

CVD EQUIPMENT CORP
Form 10KSB/A
August 18, 2008

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Form 10-KSB/A
Amendment No. 1**

(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, 2007

☐ **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: 1-16525

CVD EQUIPMENT CORPORATION

(Name of Small Business Issuer in Its Charter)

New York
*(State or Other Jurisdiction of
Incorporation or Organization)*

11-2621692
(I.R.S. Employer Identification No.)

1860 Smithtown Avenue

Ronkonkoma, New York 11779
(Address including zip code of registrant's Principal Executive Offices)

(631) 981-7081
(Issuer's Telephone Number, Including Area Code)

Securities registered under Section 12(b) of the Act:

Title of each class
Common Stock, Par value \$0.01

Name of each exchange on which registered
NASDAQ Capital Market

Securities registered under Section 12(g) of the Act:
None

Check whether the issuer: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act 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 is not contained in this form, and no disclosure will be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. ☐

Edgar Filing: CVD EQUIPMENT CORP - Form 10KSB/A

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

State issuer's revenues for its most recent fiscal year. **\$13,577,772.**

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of a specified date within the past 60 days. Shares of common stock held by each officer and director and by each person who owns 5% or more of the outstanding common stock have been excluded, in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily conclusive determination for other purposes: **\$ 7,915,873 at March 25, 2008.**

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date: **4,733,500 shares of Common Stock, \$0.01 par value at March 25, 2008.**

DOCUMENTS INCORPORATED BY REFERENCE

None. Transitional Small Business Disclosure Format (Check one): Yes ☐ No ☒

EXPLANATORY NOTE

CVD Equipment Corporation is filing this Amendment No. 1 on Form 10-KSB/A ("Amendment No.1") to amend our Form 10-KSB for the year ended December 31, 2007 which was originally filed on March 31, 2008.

We are filing this Amendment No.1 to include the disclosures required under Part II, Item 8A(T), Controls and Procedures. We are also revising and re-executing the Principal Executive Officer and Principal Financial Officer certifications filed under Exhibits 31.1 and 31.2 to include the introductory language of paragraph 4 and the language of paragraph 4(b) of Item 601(b)(31) of Regulation S-B. Except as disclosed in this Explanatory Note, we have not updated the disclosure contained in the original Form 10-KSB, as filed on March 31, 2008. Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, this Amendment No. 1 contains new certifications of our Chief Executive Officer and Chief Financial Officer executed as of the date hereof. All other disclosures and exhibits as filed in our Form 10-KSB filed on March 31, 2008 are hereby incorporated by reference as to such. Accordingly, this Amendment No. 1 should be read in conjunction with our other filings made with the Securities and Exchange Commission ("SEC").

ITEM 8A(T). CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. The Company maintains a system of disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). As required by Rule 13a-15(b) under the Exchange Act, management of the Company, under the direction of the Company's Chief Executive Officer and Chief Financial Officer, reviewed and performed an evaluation of the effectiveness of design and operation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of December 31, 2007. Based on that review and evaluation, the Chief Executive Officer and Chief Financial Officer, along with the management of the Company, have determined that as of December 31, 2007, the disclosure controls and procedures were not effective due to an inadvertent failure to include our Management's Annual Report On Internal Control Over Financial Reporting in our annual report on Form 10-KSB for the year ended December 31, 2007. As of the date of this amended report, the Company has taken the following steps to address this issue:

- (1) Before each report is filed, management of the Company will review the SEC's website, www.sec.gov, in an effort to determine any recent changes in the rules affecting our disclosure obligations; and
- (2) As each report is prepared, we will discuss with our independent consultants who assist us in the preparation of the reports and financial statements included within the reports whether they are aware of any recent changes in the rules affecting our disclosure obligations.

Management's Annual Report on Internal Control Over Financial Reporting.

Management of the Company is responsible for establishing and maintaining effective internal control over financial reporting (as defined in Rule 13a - 15(f) of the Exchange Act). There are inherent limitations to the effectiveness of any internal control, including the possibility of human error and the circumvention or overriding of controls. Accordingly, even effective internal controls can provide only reasonable assurance with respect to financial statement preparation. Further, because of changes in conditions, the effectiveness of internal control may vary over time.

We have assessed the effectiveness of our internal controls over financial reporting (as defined in Rule 13a -15(f) of the Exchange Act) as of December 31, 2007. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework. Management concluded that, as of December 31, 2007, our internal control over financial reporting was effective based on the criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to the rules of the Securities and Exchange Commission that permit the Company to provide only management's report in this annual report.

Changes in Internal Control Over Financial Reporting. There were no changes in our internal control over financial reporting, identified in connection with the evaluation of such internal control that occurred during our last fiscal quarter, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CVD EQUIPMENT CORPORATION

By: /s/ Leonard A. Rosenbaum

Name: Leonard A. Rosenbaum

Title: President and Chief Executive Officer

In accordance with the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated below.

<u>NAME</u>	<u>POSITION</u>	<u>DATE</u>
<u>/s/ Leonard A. Rosenbaum</u> Leonard A. Rosenbaum	President, Chief Executive Officer and Director (Principal Executive Officer)	August 18, 2008
<u>/s/ Alan H. Temple Jr.</u> Alan H. Temple Jr.	Director	August 18, 2008
<u>/s/ Martin J. Teitelbaum</u> Martin J. Teitelbaum	Director and Assistant Secretary	August 18, 2008
<u>/s/ Conrad Gunther</u> Conrad Gunther	Director	August 18, 2008
<u>/s/ Bruce T. Swan</u> Bruce T. Swan	Director	August 18, 2008
<u>/s/ Glen R. Charles</u> Glen R. Charles	Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)	August 18, 2008

EXHIBIT INDEX

- 31.1 Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer.
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer.
- 32.1 Section 1350 Certification of Principal Executive Officer.
- 32.2 Section 1350 Certification of Principal Financial Officer.