation Committee and management sought the advice of outside counsel and also engaged Brian Foley & Company, Inc., an independent executive compensation consulting firm, to advise the Committee on certain matters relating to stock-based compensation. Also in 2007, the Nominating and Corporate Governance Committee engaged Heidrick & Struggles, a leading executive search firm, to assist it in evaluating best practices for corporate governance, including such matters as board composition, director stock ownership guidelines and related matters.

In February 2008, the Compensation Committee engaged Harry Schum, an independent compensation consultant, to assist the Compensation Committee and management in the formulation of more formal incentive compensation programs for our executive officers as well as all other full-time employees.

We did not engage any compensation consultants in 2009.

### *Elements of Executive Compensation*

Compensation for our executives has generally consisted of the following elements:

base salary;

bonuses;

long-term incentive compensation via stock-based awards;

health, dental, life and disability insurance and other traditional employee benefits, and executive perquisites; and

Severance and change-in-control arrangements.

Historically, we have not had any formal policy or target for allocating compensation between long-term and short-term compensation, between cash and non-cash compensation or among the different forms of non-cash compensation. Instead, the Compensation Committee, with input as requested from senior management, has determined subjectively what it believes to be the appropriate level and mix of the various compensation components. The mix of compensation has also been impacted in many cases by the course of negotiations with the executive in question in connection with his hiring. Ultimately, the Compensation Committee's objective in allocating between annual and long-term compensation opportunities is to ensure adequate base compensation to attract and retain personnel, while providing incentives to maximize long-term value for our Company and its stockholders. Therefore, we have provided cash compensation in the form of base salary to meet estimated competitive salary norms and, to the extent our cash position has permitted, have rewarded individual performance on an annual basis in the form of bonus compensation. We provide non-cash compensation, principally in the form of equity-based grants such as stock options and, more recently, stock appreciation rights and restricted stock awards, which are intended to create incentives for the achievement both of specific objectives and/or of long-term strategic goals.

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

In March 2008 the Compensation Committee, acting upon the recommendations of management and Mr. Schum, adopted the compensation philosophy described above. In addition, as part of its effort to formalize our compensation practices generally, including with respect to our executives, the Compensation Committee adopted our Annual Incentive Management Plan and Long-Term Incentive Plan.

## Table of Contents

The purpose of the Annual Incentive Management Plan is to align the interests of management with corporate performance goals by focusing management on the achievement of annual financial and operational objectives with competitive financial incentives. Full-time employees not participating in other incentive programs will be eligible under the plan, with the extent of participation to be determined by position in our company. Pursuant to the plan, the board of directors, in cooperation with our executive team, will set annual corporate financial objectives. Individual performance will also be considered, and threshold and maximum levels of performance will also be set. Under the plan, our Chief Executive Officer will have a target award of 50% of base salary; other executive officers will have target awards of 35% of base salary. Our Chief Executive Officer's award will be based 100% on the achievement of corporate goals; the other executive officers' awards will be based 75% on the achievement of corporate goals, and 25% on individual performance. Particular corporate objectives will be assigned a relative weight, as may also be the case with individual performance goals. Awards under the plan will be based on the overall level of achievement of both corporate and individual goals, and will be paid following the audit of year-end financials. Participants in the plan must be employed at the time of payout to receive an award. The plan can be modified or terminated at any time, is strictly a guideline, and is not binding on us. The Compensation Committee will determine awards to our Chief Executive Officer and other executives.

The Long-Term Incentive Plan was adopted pursuant to the Compensation Committee's discretion under our existing 2005 Equity Incentive Plan and 2006 Equity Incentive Plan, to set the terms and amounts of awards under such plans, subject to the limitations set forth in such plans. The purpose of this plan is to provide a long-term incentive plan based on the financial growth of our company, to foster teamwork and an entrepreneurial spirit among participants and to provide a long-term compensation tool to motivate, reward and retain participants. Our Chief Executive Officer, our other executive officers and those additional persons designed by our Chief Executive Officer, are eligible to participate in the Long-Term Incentive Plan. Awards pursuant to the plan are expected to be made annually, and may be a combination of different long-term vehicles, including restricted stock awards, incentive stock options and stock appreciation rights, based upon guidelines considered by the Compensation Committee on an annual basis. Such awards will be made under our 2005 Equity Incentive Plan or 2006 Equity Incentive Plan, and awards pursuant to the Long-Term Incentive Plan will be subject to the terms the equity incentive plan under which they are granted, including any limitations on awards set forth therein. Awards pursuant to the plan generally will vest in three substantially equal annual installments beginning on the first anniversary of the grant date. The value of such awards will be determined based on the fair market value at the time of grant, utilizing a modified Black-Scholes methodology where appropriate. The target value of each annual award (as a percentage of base salary) will be established by the Compensation Committee for our Chief Executive Officer, will be 30% for the other executive officers, and will be discretionary for any other employees designated for participation in the plan by our Chief Executive Officer. All awards will vest in full upon the death or total disability of a participant, or upon a change in control of our company, and will be forfeited, whether or not vested, upon any termination for cause. Awards vesting upon death or disability are to be paid or exercised within 12 months following such event. The Long-Term Incentive Plan can be modified or terminated at any time, is strictly a guideline, and is not binding on us. The Compensation Committee will determine awards to our Chief Executive Officer and other executives.

*Base Salary.* Salary for our executives is generally set by reviewing compensation levels for comparable positions in the market, as described above, and the historical compensation levels of our executives. Salaries may then be adjusted from time to time, based upon market changes, actual corporate and individual performance and promotions or changes in responsibilities. Base salaries and other elements of compensation may also be mandated by the terms of employment and other agreements entered into with our executives, as described under *Information about Executive and Director Compensation* Employment and Severance Agreements. In such cases, base salaries have at first been determined by arms-length negotiations with these executives, generally in connection with their initial hiring. Going forward, we will continue to seek to set salaries that are competitive with the marketplace, recognizing the skill and experience of each executive, his or her level of performance, and his or her responsibilities as compared to similarly situated employees at competing firms. While it will be our primary objective to offer and maintain base salaries that are competitive with the marketplace, we will reserve the right to pay premium base salaries to secure the services of individuals with certain skill sets or to fill positions in key markets that are vital to our business objectives.



---

**Table of Contents**

*Bonuses.* Bonuses, as well as any annual increases in salaries, are expected to be based on actual corporate and individual performance compared to targeted performance criteria and various subjective performance criteria. Given what we believe are competitive base salaries, as well as our stage of development and cash position, we generally have not paid cash bonuses to our top executives from 2002 through 2006. We did, however, pay bonuses to our executives in respect of 2007, based on their individual performance. Due to our company's financial condition, no bonuses were paid in respect of 2008, and no bonuses will be paid in respect of 2009. Going forward, we expect to pay bonuses based upon criteria and corporate and individual performance goals established in accordance with the Annual Incentive Management Plan described above, subject to the availability of cash resources to do so. The objective of the Annual Incentive Management Plan will be to:

reward participants for achievement of short term financial and operating plan business goals;

establish goals that are challenging but attainable and linked to corporate, division and individual objectives based on the ability of the participant to influence results;

leverage award opportunities to incent over-achievement of the operating plan objectives; and

provide competitive cash opportunity versus the marketplace

We intend to communicate the annual incentive opportunities under this plan, and the accomplishments necessary to achieve these incentives, to each participating employee early in each plan year. Notwithstanding the adoption of the Annual Incentive Management Plan in early 2008, while specific performance goals for 2008 were initially identified, the goal setting process was hampered by quickly changing circumstances and deteriorating financial market conditions, which resulted in a shift in the Company's priorities. These conditions persisted into 2009, and in 2009 the Company's financial condition also deteriorated. As a result, specific performance goals for 2008 and 2009 were not implemented.

*Long-Term Incentive Compensation via Stock-Based Awards.* Compensation for executive officers also includes the long-term incentives afforded by stock options and other equity-based awards. Our stock option and equity-based award program is designed to align the long-term interests of our employees and our stockholders and assist in the retention of executives. The size of stock-based awards is generally intended to reflect the executive's position and the executive's expected contributions. In 2009, we made stock-based awards in accordance with the terms of the Long-Term Incentive Plan described above. This compensation plan is designed to accomplish several objectives:

focus participants on the strategic plan performance objectives that are critical to the success of the company over a three-year period, which objectives are linked to the achievement of business and financial goals that are designed to create value for shareholders;

encourage retention of participants through reward opportunities that require continued service; and

encourage teamwork and one company focus by employees regardless of their business unit and reward sustained contribution for attainment of strategic objectives.

As this plan is based on total company strategic results, the participation is limited to those whose actions play a direct role in the long-term success of the company, including our executive officer and others designated by our Chief Executive Officer.

*Insurance, Other Employee Benefits and Perquisites.* We maintain broad-based benefits and perquisites that are provided to all employees, including health insurance, life and disability insurance, dental insurance and a 401(k) plan. Under our 401(k) plan, so long as the employee is employed through the last day of the year in question, we generally make a matching 401(k) contribution of 50% of the employee's contribution, up to 6% of the employee's salary for the year, with a maximum matching contribution of \$7,500. In 2009 we did not make a matching corporate contribution. In addition, we provide certain perquisites to executives, which are generally detailed in their employment agreements or offer

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

letters. Going forward, we expect to offer supplemental benefits and perquisites to designated executives, which supplement broad-based benefit programs. The objectives of this supplemental benefits and perquisites program will be to:

Provide executives with competitive benefits and perquisites versus the marketplace;

Replace benefits that are restricted due to ERISA and/or Internal Revenue Code limitations;

Attract and retain experienced senior executives;

## **Table of Contents**

Assist executives in accomplishing job responsibilities; and

Supplement executive's retirement benefits.

*Severance and Change-in-Control Arrangements.* Compensation for executive officers also includes severance and change-in-control arrangements, which are generally reflected in the employment agreements for such officers. These arrangements, like other elements of executive compensation, are structured with regard to practices at comparable companies for similarly-situated officers and in a manner we believe is likely to attract and retain high quality executive talent. Changes to existing severance arrangements are also sometimes negotiated with departing executives in exchange for transition services and/or general releases. The severance and change-in-control arrangements currently in place with our current executive officers are described in greater detail in this section under the headings Employment and Severance Arrangements, and Summary of Potential Payments Upon Termination or Change of Control.

### ***Other Corporate Policies Relating to Executive Compensation***

*Role of Executive Officers in Determining or Recommending Executive and Director Compensation.* Management plays an important role in support of the Compensation Committee's determination of executive compensation. The most significant aspects of management's role are:

evaluating key-employee performance;

recommending business performance targets and objectives; and

recommending salary levels and stock-based awards.

Our President and Chief Executive Officer assists the chair of the Compensation Committee in establishing the agenda for Committee meetings. Management also prepares meeting information for each Compensation Committee meeting. At the Committee's request, our President and Chief Executive Officer also participates in Compensation Committee meetings to provide input if and as sought by the Committee, including but not limited to:

background information regarding our strategic objectives and progress toward the attainment of those objectives;

information on the performance of the senior executive officers; and

compensation recommendations as to senior executive officers other than the Chief Executive Officer.

Ultimately, however, all executive compensation decisions are made, or recommended to the Board of Directors, by the Compensation Committee, which makes such decisions and recommendations after considering management's recommendations, available market data, and, in some cases, input from outside advisors to the Committee. In doing so the Committee engages in deliberations in executive session without the presence of the Chief Executive Officer or any other members of management.

The forms and amounts of non-employee director compensation in 2009 were unchanged from those set in 2007, which were determined by the full Board of Directors following a review of data provided by Heidrick & Struggles, as described above. However, in September 2008, the Board unanimously directed management to defer payment of cash compensation due to Board members until further notice, in order to conserve cash. We have been accruing these amounts as they become due.

*Impact of Tax Treatment on Compensation Decisions.* Section 162(m) of the Internal Revenue Code of 1986, as amended, generally disallows a tax deduction for compensation in excess of \$1.0 million paid to our chief executive officer and our four other most highly paid executive officers. Qualifying performance-based compensation is not subject to the deduction limitation if specified requirements are met. We periodically review the potential consequences of Section 162(m) and generally intend to structure our executive compensation to comply with

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

Section 162(m). However, the Compensation Committee may, in its judgment, authorize compensation payments that do not comply with the exemptions in Section 162(m) when it believes that such payments are appropriate to attract and retain executive talent.

*Security Ownership Requirements or Guidelines.* While we believe it is important for our executives to have an equity stake in our company in order to help align their interests with those of our stockholders, we do not have any equity ownership guidelines for our executive officers, other than as contemplated by the Long-Term Incentive Plan. We also do not have any equity ownership guidelines for our non-employee directors. However, board

**Table of Contents**

members and executive officers are encouraged to acquire, during open trading windows, shares of our common stock to the extent consistent with their individual economic circumstances, and directors and executive officers have done so.

***Discussion of Specific Compensation Arrangements for 2009***

On August 19, 2009, the Compensation Committee approved the following compensation arrangements with our executive officers:

***Awards under Long-term Incentive Plan***

The Compensation Committee approved combined awards of stock appreciation rights and restricted stock to the Company's executive officers. Pursuant to the guidelines set forth in our 2008 Long-Term Incentive Plan, in the case of Mr. Kessel the award reflects a value of 65% of his salary in order to assure maximum alignment with shareholder interests. The stock appreciation rights were awarded under the our 2006 Equity Incentive Plan, each of which has an exercise price of \$0.55 per share, the closing price of the our common stock as reported on The Nasdaq Capital Market on the date of grant, which the Committee determined to be the fair market value of a share of our common stock on the date of grant. The Compensation Committee also made restricted stock awards under our 2006 Equity Incentive Plan, at a purchase price of \$0.01 per share. The Compensation Committee chose a vesting-schedule of one-third per year over a three-year period, with the first installment vesting on August 19, 2010, for both the stock appreciation rights and the restricted stock awards, with both the stock appreciation rights and restricted stock awards vesting in full upon a change in control:

<b>Name</b>	<b>Number of Shares Subject to SARs</b>	<b>Number of Restricted Shares</b>	<b>Vesting</b>
Richard E. Kessel	100,000	50,000	1/3 on each of August 19, 2010, August 19, 2011 and August 19, 2012
Michael E. Thomas	25,000	12,500	Same
Dennis Haines	25,000	12,500	Same

The foregoing awards are reflected in more detail in the tables below.

**Compensation Policies and Practices as They Relate to Risk Management**

We believe that the design of our compensation policies and practices for our employees is relatively straightforward, strikes an appropriate balance between the achievement of short-term objectives and the achievement of long-term value and does not encourage the taking of undue risks. Therefore, given this design, and the nature of our business activities, we do not believe that risks, if any, arising from such policies and practices are reasonably likely to have a material adverse effect on our business.

**Table of Contents****Executive Compensation****Summary Compensation**

The following table sets forth information for the fiscal years ended December 31, 2009, 2008 and 2007 regarding the compensation of our President and Chief Executive Officer, our Senior Vice President, Chief Financial Officer and Treasurer, and our Vice President, General Counsel and Secretary. We refer to these individuals as our named executive officers.

**SUMMARY COMPENSATION TABLE**

Name and Principal Position	Year	Salary	Bonus(1)	Stock Awards(2)	Option Awards(3)	Non-Equity Incentive Plan Compensation(4)	Change in Pension Value and Nonqualified Deferred	All Other Compensation(6)	Total
							Compensation Earnings(5)		
Richard E. Kessel President and Chief Executive Officer and President of Microgy, Inc.	2009	\$ 318,800		\$ 27,000	\$ 37,425			\$ 27,763	\$ 410,988
	2008	\$ 312,533		\$ 90,915	\$ 605,631			\$ 42,007	\$ 1,051,086
	2007	300,000	\$ 100,000					38,909	438,909
Michael E. Thomas Senior Vice President, Chief Financial Officer and Treasurer	2009	227,700		6,750	9,356			20,951	264,757
	2008	225,133		27,550	119,254			28,922	400,859
	2007	134,680	15,500		507,425			17,295	674,900
Dennis Haines Vice President, General Counsel and Secretary	2009	221,000		6,750	9,356			22,969	260,075
	2008	217,333		27,550	119,254			21,887	386,024
	2007	210,000	22,000					20,532	252,532

- (1) Bonus amounts for 2007 are bonuses in respect of services for that year, which were paid in 2008. We did not pay any bonuses in respect of services in 2008, nor do we expect to pay any bonuses in respect of services for 2009.
- (2) We did not make any awards of stock in 2007. In 2008, the named executive officers were granted restricted stock awards vesting over two years, and in 2009, the named executive officers were granted restricted stock awards vesting over three years. The amounts in the Stock Awards column reflect the fair value of such awards on the date of grant calculated in accordance with Accounting Standards Codification Topic 718, Compensation Stock Compensation ( FASB ASC Topic 718 ). Please see Note K to our financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2009 for a discussion of the assumptions underlying these values, which discussion is incorporated herein by reference. Please see the table below under the heading Outstanding Equity Awards at Fiscal Year-End for further detail regarding the restricted stock awards underlying these amounts, including the fair market value on the grant date and the number of shares subject to such awards.
- (3) The amounts in the Option Awards column reflect the fair value of such awards on the date of grant calculated in accordance with FASB ASC Topic 718. Please see Note K to our financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2009 for a discussion of the assumptions underlying these values, which discussion is incorporated herein by reference. Please see the table below under the heading Outstanding Equity Awards at Fiscal Year-End for further detail regarding the option awards underlying these amounts, including the exercise price and the number of shares subject to such options.
- (4) We did not pay any non-equity incentive plan compensation in 2007, 2008 or 2009.
- (5) We no longer maintain a pension plan, nor did we maintain any nonqualified deferred compensation plans in 2007, 2008 or 2009.
- (6) The amounts in the All Other Compensation column represent the following amounts for the following individuals:

Richard E. Kessel 2009:

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

		Automobile expense reimbursement: \$9,000 Medical insurance premiums: \$10,770; Dental insurance premiums: \$1,454 Life insurance premiums: \$6,539.
	2008:	Automobile expense reimbursement: \$9,000 401(k) corporate matching contribution: \$7,750 Medical insurance premiums: \$13,498; Dental insurance premiums: \$1,972 Life insurance premiums and stipend for life insurance: \$9,787 (includes amounts to which Mr. Kessel was entitled to in 2006 but which were paid in 2008).
	2007:	Automobile expense reimbursement: \$13,500 (includes amounts to which Mr. Kessel was entitled in 2006 but which were paid in 2007); 401-K corporate matching contribution: \$7,750 Medical insurance premiums: \$9,627; Dental insurance premiums: \$1,505 Life insurance premiums and stipend for life insurance: \$6,527.
Michael E. Thomas	2009:	Automobile expense reimbursement: \$9,000; Medical insurance premiums: \$7,516 Dental insurance premiums: \$897; Life insurance premiums \$3,538.
	2008:	Automobile expense reimbursement: \$9,000; 401(k) corporate matching contribution: \$5,500 Medical insurance premiums: \$9,825; Dental insurance premiums: \$1,078; Life insurance premiums and stipend for life insurance \$3,519.
	2007:	Automobile expense reimbursement: \$5,625; 401(k) corporate matching contribution: \$5,500 Medical insurance premiums: \$5,617; Dental insurance premiums: \$553.
Dennis Haines	2009:	Automobile expense reimbursement: \$9,000; Medical insurance premiums: \$7,630 Dental insurance premiums: \$897 Life insurance premiums: \$5,442.
	2008:	Automobile expense reimbursement: \$10,125 (includes amounts to which Mr. Haines was entitled in 2007 and 2006 but which were paid in 2008); Medical insurance premiums: \$5,652; Dental insurance premiums: \$1,078 Life insurance premiums and stipend for life insurance: \$5,032.
	2007:	Automobile expense reimbursement: \$9,750 (includes amounts to which Mr. Haines was entitled in 2006 but which were paid in 2007); Medical insurance premiums: \$4,643; Dental insurance premiums: \$1,103; Life insurance premiums and stipend for life insurance: \$5,036.

**Table of Contents**

The following table sets forth information regarding each grant of an award made to a named executive officer during the fiscal year ended December 31, 2009 under any plan, contract, authorization or arrangement pursuant to which cash, securities, similar instruments or other property may be received.

**GRANTS OF PLAN-BASED AWARDS**

Name	Grant Date	Estimated Future Payouts Under			Estimated Future Payouts Under			All Other Stock Awards; Number of Shares of Stock or Units	All Other Option Awards; Number of Securities Underlying Options	Exercise or Base Price of Option Awards (\$/sh)	Grant Date Fair Value of Stock and Option Awards(1)
		Non-Equity Incentive Plan Awards Threshold	Target	Maximum	Equity Incentive Plan Awards Threshold	Target	Maximum				
Richard E. Kessel	8/19/09								100,000(2)	\$ 0.55	\$ 37,425
	8/19/09						50,000(3)				27,000
Michael E. Thomas	8/19/09								25,000(2)	0.55	9,356
	8/19/09						12,500(3)				6,750
Dennis Haines	8/19/09								25,000(2)	0.55	9,356
	8/19/09						12,500(3)				6,750

- (1) The amounts in the Grant Date Fair Value of Stock and Option Awards column for options and SARs reflect the grant date fair value of each equity award calculated in accordance with FASB ASC Topic 718, using a Black-Scholes option-pricing model employing certain variables and related assumptions, including stock price volatility. The amounts shown in this column are, therefore, projections that do not necessarily reflect the actual cash compensation to be received by the option holder upon exercise of the option or SAR. The assumptions we used to calculate these amounts are discussed in Note K to our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2009. The amounts shown in this column for restricted stock awards reflect the grant date fair value of the award calculated in accordance with FASB ASC Topic 718 and are projections that do not necessarily reflect the actual cash compensation to the recipient of the award on the date the award vests or when the underlying shares are sold. As of December 31, 2009, the closing market price of our common stock was \$0.19 per share.
- (2) Represents shares subject to SARs vesting as to one-third of the shares subject thereto on each of August 19, 2010, 2011 and 2012.
- (3) Represents shares subject to a restricted stock award vesting as to one-third of the shares subject thereto on each of August 19, 2010, 2011 and 2012.

**Employment and Severance Arrangements***Employment Agreement with Richard E. Kessel*

On July 12, 2006, we entered into an employment agreement with Richard E. Kessel. Mr. Kessel's employment agreement provides for the following principal terms:

Employment as our President and Chief Executive Officer commencing on July 17, 2006, referred to as the commencement date, and appointment to our Board of Directors promptly following the satisfaction of any applicable board independence and composition requirements.

An initial annual salary of \$300,000, subject to annual adjustment by the Compensation Committee of our Board of Directors, which salary was increased to \$318,800, effective May 1, 2008.



## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

The grant of non-qualified stock options to purchase up to 400,000 shares of our common stock, as described below.

Eligibility to participate on the same basis as other executives reporting directly to our chief executive officer in any bonus plan adopted by us from time to time, subject to the terms of any such plan; and

Such medical, dental, retirement, vacation and other benefits as are made available from time to time to our other similarly-situated employees, as well as a car allowance comparable to that afforded to our other senior executives and five weeks paid vacation each year.

Mr. Kessel's employment agreement further provides that, notwithstanding the fact that Mr. Kessel will be an employee-at-will, the following termination provisions will apply:

Either we or Mr. Kessel may terminate the employment agreement upon sixty (60) days' prior written notice.

**Table of Contents**

In the event that we terminate the employment agreement without cause (as defined in the employment agreement), Mr. Kessel terminates the employment agreement for good reason (as defined in the employment agreement) or Mr. Kessel terminates his employment or we (or any successor company) terminates Mr. Kessel's employment for any reason within 180 days following a change in control (as defined in the employment agreement), Mr. Kessel will be entitled to the following:

continued coverage under our benefit plans through the termination date;

payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date;

reimbursement of any monies advanced or expenses incurred by Mr. Kessel in connection with his employment for reasonable and necessary business expenses incurred on or before the termination date;

payment of the equivalent of the base salary he would have earned over the 18 months following the termination date, less necessary tax withholdings, at his then current base salary rate, referred to as the severance payment, payable in a lump sum on the first business day following the six (6) month anniversary of the effective date of termination, to the extent required by Section 409A of the Internal Revenue Code of 1986, as amended, referred to as the Code, or, if not so required by Section 409A of the Code, then in a lump sum on the first business day following termination;

that portion of any annual bonus that Mr. Kessel would have been eligible to earn for the fiscal year in which his employment terminated, assuming that Environmental Power's performance is deemed to continue at the same rate for the remainder of the fiscal year, as is represented by the number of days Mr. Kessel was employed up to the date of termination divided by 365, referred to as the pro-rata bonus;

benefit continuation for a period of 18 months at the same level as he was receiving prior to the termination; and

a number of outstanding unvested stock options and restricted stock, if any, previously granted to Mr. Kessel shall vest upon such termination in amount equal to the stock options and restricted stock that would have vested solely as a result of the passage of time (but not as the result of any other performance measure, stock price or other target) over the twelve (12) month period after such termination if Mr. Kessel remained employed by us, referred to as the accelerated vesting.

In the event that Mr. Kessel dies or become incapacitated, he or his estate will be entitled to receive:

payment of all earned but unpaid compensation through the effective date of termination, as specified in the notice;

bonus in a deemed amount; and

whatever benefits to which he or his estate may be entitled pursuant to our benefit plans.

In the event that Mr. Kessel's employment is terminated by us for cause, he will be entitled to receive only his earned but unpaid compensation, comprised of base salary and accrued vacation, through the date of termination.

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

Mr. Kessel's employment agreement also contains customary proprietary information and assignment of inventions provisions. Furthermore, the employment agreement provides that, during such time as Mr. Kessel is employed by us and for a period of two years thereafter, Mr. Kessel will not

engage in any business or enterprise, whether as owner, partner, officer, director, employee, consultant, investor, lender or otherwise, except as the holder of not more than 1% of the outstanding stock of a publicly-held company, that develops, manufactures, markets, licenses, sells or provides any product or service that utilizes or relates to any digester technology, or

solicit certain of our employees or customers.

**Table of Contents**

On July 18, 2006, in accordance with the terms of his employment agreement, we entered into two non-statutory option agreements with Mr. Kessel. The option agreements provide for the following principal terms:

The first option agreement relates to the grant of an option under the our 2005 Equity Incentive Plan to purchase up to 250,000 shares of our common stock at an exercise price of \$6.30 per share, the fair market value of our common stock on July 17, 2006, the date of grant and the date Mr. Kessel commenced his employment, referred to as the commencement date. This option vests as follows:

100,000 shares vest on the six-month anniversary of the commencement date,

100,000 shares on the 18-month anniversary of the commencement date, and

50,000 shares on the 24-month anniversary of the commencement date.

In addition, this option vests in full upon a change in control, as defined in Mr. Kessel's employment agreement.

The second option agreement related to the grant of an option under our 2006 Equity Incentive Plan to purchase up to 150,000 shares of our common stock at an exercise price of \$6.30 per share. This option vested only if our common stock closes at a price per share equal to or in excess of \$10.00 on or prior to December 31, 2007. As this condition was not satisfied, this option did not vest and terminated by its terms.

*Employment Offer Letter with Michael E. Thomas*

On May 10, 2007, we entered into an offer letter with Michael E. Thomas regarding his employment as our Senior Vice President and Chief Financial Officer. The offer letter provides for Mr. Thomas' employment with our company on the following principal terms:

An annual salary of \$220,000, which salary was increased to \$227,700, effective May 1, 2008.

Effective on his first date of employment, such date being the grant date, the grant of a stock appreciation right, or SAR, under the Company's 2005 Stock Incentive Plan or 2006 Equity Incentive Plan, or a combination thereof, pursuant to which he will be entitled to receive, after vesting and upon exercise, a payment in cash or in shares of our common stock, or a combination of the foregoing (the form and composition of such payment to be at our election) equal to the increase, if any, in the fair market value of up to 100,000 shares of our common stock, referred to as the measuring shares, over the fair market value of the measuring shares at the close of business on the grant date, vesting as follows:

Number of Measuring Shares	Vest
25,000	May 21, 2008
25,000	May 21, 2009
25,000	May 21, 2009, so long as the closing price of a share of our common stock equals or exceeds \$11 on or before that date.
25,000	On our achieving certain equity and debt financing objectives.

The SAR does not represent the right to purchase the underlying measuring shares, and in no event may the number of shares of our common stock issued pursuant to the SAR exceed the number of shares then available for issuance under the plans. The vesting of the SAR will

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

accelerate in full upon a change in control, as defined in the offer letter.

Eligibility to participate at the same level as other executives reporting directly to our Chief Executive Officer in any bonus plan adopted by us from time to time, subject to the terms of any such plan, with an annual bonus target of 35% of base salary, based on annual performance and financial targets developed by the Chief Executive Officer:

The following benefits, as well as such other medical, dental, retirement and other benefits as are made available from time to time to our other senior executives:

An automobile allowance not to exceed \$750.00 per month;

Reimbursement for long-term disability and term life insurance coverage premiums paid by Mr. Thomas, in an amount not to exceed \$3,500.00 per year;

Four weeks paid vacation per year; and

Reimbursement for expenses of relocation, including the expenses of selling his existing residence, purchasing a new residence and moving, as well as temporary housing expenses of up to \$1,500 per month for a period of six months.

## **Table of Contents**

The offer letter further provides that, notwithstanding the fact that Mr. Thomas will be an employee-at-will, he will be entitled to severance equal to 12 months of his then current base salary if he is terminated as a result of job elimination or termination without cause, as defined in the offer letter, and not as a result of discharge for cause, retirement, disability, death or voluntary resignation, with such severance payable in a lump sum upon termination. In addition to severance, Mr. Thomas will also be entitled to 12 months of continued medical benefits coverage.

### *Employment Offer Letter with Dennis Haines*

On October 11, 2006, we entered into an employment offer letter with Dennis Haines regarding Mr. Haines' employment as our Vice President and General Counsel. The employment offer letter provides for the following principal terms:

An annual salary of \$210,000, which salary was increased to \$221,000, effective May 1, 2008.

The grant of one or more non-statutory stock options to purchase an aggregate of 100,000 shares of our common stock, vesting in three installments of 25,000 shares each on the six, 12 and 24 month anniversaries of Mr. Haines' hire date, and with respect to an additional 25,000 shares in the event that the closing price of our common stock equaled or exceeded \$10.00 per share on or before December 31, 2007. The options have an exercise price equal to the fair market value of our common stock on the date of grant. Mr. Haines will be eligible for future awards under equity compensation plans adopted by us from time to time for which our senior executives are generally eligible, with the level, terms and conditions of such participation determined by the our Board of Directors in its sole discretion.

Eligibility to participate at the same level as other executives reporting directly to our Chief Executive Officer in any bonus plan adopted by us from time to time, subject to the terms of any such plan.

The following benefits, as well as such other medical, dental, retirement and other benefits as are made available from time to time to our other senior executives:

An automobile allowance not to exceed \$750.00 per month;

Reimbursement for long-term disability and life insurance coverage premiums paid by Mr. Haines, in an amount not to exceed \$5,000.00 per year; and

Reimbursement for the costs of continuing legal education, professional license fees and membership in a professional organization, up to a maximum of \$1,750.00 annually.

Mr. Haines' employment offer letter further provides that, notwithstanding the fact that Mr. Haines will be an employee-at-will, he will be entitled to severance equal to 12 months of his then current base salary if he is terminated as a result of job elimination or termination without cause, and not as a result of discharge for cause, retirement, disability, death or voluntary resignation, with such severance payable in a lump sum upon termination. In addition to severance, Mr. Haines will also be entitled to reimbursement for 12 months of continued medical coverage.

### *Information Relating to Equity Awards and Holdings*

The following table sets forth information regarding unexercised stock options and stock appreciation rights, stock that has not vested and equity incentive plan awards for each of the named executive officers outstanding as of December 31, 2009.

**Table of Contents****OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END**

Name	Option Awards					Stock Awards		Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested
	Number of Securities Underlying Unexercised Options/SARs Exercisable	Number of Securities Underlying Unexercised Options/SARs Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options	Option/SAR Exercise Price	Option/SAR Expiration Date	Number of Shares or Units of Stock That Have Not Vested	Market Value of Shares or Units of Stock That Have Not Vested(1)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested
Richard E. Kessel		100,000(2)		\$ 0.55	8/18/2019			
	250,000			\$ 6.30	7/16/2016			
	150,000			\$ 5.52	6/2/2018			
	16,639	16,639(3)		\$ 5.52	6/2/2018			
						50,000(4) 8,250(5)	\$ 9,500 \$ 1,568	
Michael E. Thomas		25,000(2)		\$ 0.55	8/18/2019			
	50,000			\$ 6.75	5/20/2017			
	5,832	5,833(37)		\$ 5.52	6/2/2018			
					12,500(4) 2,500(5)	\$ 2,850 \$ 475		
Dennis Haines		25,000(2)		\$ 0.55	8/18/2019			
	75,000			\$ 5.05	10/15/2016			
	25,000			\$ 5.52	6/2/2018			
	5,544	5,545(3)		\$ 5.52	6/2/2018			
					12,500(4) 2,500(5)	\$ 2,850 \$ 475		

- (1) The amounts in this column are calculated based on a price per share of \$0.19, the closing market price per share of our common stock on December 31, 2009.
- (2) Represents shares subject to SARs vesting as to one-third of the shares subject thereto on each of August 19, 2010, 2011 and 2012.
- (3) Represents shares subject to SARs vesting on May 1, 2010.
- (4) Represents shares subject to a restricted stock award vesting as to one-third of the shares subject thereto on each of August 19, 2010, 2011 and 2012.
- (5) Represents shares subject to a restricted stock award vesting on May 1, 2010.

**2009 OPTION/SAR EXERCISES AND STOCK VESTED**

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise(1)	Value Realized on Exercise(2)	Number of Shares Acquired on Vesting	Value Realized on Vesting
Richard E. Kessel			8,250	\$ 3,878
Michael E. Thomas			2,500	\$ 1,175
Dennis Haines			2,500	\$ 1,175

## Edgar Filing: ENVIRONMENTAL POWER CORP - Form 10-K/A

- (1) The amounts in the Number of Shares Acquired on Exercise represent the number of shares issued to the executive in question, net of a number of shares having a fair market value necessary to pay the exercise price of the shares issued, based on the market price per share of our common stock on the date of exercise.
- (2) The amounts in the Value Realized on Exercise column are calculated based on the market price per share of our common stock on the date of exercise or vesting, multiplied by the number of shares issued to the executive.



**Table of Contents**

**Payments upon Termination or Change of Control**

We have entered into employment agreements with each of the named executive officers. These employment agreements provide for payments and benefits to the executive officer upon termination of employment or a change of control of Environmental Power under specified circumstances. For information regarding the specific circumstances that would trigger payments and the provision of benefits, the manner in which payments and benefits would be provided and conditions applicable to the receipt of payments and benefits, see Employment and Severance Arrangements.

The following tables set forth information regarding potential payments and benefits that each named executive officer who was serving as an executive officer on December 31, 2009 would receive upon termination of employment or a change of control of Environmental Power under specified circumstances, assuming that the triggering event in question occurred on December 31, 2009, the last business day of the fiscal year.

**SUMMARY OF POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE OF CONTROL**

Name	Cash Payments(1)	Termination without Cause*			Voluntary Resignation
		Value of Benefits(2)	Value of Options/SARs/ Stock Awards with Accelerated Vesting(3)	Total	Cash Payments
Richard E. Kessel	\$ 478,200	\$ 41,644	\$ 12,635	\$ 532,479	
Michael E. Thomas	227,700	7,516		235,216	
Dennis Haines	221,000	7,630		228,630	

Name	Immediately upon a Change of Control		Termination in Connection with a Change of Control*		
	Value of Options/SARs/ Stock Awards with Accelerated Vesting(3)	Cash Payments(1)	Value of Benefits(2)	Value of Options/SARs/ Stock Awards with Accelerated Vesting(3)	Total
Richard E. Kessel	\$	\$ 478,200	\$ 41,644	\$ 12,635	\$ 532,479
Michael E. Thomas(4)	0	227,700	7,516	3,325	238,541
Dennis Haines(4)					