

DEER VALLEY CORP  
Form 10-K/A  
August 12, 2013

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

Washington, D. C. 20549

**FORM 10-K/A**

Amendment No. 1

(Mark One)

☒ **ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2012

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

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

Commission file number: 000-05388

**DEER VALLEY CORPORATION**

(Exact name of Registrant as specified in its charter)

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**Florida**  
(State of Incorporation)

**20-5256635**  
(I.R.S. employer identification no.)

**3030 N Rocky Point Drive W, Suite 150, Tampa, FL**  
(Address of principal executive offices)

**33607**  
(Zip code)

**Registrant's telephone number, including area code: (813) 418-5250**

**Securities registered under 12(b) of the Exchange Act: None**

**Securities registered under 12 (g) of the Exchange Act: Common Stock, par value \$0.001**

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

Check whether the issuer is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 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 ☐

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B and no disclosure will 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, a non-accelerated filer or a smaller reporting company.

Large accelerated filer ☐

Accelerated Filer ☐

Non-accelerated filer ☐

Smaller reporting company ☒

Indicate by check mark whether the Registrant is a shell company. Yes ☐ No ☒

The issuer's revenues for its most recent fiscal year were \$26,220,656. The aggregate market value of the voting and non-voting common equity held by non-affiliates as of March 1, 2013 was \$1,927,141<sup>1</sup>. As of March 1, 2013, the number of shares outstanding of the Registrant's common stock (excluding 2,240,068 shares of treasury common stock) was 15,546,116, of which 12,793,057 shares of common stock were held by affiliates.

<sup>1</sup> Market value based upon sale price of \$.70 occurring on June 30, 2012. Calculation does not account for common shares issuable upon exercise of common stock purchase warrants.

*Deer Valley Corporation ( Deer Valley or the Company ) is filing this Amendment No. 1 (the Amended Report ) to its Annual Report on 10-K for the fiscal year ended December 31, 2012 that was originally filed with the United States Securities and Exchange Commission ( SEC ) on March 22, 2013. This amendment is filed to (a) include our management s assessment of the effectiveness of our internal control over financial reporting as of December 31, 2012, and (b) to modify the management certifications to conform to conform to the format provided in Item 601(b)(31) of Regulation S-K.*

*As a result of this Amendment No. 1, the certifications pursuant to Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002, as filed as exhibits to the original filing have been re-executed and re-filed as of the date of this Amendment No. 1 on Form 10-K. Except for the amendments described above, this Amendment No. 1 does not modify or update other disclosures in, or exhibits to, the original filing.*

The Company hereby amends and restates the following item:

#### **ITEM 9A. CONTROLS AND PROCEDURES**

##### **Evaluation of Disclosure Controls and Procedures**

Disclosure controls and procedures, as defined in Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934 (the Exchange Act ), are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission s rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer (principal executive officer) and Chief Financial Officer (the principal accounting officer and principal financial officer), as appropriate to allow timely decisions regarding required disclosure.

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2012. Based upon such evaluation, the Chief Executive Officer and Chief Financial Officer has concluded that, as of the end of such period, the Company s disclosure controls and procedures were not effective as required under Rules 13a-15(e) and 15d-15(e) under the Exchange Act.

##### **Management s Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal controls over financial reporting. Under the supervision and with the participation of our management, including our chief executive officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting using framework similar to criteria referenced in the initial steps of the Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ( COSO ). Based upon such evaluation, the Chief Executive Officer (principal executive officer) and Chief Financial Officer (the principal accounting officer and principal financial officer) has concluded that, as of the end of such period, the Company s internal controls over financial reporting as of December 31, 2012 were not effective as required under Rules 13a-15(c) and 15d-15(c) under the Exchange Act.

A material weakness is a significant deficiency (as defined in the Public Company Accounting Oversight Board's Auditing Standard No. 2), or a combination of significant deficiencies, that results in reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In its assessment of the effectiveness of the Company's internal controls over financial reporting, management determined that there were control deficiencies that constituted material weaknesses, as described below.

We have noted that there may be an insufficient quantity of dedicated resources and experienced personnel involved in reviewing and designing internal controls. As a result, a material misstatement of the interim and annual financial statements could occur and not be prevented or detected on a timely basis.

We do not have an audit committee or an independent audit committee financial expert. While not being legally obligated to have an audit committee or independent audit committee financial expert, it is the management's view that to have an audit committee, comprised of independent board members, and an independent audit committee financial expert is an important entity-level control over the Company's financial statements. Currently, the Board does not have sufficient independent directors to form such an audit committee. Also, the Board of Directors does not have an independent director with sufficient financial expertise to serve as an independent financial expert.

Due to the complex nature of recording derivatives and similar financial instruments, we noted a need for increased coordination and review of techniques and assumptions used in recording derivatives to ensure accounting in conformity with generally accepted accounting principles.

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report is not subject to attestation by our registered public accounting firm pursuant to rules of the SEC that permit us to provide only management's report in this annual report.

#### *Remediation Efforts to Address Deficiencies in Internal Control Over Financial Reporting*

As a result of the findings from the investigation and a company-led accounting review, management intends to take practical, cost-effective steps in implementing internal controls, including the following remedial measures:

Interviewing and potentially hiring outside consultants that are experts in designing internal controls over financial reporting based on criteria established in Internal Control-Integrated Framework issued by COSO.

The Company has hired an outside consultant to assist with controls over the review and application of derivatives to ensure accounting in conformity with generally accepted accounting principles.

Board to review and make recommendations to shareholders concerning the composition of the Board of Directors, with particular focus on issues of independence. The Board of Directors to consider nominating an audit committee and audit committee financial expert, which may or may not consist of independent members.

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

#### **Changes in Internal Control Over Financial Reporting**

No change in the Company's internal control over financial reporting occurred during the quarter ended December 31, 2012, that materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

#### **ITEM 15. EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
31.01A.	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated August 12, 2013.
31.02A.	Certification of Acting Chief Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated August 12, 2013.
32.01A.	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated August 12, 2013.
32.02A.	Certification of Acting Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated August 12, 2013.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

DEER VALLEY CORPORATION

By: */s/ Charles G. Masters*

Charles G. Masters, President and Chief Executive Officer (principal executive officer)

By: */s/ John S. Lawler*

John S. Lawler, Chief Executive Officer (principal financial officer and principal accounting officer)

Date: August 12, 2013