

ADA-ES INC  
Form 10-K/A  
October 19, 2012

**United States**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-K/A**

(Amendment No. 2)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2010

Commission File Number: 000-50216

**ADA-ES, Inc.**

(Name of registrant as specified in its charter)

**Colorado**  
(State of incorporation)

**84-1457385**  
(IRS Employer

Identification No.)

**9135 South Ridgeline Boulevard, Suite 200, Highlands Ranch, Colorado 80129**

(Address of principal executive offices) (Zip Code)

(Registrant's telephone number, including area code): (303) 734-1727

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

Title of each class  
Common Stock, no par value

Name of each exchange on which registered  
NASDAQ Capital Market

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

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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 15(d) of the Exchange 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 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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, 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 in response 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 definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

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 voting common stock held by non-affiliates as of June 30, 2010 was \$34,500,000.

As of March 25, 2011, there were outstanding 7,605,938 shares of the Registrant's common stock, no par value.

**DOCUMENTS INCORPORATED BY REFERENCE:**

Portions of the Definitive Proxy Statement to be filed pursuant to Regulation 14A for ADA-ES, Inc.'s annual shareholder meeting for 2011 are incorporated by reference into Part III of this Form 10-K.

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## EXPLANATORY NOTE

ADA-ES, Inc. (the Company) is filing this Amendment No. 2 on Form 10-K/A (this Amendment) to amend its Annual Report on Form 10-K for the fiscal year ended December 31, 2010 originally filed with the Securities and Exchange Commission (the SEC) on March 28, 2011 (the Original Filing) and subsequently amended on July 1, 2011. This Amendment reflects the restatement of the Company's consolidated financial statements and amendment of related disclosures as of and for the fiscal year ended December 31, 2010 as discussed below and in Note 15 to the accompanying restated consolidated financial statements.

### **1. Background of the Restatement**

As discussed in the Company's Current Report on Form 8-K dated August 14, 2012, the Company's management determined, after consultation with the Company's Board of Directors, Audit Committee, independent registered public accounting firm and outside tax experts, that the Company's previously issued audited consolidated financial statements included in its Annual Reports on Form 10-K for the fiscal years ended December 31, 2010 and 2011 and the interim unaudited consolidated financial statements included in our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, September 30, 2011, March 31, 2012 and June 30, 2012 needed to be restated as a result of certain corrections to the figures and disclosures contained therein and therefore could no longer be relied upon.

#### *Deferred Tax Assets Valuation Allowance*

In August 2012, after extensive discussions with the SEC's Division of Corporation Finance and Office of the Chief Accountant and the Company's outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that the Company should have recognized a full valuation allowance against its net deferred tax assets as of December 31, 2010 and for each subsequent quarter thereafter. Management determined that it was necessary to record the valuation allowance against the Company's deferred tax assets after reconsidering the weight given in the original assessment to the relevant information used to measure the positive and negative evidence regarding the potential for ultimate realization of the deferred tax assets.

Realization of the deferred tax assets is dependent upon the Company's ability to generate future taxable income. In its reassessment, management concluded that the objective and verifiable negative evidence represented by historical losses outweighed more subjective positive evidence of anticipated future income. As a result, management determined that it was necessary to record a full valuation allowance against the Company's deferred tax assets and is restating the consolidated financial statements for the fiscal year ended December 31, 2010.

### **2. Impact on the Consolidated Financial Statements**

The financial statement effect of these changes on the Company's Consolidated Balance Sheet as of December 31, 2010, and the Consolidated Statement of Operations, Consolidated Statement of Changes in Stockholders' Equity (Deficit) and Consolidated Statement of Cash Flows for the fiscal year ended December 31, 2010 is discussed in Note 15 in the accompanying consolidated financial statements. The restatement reflects non-cash adjustments and has no effect on previously reported operating income results.

### **3. Internal Control over Financial Reporting and Disclosure Controls and Procedures Considerations**

Management has concluded that a material weakness in the Company's internal control over financial reporting existed related to the establishment and maintenance of a valuation allowance against the Company's deferred tax assets. Accordingly, this Amendment amends the Company's disclosures regarding the effectiveness of the Company's internal control over financial reporting and disclosure controls and procedures as of December 31, 2010.

### **4. Amended Items**

No attempt has been made in this Amendment to modify or update the disclosures in the Original Filing except as required to reflect the effect of the restatement discussed herein. Except as otherwise noted herein, this Amendment continues to describe conditions as of the date of the Original Filing and the disclosures contained herein have not been updated to reflect events, results or developments that occurred after the date of the Original Filing, or to modify or update those disclosures affected by subsequent events. Among other things, forward-looking statements made in the Original Filing have not been revised to reflect events, results or developments that occurred or facts that became known to us after the date of the Original Filing, other than the restatement, and such forward-looking statements should be read in conjunction with our filings with the SEC subsequent to the filing of the Original Filing. Accordingly, this Amendment should be read in conjunction with the Original Filing and the Company's other filings with the SEC.

Part II Item 6 (Selected Financial Data), Part II Item 7 (Management's Discussion and Analysis of Financial Condition and Results of Operations), Part II Item 8 (Consolidated Financial Statements and Supplementary Data) and Part II Item 9A (Controls and Procedures) have

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been amended from the Original Filing as a result of the restatement. Part II Item 5 (Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchase of Equity Securities) has been amended to reflect the issuance of unregistered shares of our common stock pursuant to our Amended and Restated 2007 Equity Incentive Plan and 2005 Directors' Compensation Plan. Part IV Item 15 (Exhibits and Financial Statement Schedules) has also been amended to, among other things, include currently dated certifications from the Company's principal executive officer and principal financial officer as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. The certifications of the Company's principal executive officer and principal financial officer are attached to this Amendment as Exhibits 31.1, 31.2, 32.1 and 32.2.

## PART II

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities (restated).****Market Information**

Our common stock currently trades on the NASDAQ Capital Market under the symbol ADES. The table below sets forth the price range of our common stock for 2010 and 2009:

	2010		2009	
	High	Low	High	Low
1st Quarter	\$ 9.50	\$ 4.72	\$ 5.97	\$ 2.42
2nd Quarter	\$ 8.31	\$ 5.00	\$ 5.00	\$ 2.45
3rd Quarter	\$ 7.17	\$ 4.72	\$ 4.70	\$ 3.05
4th Quarter	\$ 11.70	\$ 4.54	\$ 7.45	\$ 2.05

**Holdings**

The number of record holders of our common stock as of March 25, 2011 was approximately 1,500. The approximate number of beneficial shareholders is estimated at 3,500.

**Dividends**

We have not paid dividends since inception. We currently have no plans to pay dividends in the foreseeable future.

**Securities authorized for issuance under equity compensation plans**

The disclosure required by this Item is included under Item 12 of this Report.

**Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities**

Under our 2007 Equity Incentive Plan, adopted by our Board of Directors on April 27, 2007 and approved by our shareholders on June 19, 2007 (the Original 2007 Plan), as fees for service on our Board of Directors by John Eaves, a representative of Arch Coal, Inc., we issued the following unregistered shares of our common stock to Arch Coal, Inc. on the following dates:

	Arch Coal, Inc.
October 9, 2007	429
October 17, 2008	1,917
January 16, 2009	695
July 31, 2009	9,084
<b>Total</b>	<b>12,125</b>

Under our 2005 Directors' Compensation Plan, adopted by our Board of Directors on March 17, 2005 and approved by our shareholders on May 12, 2005 (the 2005 Plan), as fees for John Eaves' service on our Board of Directors, we issued the following unregistered shares of our common stock to Arch Coal, Inc. under the 2005 Plan:

	Arch Coal, Inc.
June 19, 2005	603
October 9, 2007	1,000
October 17, 2008	1,000

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January 16, 2009

1,000

Total

3,603

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Under our Amended and Restated 2007 Equity Incentive Plan, originally adopted by our Board of Directors on April 27, 2007, approved by our shareholders on June 19, 2007 and amended and restated by our Board of Directors to make non-material changes on August 31, 2010 (the 2007 Plan), as fees for their service on the Board of Directors of the Company, we issued the following unregistered shares of our common stock under the 2007 Plan:

<b>Director:</b>	January 28, 2010	June 29, 2010	September 20, 2010	Total
John Eaves (shares issued to Arch Coal, Inc.)	2,256	1,931	1,146	5,333
Robert Caruso			1,851	1,851
Derek Johnson			1,642	1,642
Ronald Johnson		858	2,031	2,889
W. Phillip Marcum		2,349	1,699	4,048
Jeffrey C. Smith		1,995	1,210	3,205
Richard Swanson		2,292	2,446	4,738
<b>Total</b>	<b>2,256</b>	<b>9,425</b>	<b>12,025</b>	<b>23,706</b>

On January 28, 2010, we issued 1,000 unregistered shares of our common stock under our 2005 Plan to Arch Coal, Inc. as fees for John Eaves service on our Board of Directors.

The issuances of all of these shares were exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended, as sales of securities that do not involve a public offering or distribution. No underwriters were involved, no sales commission or other remuneration was paid, and we did not receive any cash proceeds in connection with these issuances.

### Purchases of Equity Securities by the Company and Affiliated Purchasers

Neither we nor any affiliated purchaser, as defined in SEC Rule 10b-18(a)(3), purchased any of our equity securities during the quarter ended December 31, 2010.

### Item 6. Selected Financial Data (restated).

#### FIVE-YEAR SUMMARY OF SELECTED FINANCIAL DATA

<i>(Dollars in thousands, except per share data)</i>	Years Ended December 31,				
	2010 (restated)	2009	2008	2007	2006
<b><u>Income Statement Data:</u></b>					
Revenues	\$ 22,281	\$ 20,061	\$ 16,193	\$ 19,248	\$ 15,488
Net income (loss)	\$ (31,127)	\$ (8,771)	\$ (4,106)	\$ 247	\$ 377
Net income (loss), per common share, basic and diluted	\$ (4.21)	\$ (1.26)	\$ (.67)	\$ .05	\$ .07
Dividends declared per common share	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

<b><u>Balance Sheet Data:</u></b>	As of December 31,				
	2010 (restated)	2009	2008	2007	2006
Total assets	\$ 41,011	\$ 40,967	\$ 75,142	\$ 34,906	\$ 31,754
Long-term debt	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Stockholders' equity (deficit)	\$ (2,213)	\$ 24,351	\$ 56,987	\$ 28,552	\$ 27,678

See the audited financial statements attached hereto under Item 8 for additional information, including Notes 8 and 15 relating to the restatement.

## QUARTERLY FINANCIAL DATA UNAUDITED

	2010				2009			
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter (restated)	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<i>(Amounts in thousands except per share data)</i>								
<b>Revenues</b>	\$ 3,867	\$ 1,937	\$ 7,509	\$ 8,968	\$ 4,867	\$ 4,758	\$ 3,735	\$ 6,701
<b>Gross margin</b>	\$ 1,355	\$ 8	\$ 5,826	\$ 6,479	\$ 2,044	\$ 1,805	\$ 1,199	\$ 1,143
<b>Net loss</b>	\$ (2,820)	\$ (3,710)	\$ (5,823)	\$ (18,774)	\$ (543)	\$ (1,630)	\$ (5,315)	\$ (1,283)
<b><u>Common Stock Data</u></b>								
Basic and Diluted:								
Net loss per share	\$ (.39)	\$ (.50)	\$ (.78)	\$ (2.51)	\$ (.08)	\$ (.24)	\$ (.76)	\$ (.18)
Basic and Diluted average common shares outstanding	7,194	7,412	7,455	7,494	6,869	6,929	7,021	7,070



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**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation (restated).**

**Restatement**

With this Amendment we have restated the following previously filed consolidated financial statements, data and related disclosures: Consolidated Balance Sheet as of December 31, 2010 and Consolidated Statement of Operations, Consolidated Statement of Changes in Stockholders' Equity (Deficit) and Consolidated Statement of Cash Flows for the fiscal year ended December 31, 2010. The restatement reflects non-cash adjustments and has no effect on previously reported operating income results or cash flows from operations. The following Management Discussion and Analysis of Financial Condition and Results of Operations ( MD&A ) should be read in conjunction with Part II Item 8 of this Amendment, the audited consolidated financial statements and notes thereto, as well as the Company's other filings with the SEC.

The restatement results from management's determination that a full valuation allowance against the Company's net deferred tax assets should have been recognized as of December 31, 2010 and all subsequent quarters thereafter.

The following MD&A incorporates the restated figures reflecting these changes. For this reason the data set forth in this section may differ from that presented in discussions and data in our previously filed Annual Report on Form 10-K for the fiscal year ended December 31, 2010, as amended.

**Overview**

We develop, offer and implement proprietary environmental technology and market equipment and specialty chemicals to the coal-burning electric power generating industry, to the Portland cement industry and to industrial boiler operators. Beginning this year, we have changed our segment reporting structure to better reflect the way we manage and measure the performance of our business. We have three operating segments: EC (emissions control); CC (CO<sub>2</sub> capture) and RC (refined coal). The EC segment includes revenue from the supply of emissions control systems including powdered activated carbon injection ( ACI ) systems, dry sorbent injection systems to control SO<sub>2</sub> and other acid gases and the sale of specialty chemicals, equipment and services for flue gas conditioning projects, the licensing of certain technology, consulting services related to such matters and other applications. The CC segment includes revenue from projects relating to the CO<sub>2</sub> capture and control market, including projects co-funded by government agencies, such as the Department of Energy ( DOE ) and industry supported contracts. The RC segment primarily represents revenues from the leasing of two RC facilities.

We conduct research and development efforts in CO<sub>2</sub> capture and control from coal-fired boilers. On September 30, 2010, we signed our second significant contract related to CO<sub>2</sub> capture with the DOE, which is scheduled to continue through the end of 2014. We are marketing our RC facilities through our 50% interest in our Clean Coal joint venture with NexGen an affiliate of NexGen Resources Corporation. We currently own two RC facilities through Clean Coal, which leases them through its subsidiaries to a subsidiary of a major financial institution. The two RC facilities are operated by Clean Coal Solutions Services, LLC ( CCSS ), a Colorado limited liability company owned 50% by us and 50% by NexGen. In addition, the Carbon Solutions joint venture, of which we owned 25.9% as of December 31, 2010, has commenced commercial operations at its newly constructed AC Facility whose production is focused primarily for mercury emissions control applications for coal burning electric power generators.

**Emissions Control**

*Environmental Legislation and Regulations*

Mercury has been identified as a toxic substance and, pursuant to a court order, the EPA issued regulations for its control from power plants in March 2005, which was known as the Clean Air Mercury Rule or CAMR. CAMR had been subject to significant challenges since it was issued and was ultimately declared invalid. In April 2010, the U.S. District Court of Appeals of the District of Columbia approved the consent agreement reached last year between EPA and a coalition of public health and environmental groups that sued in 2008 to force the agency to set tighter emission limits. That settlement requires EPA to issue a final rule requiring strict plant-specific controls for power plants' toxic air pollutants no later than November 16, 2011. Recent rulings by the courts related to the Industrial Boiler MACT, defined below, indicate that they will not tolerate significant deviations from the expected schedule for finalization. On March 16, 2011, the EPA issued a draft Air Toxics Rule, a MACT based hazardous pollutant regulation, which provides for among other provisions, control of mercury organics and volatile metals such as arsenic, selenium and acid gases such as HCl and other HAPs such as dioxins and furans. The draft Air Toxics Rule is based upon the average of the best-performing 12% of the power plants and will only allow minimal averaging or trading. The Air Toxics Rule standard proposed a limit for mercury emissions that will require capture of 80% to 90% of the mercury in coal burned in electric power generation boilers. While the new regulations will require additional emission control equipment, the EPA estimates a small percentage of the current generation fleet will be forced to retire due to the cost of complying with the regulations.

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In addition to the electric power generators, EPA has developed a Cement MACT which is a MACT-based mercury emissions regulation for the Portland Cement Industry through proposed amendments to the National Emission Standards for HAPs for the Portland Cement Manufacturing Industry. The Cement MACT regulation was finalized on August 9, 2010. This regulation requires cement plants to reduce HAPs by 2013 including 92% of mercury and 83% of hydrocarbons. This regulation could require ACI systems on up to 90 cement kilns in the U.S., which are owned by approximately 15 companies. We have been engaged in several testing programs for cement companies to define their emissions and evaluate how our ACI equipment and sorbents will work in that industry. The tests were designed to evaluate the effectiveness of collecting mercury and organics from cement kiln exhaust gas streams. We believe the Cement MACT will increase the market for both ACI systems and AC.

The EPA has also issued a new Industrial Boiler MACT regulation for coal-fired boilers that provide mostly steam and/or electricity for small industrial and institutional power needs with no more than 25 MW of electricity sold to the grid. The final regulation, which is under reconsideration for the wide variety of boiler types and fuels used, was released on February 23, 2011, with compliance deadlines in early 2014. The Industrial Boiler MACT could impact over 600 existing coal-fired industrial boilers. The emission limit of 4.6 pounds of mercury per Trillion BTU for existing and two pounds per Trillion BTU for new coal-fired industrial boilers will require 60% to 70% capture of mercury from boilers burning bituminous coals and 40% to 50% capture of mercury from boilers burning sub-bituminous coals. We believe the final Industrial Boiler MACT will increase the market for ACI systems by several hundred and the associated AC by 50 to 100 million pounds per year. These totals could be even higher, when considering that 400 or more biomass and wood fired boilers are also covered under this regulation and, as with coal-fired units, require both mercury and other hazardous air pollutant reductions (dioxins and furans), that can be controlled by activated carbon injection. We are in discussions with several companies that own and operate a number of industrial boilers regarding how our technology can help such companies comply with the new regulations.

The Clean Air Act requires that all emission control related regulations be met within 36 months. We believe that substantial long-term growth of the EC market for the electric power generation industry will most likely depend on how industry chooses to respond to the pending and new federal regulations. In general, all three of these regulations are less stringent than expected, meaning fewer scrubbers and forced retirements, however, we anticipate the final federal MACT regulations will create an even larger market for our mercury control products beyond 2011. We expect that as many as 1,200 existing coal-fired boilers will be affected by such regulations, if and when they are fully implemented. Many power companies recognize the urgency of these pending regulations, and as a result we are contracting with power plants to evaluate mercury control options at a number of their plants. This could result in near-term ACI demonstration revenue, puts us in close contact with companies that could purchase ACI equipment and could result in long-term contracts for AC.

In addition to the U.S. market, we are seeing market potential in the six Canadian provinces that have passed their own mercury control regulations.

#### *ACI Systems and Services*

Thus far to date, we have installed or are in the process of installing 47 ACI systems. Some market demand continues in 19 states and 6 Canadian provinces that either have passed their own mercury control regulations or have entered agreements with power plants to reduce mercury emissions for new power plants. We remain active in the bid and proposal process and expect the number of awards this year to remain flat or decline compared to last year. Although we expect the equipment market to continue to be static in 2011, we believe we have the opportunity for significant revenue growth for our EC products and services when final federal regulations or legislation affects a significant portion of previously uncontrolled and existing boilers. Given the current expected timing for finalization of the Air Toxics Rule, we anticipate the need for 500 to 700 ACI systems to be supplied between 2012 and 2015, which would require rapid scale-up of our production capabilities to maintain our approximate 30% market share. For an average sized plant, the ACI equipment costs are between \$2 million to \$3 million.

We have developed and are offering commercial systems to inject dry alkali sorbents for control of acid gases such as SO<sub>3</sub> and HCl. Dry sorbent injection systems, which cost approximately \$2 million to \$3 million for an average size plant, provide a low-capital cost alternative to scrubbers for meeting certain provisions of the Air Toxics Rule. We conducted full-scale tests of this equipment in 2010. Experts have predicted that up to a quarter of the 1,200 plus coal fired boilers could be forced to shut down if they were required to add scrubbers and selected catalyst reduction systems which can cost \$200 to \$300 million per installation.

We are investigating, developing and providing services and systems to measure and mitigate acid gasses from coal fired boilers. These acid gas emissions are often the unintended result of the retrofit and operation of NOx control technology on medium to high sulfur coal-fired boilers.

#### *Arch Coal Development and License Agreement for Enhanced Coal*

Since 2004, we have been working with Arch Coal to explore certain unique characteristics of some types of coals produced by Arch Coal that allow them to be burned with lower emissions. We believe a recent technical breakthrough provides a potential means to obtain similar performance improvements from all of Arch Coal's PRB coals. As a result on June 25, 2010, we entered into a Development and License Agreement (the License Agreement) with Arch Coal. Pursuant to the License Agreement, we provided Arch Coal with an exclusive, non-transferable license to use certain technology to produce Enhanced Coal by the application of ADA's proprietary coal treatment technology for coal mined by Arch Coal at mines and sites located in the PRB. We expect that the technology will reduce certain emissions from the burning of the PRB coal, which should help to meet the Air Toxics Rule regulation. Pursuant to the License Agreement, we are providing development services to Arch Coal aimed at applying the technology to the PRB coal. In addition, if we develop improvements to the technology that are related to the reduction of certain emissions from the burning of PRB coal, that technology will either be included in the license at no additional cost, or, under certain circumstances, we will negotiate with Arch Coal to determine if Arch Coal wants to use the additional improvements. We retain all right, title and interest, including all intellectual property rights, in and to any technology we license to Arch Coal. The initial demonstration of coal treated at the mine and shipped by rail to a power plant produced promising results.

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In consideration for the development work and the license to Arch Coal, Arch Coal paid us an initial, non-refundable license fee in cash of \$2 million in June 2010 and we have recognized \$666,000 of such amount as revenue from the inception of the agreement through the six-month period ended December 31, 2010. Arch Coal may be obligated to make royalty payments to us that could amount to as much as \$1 per ton of Enhanced Coal sold by Arch Coal, depending upon the successful implementation of the technology and Arch Coal's future sales of the Enhanced Coal product. Arch Coal currently produces more than 100 million tons of PRB coal per year. Any royalty ultimately payable under the License Agreement will first be subject to credit to Arch Coal of an amount equal to the initial license fee, other development and operational costs paid by Arch Coal plus a rate of return on such payments.

The License Agreement contains standard indemnification provisions customary for license agreements, including indemnification by us for any losses suffered by Arch Coal as a result of any claims for infringement by the technology as to intellectual property rights of any third party. Either party may terminate the License Agreement upon written notice to the other party if the other party materially breaches any material term of the License Agreement, generally with a right to cure a breach within 30 days. In addition, if we materially breach the provisions of the License Agreement relating to ownership of the related technology and maintaining confidential information, and fail to correct any such breach within 30 days, the licenses granted to Arch Coal become fully paid-up, perpetual and irrevocable, without any further obligation of Arch Coal to pay any ongoing royalty.

In recent tests we have shown that we can enhance PRB coal at the mine and achieve mercury reductions when the coal is burned at power plants. Based upon these results we are planning on sending additional trainloads of the coal to different plants to show the capabilities of this new product that we believe provides a \$2 to \$4 per ton benefit of coal to the power plants. The proposed Air Toxics Rule could create a market for a significant percentage of the greater than 100 million tons per year of PRB coal mined by Arch. Additional demonstrations are planned in 2011.

As a part of entering into the License Agreement we agreed to negotiate and enter into a Supply Agreement under which Arch Coal will purchase the additives described in the License Agreement exclusively from us, and we will supply Arch Coal with the additives it needs. We expect to negotiate the final terms of the Supply Agreement in the next six months.

#### *Sale of Common Stock to Arch Coal*

On March 23, 2010, under a subscription agreement with Arch Coal, we issued and sold to Arch Coal in a private placement an aggregate of 143,885 shares of our common stock at a purchase price of \$6.95 per share for aggregate proceeds of \$1.0 million. The per-share price was the closing sales price of our common stock as listed on the NASDAQ Capital Market on the day before we entered into the subscription agreement.

#### **CO<sub>2</sub> Capture**

In addition to our two key growth areas, emissions control and RC, we continue to demonstrate our position as a premier developer of innovative clean energy technologies. Control of CO<sub>2</sub> from coal-fired power plants is currently a topic of discussion in Washington and a significant issue for the coal industry as a result of the impact of CO<sub>2</sub> emissions on climate change. A number of permits for new coal-fired plants were rejected by various state officials in 2010 in response to protests by environmental groups. We see this as an opportunity and have begun developing technologies to address the needs of our customers through reduction of CO<sub>2</sub> generation, CO<sub>2</sub> capture and beneficial use of CO<sub>2</sub>.

DOE is funding CO<sub>2</sub> control projects related to our business and on September 30, 2010, we signed a new contract with DOE to continue development of clean coal technology to capture CO<sub>2</sub> from coal-fired power plants and other industrial sources of CO<sub>2</sub> emissions. We are the prime contractor for the approximately \$19 million project administered by DOE's National Energy Technology Laboratory which is providing \$15 million of the funding. We expect approximately \$4 million in co-funding and support to be provided by several major electric power generation companies including Southern Company, Luminant and the Electric Power Research Institute. The project provides funding to advance our commercialization plan for regenerable solid-sorbent technology, which is designed to capture CO<sub>2</sub> generated by coal-fired power plants.

In 2010 we began the first field tests of our CO<sub>2</sub> control technology on a \$3.8 million program co-funded by DOE, as well as several major forward-thinking utility companies. The initial results at a plant confirmed the promising performance we had demonstrated in our laboratory. The pilot plant was moved to another plant for additional testing. Once captured, the CO<sub>2</sub> could be either stored underground (sequestration) or beneficially used in processes such as enhanced oil recovery. This technology appears to offer potential cost and energy advantages over competing liquid-solvent-based technologies.

In October 2010 we began work on the new DOE CO<sub>2</sub> project, which is expected to run for a total of 51 months to scale-up the technology to the one-megawatt level, which is a key step in the technology development process. This contract will not only fund research and development ( R&D ) on this technology, but it will also provide significant contributions to our revenue and margin over the next four plus years.

We anticipate that DOE programs will continue to represent an important component of the revenue stream of the Company over the next several years as we position ourselves for the market growth for ACI systems, enhanced coal additives and related technology with Arch Coal and other technologies for emissions control.

#### **Refined Coal**

##### *Environmental Legislation and Regulations*

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Clean Coal's primary opportunity is based on certain tax credits that are available under Section 45 of the Internal Revenue Code (Section 45 tax credits), as it was amended by the American Jobs Creation Act of 2004, the Emergency Economic Stabilization Act of 2008, the American Recovery and Reinvestment Act of 2009 for qualifying RC and the Tax Relief and Job Creation Act of 2010. In December 2009, the IRS issued the anticipated guidance as to the specifics concerning how the emissions reductions are to be measured and certified to demonstrate compliance necessary to qualify for the tax credits. Clean Coal placed two RC facilities in service prior to January 1, 2010 and demonstrated the required emission reductions for their RC product to qualify for the tax credits. As a result of the 2010 legislation, we are pursuing strategic relationships to sell or lease six additional facilities during 2011 with a potential of 16 total facilities. The tax credits amount to an annually escalating \$6.27 per ton of RC for a period of ten years for facilities placed in service period to January 1, 2012.

Based on the current Section 45 tax credits, we expect Clean Coal to generate revenues from leasing or selling RC facilities to financial parties or generate tax credits by retaining and operating the RC facilities that we expect to meet the placed in service deadline through December 31, 2021. Upon expiration of the tax credits on December 31, 2021, the leases of our RC facilities to financial parties will terminate. We may then lease the RC facilities directly to the utilities or operate them on behalf of utility customers given the significant benefit of the resulting mercury reductions such facilities provide. The tax credits would no longer be available absent further extension by Congress.

#### *Clean Coal*

On June 29, 2010, Clean Coal executed contracts in which the two RC facilities were leased to GS RC Investments LLC, the lessee. The leases have base terms that run through December 31, 2012 (the Initial Term), and automatically renew for annual terms through the end of 2019. The other 50% of Clean Coal is owned by NexGen and the two RC facilities are owned, respectively, by two special purpose entities (the Lessors). Clean Coal owns 95%, and we and NexGen each own 2.5% of the Lessors. The lessee has entered into supply agreements for each RC facility pursuant to which it supplies RC to the applicable power plant owner. CCSS will (subject to oversight by the lessee) operate and maintain the RC facilities under two Operating and Maintenance Agreements entered into with the lessee as part of the transaction. In addition to reimbursement for costs incurred, CCSS receives a fee of \$.08 per ton of coal processed through the RC facilities for its services. The lessee pays the costs for operating and maintaining the RC facilities, subject to certain limitations. CCSS also arranges for the purchase and delivery of certain chemical additives necessary for lessee's production of RC under two supply agreements entered into with the lessee as part of the transaction. CCSS receives a fee for its services in the amount of 5% of the cost of chemical additives and transportation costs. The term of each supply agreement runs coincident with the leases.

Since its inception, we have been considered the primary economic beneficiary of Clean Coal and have consolidated its accounts in our financial statements, but we do not consolidate the results of CCSS because NexGen controls the entity pursuant to the operating agreement of the entity. The leases included an upfront payment of \$9 million in prepaid rent for both facilities and provide for fixed rent and contingent rent based upon future production of RC, each of which is payable on a quarterly basis. We are recognizing the prepaid rent over the Initial Term of the leases. Such revenues are recorded as they are earned. Historically, the utilities at which the facilities operate have used over six million tons of coal per year, which amount can vary based on several factors. The total annual contribution to our operating income will ultimately depend on the utilities' use of coal in the generation of electricity, which use will likely fluctuate over the term of the tax credits. A portion of the lease payments made by lessee during the Initial Term was held in an escrow account, which was established to provide a fund from which the lessee can reclaim a portion of the lease payments if certain circumstances arise that affect the availability of Section 45 Credits for RC from the RC facilities.

Each lease may be terminated by the lessee for various reasons, the most significant of which are:

For any reason as of the end of the Initial Term by giving notice by no later than July 1, 2012.

If the Total Operating Expenses (as defined in each lease) paid by the lessee for two consecutive quarters exceed 140% of the projected operating costs for the RC facility.

If any of Lessor's representations or warranties were breached as of the date made and such breach is not cured within 30 days after notice.

If a change of law, or certain other specified events affecting the availability of the Section 45 credits, occurs.

Upon the occurrence of a governmental regulatory event that would make the contemplated transaction impermissible. In order to maintain our 50% interest in Clean Coal, we are obligated to fund half of its operating costs and capital expenditures. In order to satisfy a portion of the 2009 capital needs of Clean Coal, Clean Coal entered into a Loan Commitment Agreement with NexGen in October 2009, by which NexGen loaned Clean Coal \$1.0 million. The note was paid in full prior to April 30, 2010. In the future, we expect the operations of the facilities to generate sufficient working capital to meet their operating needs.

We, Clean Coal and the lessee also entered into a technology sublicense (the Technology Sublicense) pursuant to which we licensed and Clean Coal sublicensed to the lessee certain technology required to operate each RC facility and to produce RC. The Technology Sublicense parallels

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the license previously granted by us to Clean Coal and requires that we stand behind Clean Coal if it fails to perform its obligations under the sublicense, other than as a result of a default by lessee. The agreement contains representations and warranties customary for such agreements regarding intellectual property, and, subject to certain liability limits, requires us to indemnify the lessee in the event of certain infringement claims by a third party. We are also obligated to actively prosecute infringement of the technology by third parties, or to cooperate with the lessee if it does so, in which case any award would go to the lessee and any other sublicensee who prosecutes the infringement. The annual license fee payable to Clean Coal for the sublicense is \$10,000 per year, but this amount is deductible from the amount the lessee pays in rent under the leases.

In addition, we, NexGen and two entities affiliated with NexGen have provided the lessee with joint and several guaranties (the CCS Guaranties ) guaranteeing all payments and performance due under the agreements described above. We also entered into a contribution agreement (the Contribution Agreement ) with NexGen under which any party called upon to pay on a CCS Guaranty is entitled to receive contribution from the other party equal to 50% of the amount paid. The parent of lessee provided Clean Coal with a guaranty as to the payment only of all fixed rent payments under the leases, which, although terminable at any time, cannot be terminated without the substitution of such guaranty with another guaranty on similar terms from a creditworthy guarantor. Clean Coal signed agreements with a subsidiary of a large financial institution at the end of June 2010 to lease the two RC facilities it had previously placed in service.

In September 2010, the RC facilities ramped up production to expected continuous levels and are now treating over 98% of the available coal used by the four generating units at the two power plants. In the first two quarters of operation, these two units generated over \$10 million in



consolidated revenues for ADA. These production levels are expected to generate between approximately \$15 to \$20 million per year in revenues and, after deduction of NexGen's 50% share, between approximately \$7 to \$10 million in pre-tax cash flow and operating income, or approximately \$1 per share annually for ADA through 2019 (assuming no significant change in outstanding number of shares).

Pursuant to the American Recovery and Reinvestment Act of 2009 for qualifying RC and the Tax Relief and Job Creation Act of 2010 which extends the placed-in-service deadline to January 1, 2012, we have taken steps to schedule the construction of six additional RC systems with a possibility of up to 16 additional RC systems before placed-in-service deadline. Thus far in 2011, Clean Coal has issued through us purchase orders totaling approximately \$3.8 million in connection with the construction of these facilities.

#### *Carbon Solutions*

Carbon Solutions, our joint venture company with ECP, has constructed the AC Facility through its wholly owned subsidiary Red River. The AC Facility, which achieved commercial operation in May 2010, is operating on two of the four furnaces and is expected to be capable of operation at full capacity sometime in early 2011. In the second half of 2010 the AC passed certification testing that will allow it to be sold into the water market.

Under the terms of the Limited Liability Company Agreement (the "LLC Agreement") of Carbon Solutions among ECP and ADA, we have contributed \$25.6 million in cash and other property and ECP has contributed cash of \$171.6 million, including preferred equity contributions of \$89.3 million, through December 31, 2010. Effective June 2009 and since that date, ECP converted some of its preferred equity contributions to ordinary capital contributions resulting in a dilution of our ownership percentage to 25.9% as of December 31, 2010 and as a result, we include our share of Carbon Solutions' loss under the equity method of accounting. Our initial investment combined with our share of Carbon Solutions' cumulative losses to date has resulted in a net investment in Carbon Solution of \$13.6 million as of December 31, 2010. We do not have any further capital commitments to Carbon Solutions, and expect that all future funding for the AC Facility will come from ECP and third-party debt financing. See "Liquidity and Capital Resources" below for additional information.

Carbon Solutions predicts a significant gap between AC production and demand beginning in 2012, with the gap growing close to a billion pounds per year after all the MACT regulations are in place by 2015. They believe that the growth anticipated will require up to five additional AC production lines of the same size and capacity as Red River. To prepare for the additional demand created by the draft Air Toxics Rule, Carbon Solutions has permitted a second 150 million pound per year production line at the Red River plant and is pursuing permits for up to four additional AC production plants. We have certain rights to participate by up to 50% in capacity additions.

In addition, we provide certain services to Carbon Solutions under a Master Services Agreement ("MSA"). Sales and other revenues under the MSA totaled \$293,000 and \$1.1 million for 2010 and 2009, respectively, which amounts are included in EC revenues in the accompanying consolidated statement of operations.

#### **Results of Operations 2010 versus 2009**

Revenues totaled \$22.3 million for 2010 versus \$20.1 million in 2009, representing an increase of 11%. The change is due primarily to initiation of revenues from operations at the RC facilities we leased to a third party offset by the decrease in our EC segment revenues. We expect overall revenues for 2011 to be higher than those reported for 2010.

Cost of revenues decreased by \$5.3 million or 38% in 2010 from 2009 primarily as a result of decreased revenues in our EC segment and lower RC segment costs described below. Gross margins were 61% for the year compared to 31% in 2009. The increase primarily reflects the increased RC margins and revenues as described below. For the near term, we expect the sales related to RC segment to represent an increasing source of revenues, for which the anticipated gross margins are higher than our EC and CC segments. As a result, we expect the gross margin for fiscal year 2011 to be higher than the overall margin realized in 2010.

#### *Emission Control*

Revenues in our EC segment totaled \$9.8 million versus \$15.9 million in 2009, representing a decrease of 38%. The amounts reported for 2010 and 2009 excludes the work ADA has conducted for Clean Coal, as further described below, which was eliminated in our consolidation. Revenues from the EC segment for the year ended December 31, 2010 were comprised of sales of ACI systems and services (56%), flue gas chemicals and services (6%) and other services (38%), compared to 66%, 2%, and 32%, respectively, in 2009. For the near term, we expect the consulting services in our EC segment to increase as a percentage of EC revenues as the industry seeks to analyze and evaluate the probable MACT regulations in addition to increased revenues related to our technical breakthrough related to PRB coal. We expect our EC segment revenues related to ACI systems to remain at static levels until such time as utilities, cement plants and industrial boilers start to react to the new and anticipated MACT regulations. We expect overall gross margins for the EC segment for 2011 to be lower than levels achieved in 2010.

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Our consulting revenues decreased approximately \$1.3 million during 2010 compared to 2009 as we have completed nearly all of our mercury control demonstrations and analysis. Such decline is offset by our Arch Coal non-refundable license revenue. Our consulting revenues contributed approximately \$3.6 million during 2010 and we expect our consulting revenue to increase as a percentage of EC revenues for the next year as several customers are seeking advice on how best to comply with the proposed and finalized MACT regulations.

As of December 31, 2010, we had contracts in progress for work related to our EC segment totaling approximately \$2.9 million, of which we expect to recognize approximately 90% as revenue in 2011, with the balance to be completed and realized in 2012. Our ACI systems revenues totaled \$5.5 million for 2010, representing a decrease of 48% compared to 2009. In the EC segment, we performed work related to RC systems provided to Clean Coal valued at \$3.7 million and \$1.3 million for the years ended December 31, 2010 and 2009, respectively, which would otherwise be recognized as revenue but was eliminated in the consolidation of Clean Coal.

Cost of revenues for the EC segment decreased by \$3.4 million or 36% in 2010 from 2009, primarily as a result of the decreased revenue-generating activities from our ACI system sales. Gross margins for this segment were 38% for the year compared to 40% for 2009. The decrease in gross margins from the prior year are primarily a result of the impact of our consulting and ACI system margins as well as the elimination of \$3.0 million and \$1.0 million in consolidation for the years ended December 31, 2010 and 2009, respectively, related to our work on Clean Coal s RC facilities.

EC segment profits decreased by \$3.2 million or 60% for 2010 compared to 2009. The decrease was primarily a result of decreased ACI systems sales and work performed for Clean Coal in the period.

#### *CO<sub>2</sub> Capture*

Revenues in our CC segment totaled \$2.1 million versus \$1.5 million for 2009 representing an increase of 36%. We had outstanding DOE contracts, including anticipated industry cost share in progress totaling approximately \$18.8 million as of December 31, 2010. We expect to recognize approximately \$2.4 million from these contracts in 2011 including participation by other industry partners. As discussed above, on September 30, 2010 we signed a contract on a DOE project totaling approximately \$19 million (including expected contributions by other industry partners) with work ramping up in the fourth quarter of 2010.

Cost of revenues for the CC segment increased by \$97,000 or 10% for 2010 from 2009, primarily from increased activities related to our development of CO<sub>2</sub> capture technology. Gross margins for this segment were 49% for 2010 compared to 37% for 2009. The increase in gross margins from 2010 to 2009 is due primarily to the increased work being performed under these projects. We expect overall gross margins for the CC segment for fiscal year 2011 to be lower than the levels achieved in 2010, due to the mixture of direct costs (labor versus equipment) associated with this segment.

CC segment profits increased by \$546,000 or 156% for 2010 compared to 2009. The increase was primarily the result of increased activities related to our development of CO<sub>2</sub> capture technology, which ramped up significantly in 2010.

Our contracts with the government are subject to audit by the federal government, which could result in adjustment(s) to previously recognized revenue. Our historical experience with these audits has not resulted in significant adverse adjustments to amounts previously received; however the audits for the years 2004 and later have not been finalized. Revenues recognized from 2004 through 2010 that are subject to government audit totaled approximately \$29 million. In addition, we had \$18.8 million of remaining unearned amounts under contracts subject to audit as of December 31, 2010. We believe, however, that we have complied with all requirements of the contracts and future adjustments, if any, will likely not be material. In addition, the federal government must appropriate funds on an annual basis to support DOE contracts, and funding is always subject to unknown and uncontrollable contingencies.

#### *Refined Coal*

Revenues in our RC segment totaled \$10.4 million versus \$2.6 million in 2009, representing an increase of 301%, as the leased RC facilities initiated routine operations. As discussed above, in June 2010 we leased the two RC facilities and earn related rent revenues, which began in July 2010. The first two systems are expected to produce approximately 6 million tons of RC annually, which is anticipated to qualify for the present \$6.27 per ton federal tax credit through 2019. We expect our quarterly revenues to fluctuate based on seasonal variations in electricity demand as well as planned and unplanned outages required by the power plants for equipment repair and maintenance.

Cost of revenues for the RC segment decreased by \$1.9 million or 57% for 2010 from 2009, primarily due to the two RC facilities ramping up production levels in the fourth quarter of 2010. In 2009, we recorded the sales of RC which were made essentially on a cost basis with no margin. There were no similar sales in 2010 as that activity was conducted by the lessee of the facilities. Costs of revenues are expected to stabilize as the RC facilities settle into routine operations. We expect future RC margins to be at a level near 95%.

RC segment profits increased by \$9.2 million or 697% for 2010 compared to 2009 as the two facilities were leased and placed in routine operation in the middle of 2010.

#### *Other Items*

General and administrative expenses increased by \$16 million or 96% to approximately \$32.8 million in 2010. The dollar increase for 2010 resulted primarily from legal costs related to our legal proceedings with Norit and Calgon described in Part II, Item 1 of this report, which comprises approximately 75% of the overall general and administrative expense for 2010. We expect non-routine legal costs to decrease somewhat in the first quarter of 2011, and decrease significantly starting in the second quarter of 2011 as the Norit arbitration is expected to reach its final stages. We expect other components of our G&A to increase in 2011 as we build our infrastructure in preparation for the increased market opportunities anticipated from the several MACT regulations.

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We incur R&D expenses not only on direct activities we conduct but also by sharing a portion of the costs in the government and industry programs in which we participate. Total R&D expense increased by \$202,000 or 28% in 2010 compared to 2009 as a result of increases in CC and RC activities. We had no significant direct cost share for R&D under DOE related contracts in either 2010 or 2009. The increase in total R&D is related to preparing for growth in the delivery of our ACI systems, as well as our RC activities. Future consolidated research and development expenses, except for those anticipated to be funded by the DOE contracts and others that may be awarded, are expected to be higher in 2011 compared to 2010. We continue to anticipate that our future R&D expenses will grow in direct proportion to DOE funded CO<sub>2</sub> work we perform for the next several years and other technology development we choose to pursue.

We had net interest and other income of \$8.6 million in 2010 compared to \$34,000 for 2009. As discussed below in Part I, Item 3 of this report, in December 2010, we accepted a \$7.2 million payment (recognized a net of \$6.1 million after payment of certain contingent legal fees) and recognized income related to the settlement of our damage claim against Calgon. In addition, during the second quarter of 2010, we recognized approximately \$1.8 million related to the notes payable delivered by NexGen, by which NexGen has paid us as a portion of the amounts required to maintain its 50% interest in Clean Coal. Such payments have been recorded as other income. During the second half of 2010, we recognized approximately \$200,000 in interest and other income related to the notes receivable and other amounts due from NexGen.

The income tax provisions for 2010 and 2009 represent an effective tax (expense) benefit rate of approximately (35%) (restated) and 37%, for the years ended December 31, 2010 and 2009, respectively. The consolidated financial statements for the fiscal year ended December 31, 2010 have been restated to include a full valuation allowance against the net deferred tax assets as discussed in Notes 12 and 15 of the notes to the restated consolidated financial statements. No unrecognized tax benefits were recorded as of December 31, 2010. The primary jurisdictions in which we file income tax returns are the U.S. federal government and State of Colorado. We are no longer subject to U.S. federal examinations by tax authorities for years before 2007 and Colorado state examinations for years before 2006. Our income tax rate does not include any material amount of Section 45 tax credits from Clean Coal as those tax benefits will primarily be realized by the lessee under the RC facilities leases.

In June 2009, our partner in the Carbon Solutions joint venture, ECP, converted a portion of its preferred equity contributions in Carbon Solutions to ordinary capital contributions thereby reducing our ownership interest below 50%. Accordingly, we deconsolidated Carbon Solutions in June 2009 as we no longer held a controlling interest and began to account for our investment in Carbon Solutions under the equity method of accounting. Additional preferred equity contributions have been converted and common equity contributions have been made by ECP since that time and our interest in Carbon Solutions has been decreased to 25.9% as of December 31, 2010. Our net investment of \$13.6 million as of December 31, 2010 in Carbon Solutions is accounted for under the equity method of accounting. Accordingly, our equity in the net loss of Carbon Solutions for the year ended December 31, 2010 has been recognized in other income (expense) in the consolidated statement of operations and our investment in Carbon Solutions has been reduced by our respective share of such loss. For the year, we recorded a loss of \$8.0 million, which represents our share of Carbon Solutions' net loss for the year. The amount is reported net of our equity in the net income of CCSS which amounted to \$118,000 for the year.

The net operating loss from continuing operations was \$21 million or \$2.84 per share in 2010 compared to a net operating loss of \$11.8 million or \$1.69 per share, respectively in 2009. The net operating loss is due in large part to the costs associated with our litigation matters involving Norit and Calgon and the losses incurred by Carbon Solutions. We expect to continue to report equity in loss of Carbon Solutions for 2011 and future years as sales ramp up and other development activities continue. We expect to continue to report our equity in the net income of CCSS for 2011 as routine operations are anticipated for the year. We would have a net income after tax of approximately \$5.1 million or \$0.69 per share for the year excluding the non-routine legal expenses related to the Calgon and Norit matters and disregarding the deferred tax asset valuation allowance and the non-cash loss from Carbon Solutions. With the expected reduction in non-routine legal expenses in the second quarter of 2011 and thereafter, we should be in a position, apart from the losses we pick up from Carbon Solutions, to achieve very attractive levels of profitability.

### **Results of Operations 2009 versus 2008**

Revenues totaled \$20.1 million for 2009 versus \$16.2 million in 2008, representing an increase of 24% primarily due to the tests related to placing Clean Coal's two facilities in service. Cost of revenues increased by \$3 million or 27% in 2009 from 2008 primarily as a result of increased revenues. Gross margins were 31% for the year compared to 33% in 2008. The decrease primarily reflects the decrease in margins for the RC segment as described below.

#### *Emission Control*

Revenues in our EC segment for 2009 increased by \$12,000 versus 2008. Revenues in 2009 from the EC segment were comprised of sales of ACI systems and services (66%), flue gas chemicals and services (2%), and other services (32%), compared to 58%, 3% and 39%, respectively, in 2008. In 2009, sales of our ACI systems contributed \$10.6 million to EC revenues recognized for the year, increasing 13% from the 2008 contribution of \$9.4 million.

Revenues from consulting services included in the EC segment increased approximately \$3.3 million, from 2008 to approximately \$5 million in 2009 which were net of eliminated revenues totaling \$1.3 million related to our efforts to construct RC facilities for Clean Coal. The change for the year resulted primarily from two mercury control programs that commenced and were largely completed in 2008 offset by increased activity with current and new test programs that commenced during 2009.

Cost of revenues for the EC segment decreased by \$1.3 million in 2009 or 12%, primarily from decreased activity in our government and industry supported mercury contracts and other consulting services, offset by cost saving activities related to our ACI system sales. Cost of revenues was reduced by \$1.0 million related to the eliminated revenues described above in connection with our construction of RC facilities for

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Clean Coal. Gross margins for the EC segment were 40% in 2009 compared to 32% in 2008. The increase was primarily due to the increased margins related to our ACI system sales as a result of the implementation of our improved modular ACI equipment design, which broadens fabrication and material supply options, simplifies field installation and reduces system costs and increased margins in our emission strategy consulting services as a result of higher utilization of labor on such projects.

EC segment profits increased by \$3.4 million or 170% to \$5.3 million compared to 2008. The increase was primarily a result of increased EC segment revenues from our ACI systems offset by our decline in DOE and industry supported mercury revenues.

The remaining unearned amount on outstanding contracts in our EC segment was \$7.3 million as of December 31, 2009. During 2008, government funded work for mercury demonstration projects diminished significantly as the market moved into a commercial phase.

Our contracts with the government are subject to audit by the federal government, which could result in adjustment(s) to previously recognized revenue. We believe, however, that we have complied with all requirements of the contracts and future adjustments, if any, will not be material. In addition, the federal government must appropriate funds on an annual basis to support DOE contracts, and funding is always subject to unknown and uncontrollable contingencies.

#### *CO<sub>2</sub> Capture*

Revenues in our CC segment were \$1.5 million in 2009, primarily from our one CO<sub>2</sub> contract representing an increase of \$1.3 million or 491% versus 2008. In 2009, we increased testing and research on our first significant project related to CO<sub>2</sub> demonstration work sponsored by the DOE which initially began late 2008.

Costs of revenues for the CC segment were \$969,000 in 2009 which represents an increase of \$861,000 or 797% versus 2008. As 2009 was the beginning of significant efforts in carbon capture, largely under our contracts with DOE. Gross margins for the CC segment were 36% in 2009 compared to 58% primarily due to the timing of revenue recognized with industry supported costs share participants in 2008.

CC segment profits increased by \$199,000 in 2009 or 133% versus 2008, which was consistent with our revenue efforts in carbon capture.

#### *Refined Coal*

Revenues in our RC product in 2009 (primarily for the tests related to placing Clean Coal's two facilities in service) amounted to approximately \$2.6 million. Prior to the fourth quarter of 2009, we did not have any prior revenue generating activities to report for this segment.

Cost of revenues for our RC segment totaled \$3.4 million in 2009, primarily for the tests related to placing Clean Coal's two facilities in service and other start up activities related to the segment. In 2008, we did not have any significant direct costs associated with this segment.

RC segment loss was \$1.3 million in 2009 and represents activities related to placing the first two RC facilities into service.

#### *Other Items*

General and administrative expenses increased by \$7.6 million or 83% to \$16.7 million in 2009. The dollar increase in 2009 resulted primarily from the increased legal fees due to litigation efforts (approximately \$9.6 million) and increased corporate governance costs \$384,000, offset by savings in personnel costs \$868,000 and occupancy and other general and administrative costs \$733,000. Included in our general and administrative expenses was approximately \$251,000 related to share based compensation. In 2009, we curtailed hiring personnel in response to the then delayed regulatory environment.

We incur R&D expenses not only on direct activities we conduct but also by sharing a portion of the costs in the government and industry programs in which we participate. Total R&D expense decreased by \$75,000 or 10% in 2009 compared to 2008. Our direct cost share for R&D under DOE related contracts decreased from \$30,000 in 2008 to \$1,000 in 2009, reflecting the anticipated decrease in our cost share contribution and the overall decrease in mercury related demonstrations that we carried out during the year. The decrease is somewhat offset by increased activities related to preparing for growth in the delivery of our ACI systems, as well as our RC activities. Our future R&D expenses are expected to grow in direct proportion to DOE funded CO<sub>2</sub> work we perform for the next several years.

We had net interest and other income of \$34,000 in 2009 compared to \$439,000 for 2008. The interest income was earned from our money market deposits. We anticipated interest income to decline in 2009 due to a combination of lower invested balances and lower interest rates compared to prior years.

The income tax provision for 2009 represents an effective tax rate benefit of approximately 37%, which is more than the rate benefit of 27% we recognized for 2008. The increase is primarily the result of the change in permanent book and tax differences, which included a \$1.6 million goodwill impairment charge to book income in 2008. All other permanent differences were less than 1% for both 2009 and 2008. We adopted the provisions of FASB ACS 740 on January 1, 2007. No unrecognized tax benefits were recorded as of the date of adoption. The primary jurisdictions in which we file income tax returns are the U.S. federal government and State of Colorado. We are no longer subject to U.S. federal examinations by tax authorities for years before 2006 and Colorado state examinations for years before 2005.

In June 2009, our partners in the Carbon Solutions joint venture, ECP, converted a portion of its preferred equity contributions in Carbon Solutions to ordinary capital contributions thereby reducing our ownership interest below 50%. Accordingly, we deconsolidated Carbon Solutions in June 2009 and began to account for our investment in Carbon Solutions under the equity method of accounting. Under the equity method of accounting, we record our equity in the net income or loss of Carbon Solutions as a component of Other Income (Expense) in our financial statements. For the year ended December 31, 2009, we recorded a loss of \$3.2 million, which represents our share of Carbon Solution's

net loss for the same period.

Our operating loss from continuing operations was \$11.8 million in 2009 compared to a loss of \$6.7 million in 2008, due in large part to the costs associated with our litigation matters involving Norit and Calgon and those related to the Company's growth initiatives for RC. We would have had a net income after tax of approximately \$18,000 or less than \$0.01 per share in 2009 if we did not incur the non-routine legal expenses related to the Calgon and Norit matters and disregarding the non-cash loss from Carbon Solutions.



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## Liquidity and Capital Resources

Our principal source of liquidity in 2010 was our working capital, our cash flow from RC activities, proceeds from settlement of litigation matters and other operations. We had consolidated cash and cash equivalents totaling \$9.7 million at December 31, 2010 compared to consolidated cash and cash equivalents of \$1.5 million at December 31, 2009.

At December 31, 2010, we had working capital of \$9.9 million (restated), which includes a reduction of \$188,000 attributable to the recognition of a valuation allowance against the Company's net deferred tax assets, compared to \$2.2 million at December 31, 2009. We have long-term liabilities recorded totaling \$31.8 million for our accrued warranty, long-term deferred revenue, including deferred rental income, and other obligations of \$4.4 million and indemnity costs related to the Norit Action of \$27.4 million as of December 31, 2010. Although we had positive operating cash flow for the year ended December 31, 2010, this trend may not continue in 2011, due to expected resolution of the indemnity costs as the Norit Action is resolved. Expansion of efforts related to our Clean Coal joint venture and preparation for the market opportunities expected from the MACT regulations will also likely require additional investments in 2011.

The increase in working capital during 2010 resulted primarily from:

\$2 million payment received, net of deferred amounts, for the exclusive licensing of technology to Arch Coal,

\$1 million from the sale of our Common Stock to Arch Coal,

\$2.1 million in equity contributions to Clean Coal by NexGen,

Prepaid rents received and other rentals earned related to the lease of Clean Coal's RC facilities, net of current deferred revenues, and

\$6.1 million from the settlement of the Calgon litigation which amount is net of related contingent legal fees associated with the settlement structure.

The above were offset by decreases in cash and cash equivalents which included:

\$3.7 million in cash distributed by Clean Coal to NexGen and

\$2.9 million in capital expenditures including those improvements made by Clean Coal to the RC facilities that were subsequently leased.

Our stockholders' deficit is approximately \$2.2 million (restated) as of December 31, 2010 compared to stockholders' equity of \$24.4 million as of December 31, 2009. The decrease is primarily due to the net operating loss for the year and the recording of a valuation allowance against the Company's net deferred tax assets (see Note 15 for the effect of the restatement on stockholders' equity (deficit)).

To provide flexibility in the capital markets, we filed a universal shelf registration statement with the SEC on January 28, 2011 and, when declared effective by the SEC, this registration would give us the ability to offer and sell up to \$140 million of securities consisting of common stock, preferred stock, warrants, units or a combination thereof. After the shelf registration becomes effective, we may offer and sell such securities from time to time and through one or more methods of distribution, subject to market conditions, for our capital needs and regulatory requirements. The terms of any offering under the shelf registration statement will be established at the time of such offering and will be described in a prospectus supplement filed with the SEC prior to completion of the offering.

Carbon Solutions has funded, through loans and/or equity contributions from ECP to Carbon Solutions, a significant portion of the legal expenses related to the Norit Action. We have not recorded any accrued indemnity obligations to ECP, and we are unable to estimate the total amount of any future indemnity obligations to Carbon Solutions or ECP at this time. ECP has notified us that it believes such obligations include any losses it suffers due to its loss of potential customers and diminution in the value of its businesses, the costs and fees it has incurred and will

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continue to incur, and any damages it may suffer as a result of a lawsuit Norit N.V. has filed against ECP in state court in New Jersey. Satisfaction of any indemnity obligations to ECP, as discussed above, may be made via a decrease in our recorded capital contributions (and with a corresponding increase in ECP's capital contributions) in Carbon Solutions and adjustment of each party's percentage ownership accordingly.

We may also require additional working capital to meet our 50% share of capital expenditures and working capital requirements of Clean Coal as it constructs additional RC facilities to qualify for Section 45 tax credits which Clean Coal expects to finance through a \$10 million credit facility expected to be in place in early 2011.

Our ability to generate the financial liquidity required to meet ongoing operational needs and to meet our current and future indemnification obligations to Carbon Solutions and potentially to ECP, will likely depend upon several factors, including our ongoing legal expenses incurred by the parties in the Norit matters, timing of satisfaction and ultimate amount of the Indemnity Obligations and insurance coverage with respect to the Norit matters, our ability to maintain a significant share of the market for mercury control equipment, Clean Coal's continued operation of the two RC facilities placed in service in 2010 and success in monetizing Section 45 tax credits through the sale or lease of additional facilities to third party investors. Consequently, we may not have sufficient working capital to fund all these obligations in the event we are called upon to do so. We believe we could, if need be, defer some of the growth initiatives or reduce expenses, or both, if necessary to fund operations through at least December 31, 2011.

### *Clean Coal Related Items*

Clean Coal, our 50% joint venture with NexGen, has placed two RC production facilities into service, which have been leased to a third party. Based on the amount of RC that we expect will be produced from the RC facilities, we expect to recognize pre-tax cash flows between \$7 million to \$10 million per year through 2019, the expected period for which Section 45 tax credits are available for these facilities.

NexGen has elected to retain its interest in Clean Coal by paying us up to \$4 million (plus any accrued interest under the notes described below) as follows: (a) \$1.8 million under NexGen's two-year promissory notes issued to us in June 2010, plus (b) 25% of cash distributions (other than for income taxes) due to NexGen from Clean Coal. NexGen's promissory notes are shown as notes receivable, bear interest at 5% per annum, are payable out of 35% of cash distributions to NexGen and are secured by NexGen's interest in Clean Coal. We expect to receive payments from NexGen based upon a portion of cash distributed to NexGen from Clean Coal, with a portion of that amount to be applied as payment on the notes and any additional amounts to be applied to the remainder of the total \$4 million expected to be paid by NexGen, which payments are expected by the end of 2011. We expect to report these amounts upon receipt as other income. NexGen is not obligated to make those payments, but if it does not do so, it will forfeit a part of its interest in Clean Coal in direct proportion to the amount that it elects not to pay (including any election not to pay under any notes issued). Once it fails to make any one payment, it cannot reclaim its interest by making later payments. We are not required to refund any of the cash paid by NexGen. In addition, we, NexGen and two entities affiliated with NexGen have provided Clean Coal's sublessee with joint and several guaranties guaranteeing any payments and performance due the lessee under the various agreements Clean Coal executed in the lease of the RC facilities.

#### *AC Facility Related Items*

As noted above, Carbon Solutions has commenced commercial operations at its AC Facility, which has an estimated all-in, total cost for one production line capable of producing approximately 150 million pounds of AC per year of including related activities of approximately \$400 million. Red River has received a conditional commitment for up to \$245 million from the DOE to guarantee a loan related to the costs of construction of the AC Facility.

In order to address the anticipated capital needs of Carbon Solutions, ECP may fund additional ordinary capital contributions or preferred equity contributions to Carbon Solutions or make loans to Red River, in each case at such times and in such amounts as ECP determines are necessary to satisfy their capital requirements. Neither ADA nor ECP is required to fund additional capital contributions to Carbon Solutions at this time. In October 2008, the Company entered into a Securities Purchase Agreement (SPA) providing for the potential sale to ECP of 1,800,000 shares of Series A Convertible Preferred Stock and 1,800,000 shares of Series B Convertible Preferred Stock. The Company terminated the SPA on March 23, 2010. One-half of ECP's preferred equity bears a preferred return of 12% per annum, and the other half does not bear a preferred return. ECP is entitled to receive priority distributions on its preferred equity until it is redeemed or converted and has the option to convert any such unredeemed preferred equity into ordinary capital contributions.

Pursuant to an Amended and Restated Credit and Reimbursement Agreement among Red River, ECP and us dated as of September 2, 2009 and related documents (the Carbon Solutions Credit Support Documents), ECP may make loans to Red River from time to time. As of December 31, 2010, the principal balance of ECP's loans to Red River totaled approximately \$193.8 million. Such loans are evidenced by convertible demand promissory notes bearing interest at 12% per annum compounded quarterly. ECP may convert any outstanding amounts due under such notes to ordinary capital or preferred equity contributions in Carbon Solutions at any time at its option. The outstanding loans are secured by Red River's assets and guaranteed by Carbon Solutions, and Carbon Solutions' guaranty is secured by a pledge of Carbon Solutions' equity in Red River. If and when Carbon Solutions is able to place long-term commercial debt, we expect a significant portion, if not all, of its outstanding loans from ECP to be replaced by such debt.

As of December 31, 2010, ECP had outstanding preferred equity in Carbon Solutions totaling approximately \$89.3 million, all of which is convertible to ordinary capital contributions. In 2009 and subsequently, ECP has converted some of its then outstanding preferred equity to ordinary capital contributions and made additional ordinary capital contributions, resulting in dilution of our ownership interest in Carbon Solutions to 25.9% as of December 31, 2010. Because of such dilution to date, ECP now elects three out of the four managers of the Board of Carbon Solutions and controls decisions of the Board. Through March 1, 2011, ECP had contributed cash of \$171.6 million to Carbon Solutions and had loaned \$193.8 million to Red River. We continue to have the right to participate in significant decisions subject to member approval so long as we continue to hold at least a 15% ownership interest. Member approval requires approval of members holding at least 75% of the ownership interests.

In addition to our indemnity obligations described above, we have given guaranties and undertaken other commitments of approximately \$30 million related to Carbon Solutions. No liabilities associated with such guaranties and obligations were recorded on our financial statements as we do not expect the guaranties and commitments to be called upon. Pursuant to the Carbon Solutions Credit Support Documents, Red River has agreed to reimburse us and ECP in the event we or they are required to make payments related to these guaranties and guaranties provided by ECP. Red River's reimbursement obligations are secured by Red River's assets and guaranteed by Carbon Solutions, and Carbon Solutions' guaranty is secured by a pledge of Carbon Solutions' equity in Red River. We assigned our rights under these agreements to ECP, and any amounts payable to us would be paid directly to ECP until ECP's preferred equity in Carbon Solutions is fully redeemed or converted and all loans to Red River have been paid in full.

*Other Liquidity and Capital Resource Items*

Our trade receivables balance is comprised of both amounts billed to customers as well as unbilled revenues that have been recognized. As of December 31, 2010 our trade receivables balance was \$9.1 million, which was offset by billings in excess of recognized income of \$452,000 for a net of \$8.6 million compared to \$4.5 million at December 31, 2009. Our trade receivables balance was higher at December 31, 2010 compared to 2009, primarily due to the RC facilities rent earned during the quarter ended December 31, 2010 and not collected until the first quarter of 2011, and due to the nature and timing of our billing milestones for our ACI systems contracts.

As discussed above, we have recorded approximately \$27.4 million in potential indemnity obligations to Carbon Solutions related to the Norit Action. These accrued expenses have resulted in the increase in accrued long-term liabilities in 2010. Our net accrued warranty obligations have increased by \$8,000, related to our increase in related ACI projects.

Under our defined contribution and 401(k) retirement plan, in 2010 and 2009 we matched up to 7% of salary amounts deferred by employees in the Plan. During 2010 we recognized \$282,000 of matching expense which payment was made with our stock, while in 2009, we recognized \$267,000 of matching expense the payments for which were made in both cash and our stock. In the past, we have also made discretionary contributions to the Plan for employees, however in 2010 and 2009, we did not make any such discretionary contributions. Our matching expense is expected to amount to \$300,000 for 2011 depending on employee participation in the plan.

We had recorded net current deferred tax assets of \$188,000 and net long-term deferred tax assets of \$15.4 million as of December 31, 2010 compared to net current deferred tax asset of \$271,000 and net long-term deferred tax assets of \$6.8 million as of December 31, 2009. The current and long-term amounts for 2010 have subsequently been reduced to zero by recording a full valuation allowance. As discussed above and in Notes 12 and 15 to the restated consolidated financial statements, in August 2012, after extensive discussions with the SEC's Division of Corporation Finance and Office of the Chief Accountant and the Company's outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that a full valuation allowance against the Company's net deferred tax assets should have been recognized as of December 31, 2010 and for each subsequent quarter thereafter. Management determined that it was necessary to record the valuation allowance against the Company's deferred tax assets after reconsidering the weight given in the original assessment to the relevant information used to measure the positive and negative evidence regarding the potential for ultimate realization of the deferred tax assets.

Cash flow provided by operations totaled \$11.7 million for 2010 compared to cash flow used in operations of \$1.6 million in 2009. The change in operating cash flow primarily resulted from an increase in deferred revenues and other liabilities of \$7.7 million, an increase in our accrued indemnity liability of \$20.6 million and a decrease in prepaid and other assets of \$288,000, which were offset by a decrease in our accounts payable of \$1.7 million and an increase in receivables of \$3.2 million. These changes in our operating assets and liabilities correspond to the nature and timing of our procurement and billing cycle and development activities. In addition, adjustments related to our net loss of \$31.1 million (restated) for non-cash operating activities, which included expenses paid with stock and restricted stock of \$1.3 million, depreciation and amortization of \$917,000, non-controlling interest in Clean Coal of \$3.6 million our net minority equity interest in the net income/loss of unconsolidated entities of \$8 million and a net deferred tax expense of \$7.1 million (restated) which includes the establishment of a full valuation allowance for deferred tax assets as described above and in Note 15 to the restated consolidated financial statements, all of which increased our cash flow used in operations during 2010.

Net cash used by investing activities was \$3.1 million for 2009 compared to \$25.9 million for 2009. The cash used consisted of investments in short term paper of \$105,000 and purchases of equipment of \$2.9 million. Offsetting cash provided by investing activities consisted of payments received from NexGen related to their note receivable to us. The 2009 cash used of \$25.9 million was primarily related to the deconsolidation of Carbon Solutions.

Cash used by financing activities was \$356,000 in 2010 compared to cash provided by financing activities of \$725,000 in 2009. Cash provided during 2010 consisted of \$2.1 million in capital contributions by the non-controlling interest in Clean Coal and the sale of stock for proceeds totaling \$1 million and the exercise of stock options totaling \$347,000. Uses of cash consisted of the distribution by Clean Coal to the non-controlling interest.

We had the following contractual commitments as of December 31, 2010:

	Total	Payment due by period			
		2011	2012 and 2013	2014 and 2015	2016 and Beyond
Purchase obligations	\$ 433,000	\$ 433,000	\$ 0	\$ 0	\$ 0
Operating lease obligations	402,000	240,000	162,000	0	0
<b>Total</b>	<b>\$ 835,000</b>	<b>\$ 673,000</b>	<b>\$ 162,000</b>	<b>\$ 0</b>	<b>\$ 0</b>

#### Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements except for the operating leases disclosed above and the commitments and contingencies disclosed in Note 9 of our consolidated financial statements contained in Item 8 of this Annual Report.

#### Critical Accounting Policies and Estimates (restated)

**Revenue Recognition** We follow the percentage of completion method of accounting for all significant contracts excluding government contracts, chemical sales, technology license and related royalties, and RC leases. The percentage of completion method of reporting income

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takes into account the estimated costs to complete and estimated gross margin for contracts in progress. We recognize revenue on government contracts generally based on the time and expenses incurred to date. We are recognizing revenue from the Arch Coal license over the estimated time for which Arch Coal expects to recoup its investment in the technology and the related royalties will be recognized when earned. RC base rents, which are fixed, are recognized over the life of the lease. Contingent rents are recognized as they are earned.

Significant estimates are used in preparation of our financial statements and include:

our allowance for doubtful accounts, which is based on historical experience;

our warranty costs;

our percentage of completion method of accounting for significant long-term contracts, which is based on estimates of gross margins and of the costs to complete such contracts; and

the period over which we estimate we will earn up-front license payments.

In addition, amounts invoiced for government contracts are subject to change based on the results of future audits by the federal government. We have not experienced significant adjustments in the past, and we do not expect significant adjustments will be required in the future. We also use our judgment to support the current fair value of goodwill and other intangible assets of \$695,000 on the consolidated balance sheets. Management believes the value of other recorded intangibles is not impaired, although market demand for our products and services could change in the future, which would require a write-down in recorded values. As with all estimates, the amounts described above are subject to change as additional information becomes available, although we are not aware of anything that would cause us to believe that any material changes will be required in the near term.

Under certain contracts we may grant performance guaranties or equipment warranties for a specified period and the achievement of certain plant operating conditions. In the event the equipment fails to perform as specified, we are obligated to correct or replace the equipment. Estimated warranty costs are recorded at the time of sale based on current industry factors. The amount of the warranty liability accrued reflects our best estimate of expected future costs of honoring our obligations under the warranty section of each contract. We believe the accounting estimate related to warranty costs is a critical accounting estimate because changes in it can materially affect net income, it requires us to forecast the amount of equipment that might fail to perform in the future, and it requires a large degree of judgment.

Income taxes are accounted for under the asset and liability approach. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax bases using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period when the change is enacted. At each reporting date, management reviews deferred tax assets and liabilities and any related valuation allowance and, if necessary, revises them to reflect changed circumstances. In a situation where recent losses have been incurred, the accounting standards require convincing evidence that there will be sufficient future taxable income to realize deferred tax assets. Deferred tax assets have been reduced to zero by a valuation allowance because, in the opinion of management, it is more likely than not that all of the deferred tax assets will not be realized. A change in laws can have a material effect on the amount of income tax we are subject to. We are not aware of anything that would cause us to believe that any material changes will be required in the near term.

We recognize all share-based payments, including grants of stock options, restricted stock units and employee stock purchase rights in our financial statements based upon their respective grant date fair values. Under this standard, the fair value of each employee stock option and employee stock purchase right is estimated on the date of grant using an option pricing model that meets certain requirements. We currently use the Black-Scholes option pricing model to estimate the fair value of our stock options and stock purchase rights. The Black-Scholes model meets the requirements of FASB Topic 718 but the fair values generated by the model may not be indicative of the actual fair values of our equity awards, as it does not consider certain factors important to those awards to employees, such as continued employment and periodic vesting requirements. The determination of the fair value of share-based payment awards utilizing the Black-Scholes model is affected by our stock price and a number of assumptions, including expected volatility, expected life and risk-free interest rate. We use a historical volatility rate on our stock options. The fair value of our restricted stock is based on the closing market price of our Common Stock on the date of grant. If there are any modifications or cancellations of the underlying securities, we may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense. To the extent that we grant additional equity securities to employees or we assume unvested securities in connection with any acquisitions, our stock-based compensation expense will be increased by the additional unearned compensation resulting from those additional grants or acquisitions.

**Consolidation of Subsidiaries** Our equity partner in Carbon Solutions, ECP, contributed equity capital significantly in excess of our contributions. We expect that our ownership percentage may be further diluted below the 25.9% existing as of December 31, 2010 and that we will continue recording our interest under the equity method.

Our equity partner in Clean Coal, NexGen, must pay us up to \$4 million to maintain its 50% interest in Clean Coal for which it has issued notes payable to us evidencing a portion of that amount as described above. Since inception, ADA has been considered the primary economic beneficiary of the joint venture with Clean Coal and, therefore, we have consolidated its accounts with ours.

We hold a 50% interest in CCSS. However, we control only two of the five seats on the board of managers and our equity partner controls the other three seats. Therefore, we believe our 50% interest does not constitute control of CCSS and we have recorded our interest under the equity method.

#### **Recently Issued Accounting Policies**

No pronouncements have been issued which would have a significant impact on us.

**Item 8. Financial Statements and Supplementary Data (restated).**

**Our Financial Statements can be found at pages F-1 through F-24 of this report.**

<u>Index to Financial Statements</u>	F-1
<u>Report of Independent Registered Public Accounting Firm</u>	F-2
Financial Statements: ADA-ES, Inc. and Subsidiaries	
<u>Consolidated Balance Sheets, December 31, 2010 and 2009</u>	F-3
<u>Consolidated Statements of Operations, For the Years Ended December 31, 2010 and 2009</u>	F-4
<u>Consolidated Statements of Changes in Stockholders' Equity, For the Years Ended December 31, 2010 and 2009</u>	F-5
<u>Consolidated Statements of Cash Flows, For the Years Ended December 31, 2010 and 2009</u>	F-6
<u>Notes to Consolidated Financial Statements</u>	F-7



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**Item 9A. Controls and Procedures (restated).**

We conducted 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. The term disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by the company in the reports it files or submits 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. Disclosure controls and procedures also include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management necessarily applied its judgment in assessing the costs and benefits of such controls and procedures, which, by their nature, can provide only reasonable assurance regarding management's control objectives.

**Evaluation of Disclosure Controls and Procedures**

When our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 was filed on March 28, 2011, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2010. Subsequent to that evaluation, our management identified an error related to the establishment and maintenance of a valuation allowance against deferred tax assets, as discussed below. This error had a material effect on the Company's previously issued consolidated financial statements. As a result of this error, we determined that the consolidated financial statements for the fiscal years ended December 31, 2010 and 2011 and the quarters ended March 31, 2011, June 30, 2011, September 30, 2011, March 31, 2012 and June 30, 2012 should not be relied upon and needed to be restated (see Note 15 in the accompanying restated consolidated financial statements for further discussion) and identified the material weakness described below.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) is defined as a process designed by, or under the supervision of, a company's principal executive and financial officers, or persons performing similar functions, and effected by a company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally acceptable accounting principles and includes those policies and procedures that: (a) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

A material weakness is a control deficiency, or combination of control deficiencies, that result in more than a remote likelihood that a material misstatement of annual or interim financial statements will not be prevented or detected. Our management assessed our internal control over financial reporting as of December 31, 2010. Management based its assessment on criteria set forth in the framework 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 independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's independent registered public accounting firm pursuant to temporary 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**

In connection with the identification of the error to our financial statements described above and in Note 15 to our restated consolidated financial statements, management has identified the following deficiency that constituted a material weakness in our internal control over financial reporting for the periods described above:

We did not establish adequate criteria to assess positive and negative evidence over the establishment and maintenance of a valuation allowance against deferred tax assets and an appropriate review process over the inputs and conclusions from this assessment was not

in place.

Accounting errors resulting from the material weakness described above resulted in the need to restate our annual and interim consolidated financial statements.

**Remediation of Material Weakness**

By establishing a valuation allowance against the Company's deferred tax assets, management believes that the material weakness which had previously existed with respect to the deferred tax assets has been fully remediated. To ensure that such an issue does not arise again in the future, the Company is in the process of creating a formal process related to the design and implementation of controls and establishment of adequate criteria to assess the positive and negative evidence over the establishment and maintenance of a valuation allowance against deferred tax assets. Management anticipates that this process will include periodic oversight by the Audit Committee and anticipates completing this remediation effort before the Annual Report on Form 10-K for the fiscal year ending December 31, 2012 is filed.

We will continue to monitor the effectiveness of our internal control over financial reporting in the areas affected by the material weakness described above and employ any additional tools and resources as appropriate to provide reasonable assurance that our financial statements are fairly stated in all material respects.

As previously disclosed, there were no changes in our internal control over financial reporting during the quarter ended December 31, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. As described above, we have taken steps subsequent to the period covered by this Amendment to remedy the material weakness in our internal control over financial reporting.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules (restated).**

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements see Part II, Item 8, which is incorporated herein by this reference;

(2) Financial Statement Schedules None required or applicable; and

(3) Exhibits as described in the following index.

**Index to Exhibits**

No.	Description
3.1	Amended and Restated Articles of Incorporation of ADA-ES (1)
3.2	Second Amended and Restated Bylaws of ADA-ES (2)
4.1	Form of Specimen Common Stock Certificate (3)
4.2	Registration Rights Agreement dated October 21, 2005 (4)
4.3	Registration Rights Agreement between ADA-ES, Inc. and Arch Coal, Inc. dated March 19, 2003 (5)
4.4	Standstill and Registration Rights Agreements dated August 3-6, 2004 (6)
4.5	Registration Rights Agreement among ADA-ES, Inc., Perella Weinberg Partners Oasis Master Fund L.P., Black River Commodity Select Fund and Black River Small Capitalization Fund Ltd. dated August 26, 2008 (7)
4.6	ADA-ES, Inc. Profit Sharing Retirement Plan Adoption Agreement (8)
4.7	American Funds Distributors, Inc. Nonstandardized 401(K) Plan (9)
4.8	American Funds Distributors, Inc. Defined Contribution Prototype Plan and Trust (10)
4.9	Amended ADA-ES, Inc. Plan Policy Document (35)

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- 4.10 Employer Stock Addendum to Trust Agreement (11)
- 4.11 Registration Rights Agreement between ADA-ES, Inc. and Arch Coal, Inc. dated March 23, 2010 (12)
- 10.2 2003 ADA-ES, Inc. Stock Option Plan\*\* (13)
- 10.13 2003 Stock Compensation Plan #1\*\* (14)
- 10.14 2003 Stock Compensation Plan #2\*\* (15)
- 10.21 ADA-ES, Inc. 2004 Executive Stock Option Plan\*\* (16)
- 10.23 Employment Agreement dated May 1, 1997 between C. Jean Bustard and ADA Environmental Solutions, LLC (assigned to ADA-ES, Inc.) \*\* (17)
- 10.24 Employment Agreement dated May 1, 1997 between Michael D. Durham and ADA Environmental Solutions, LLC (assigned to ADA-ES, Inc.) \*\* (17)
- 10.25 Employment Agreement dated January 2, 2000 between Mark H. McKinnies and ADA Environmental Solutions, LLC (assigned to ADA-ES, Inc.) \*\* (17)
- 10.26 Employment Agreement dated January 1, 2000 between Richard J. Schlager and ADA Environmental Solutions, LLC (assigned to ADA-ES, Inc.) \*\* (17)
- 10.27 2004 Stock Compensation Plan #2 and model stock option agreements\*\* (16)

- 10.28 2004 Directors Stock Compensation Plan #1\*\* (18)
- 10.29 2005 Directors Compensation Plan\*\* (5)
- 10.31 Chemicals, Equipment, and Technical Engineering Services Supply Agreement dated as of November 3, 2006 by and between ADA-ES, Inc. and Clean Coal Solutions, LLC (f/k/a ADA-NexCoal, LLC). (19)
- 10.32 Purchase and Sale Agreement dated as of November 3, 2006 by and among ADA-ES, Inc., NexGen Refined Coal, LLC and Clean Coal Solutions, LLC (f/k/a ADA-NexCoal, LLC). (20)
- 10.33 Amended and Restated Operating Agreement of Clean Coal Solutions, LLC (f/k/a ADA-NexCoal, LLC) dated as of November 3, 2006 by and among ADA-ES, Inc., NexGen Refined Coal, LLC and Clean Coal Solutions, LLC (f/k/a ADA-NexCoal, LLC). (21)
- 10.34 Employment Agreement dated March 1, 2003 between Sharon M. Sjostrom and ADA Environmental Solutions, LLC (assigned to ADA-ES, Inc.)\*\* (22)
- 10.35 Executive Compensation Plan\*\* (22)
- 10.38 2007 Equity Incentive Plan\*\* (23)
- 10.39 Employment Agreement dated November 28, 2005 between Richard Miller and ADA-ES, Inc.\*\* (24)
- 10.43 Employment Agreement dated January 1, 2008 between Cameron E. Martin and ADA-ES, Inc.\*\* (24)
- 10.44 Engineering, Procurement and Construction Agreement dated January 29, 2008 between Red River Environmental Products, LLC and BE&K Construction Company, LLC. \*\*\* (24)
- 10.46 Agreement for the Purchase of Activated Carbon between Red River Environmental Product, LLC and Southern Company Services, Inc dated June 5, 2008\*\*\* (25)
- (a) Master Agreement for the Purchase of Activated Carbon
- (b) General Conditions of the Contract for the Purchase of Chemical and/or Gas Products
- (c) Special Supplemental Conditions Contract
- 10.48 Promissory Note and Account Pledge Agreement for Colorado Business Bank Letter of Credit dated August 15, 2008 (7)
- 10.49 Carbon Supply Agreement between Red River Environmental Products, LLC and Luminant Generation Company, LLC dated September 3, 2008\*\*\* (7)
- 10.50 Multiple Hearth Furnace (MHF) Contract between Industrial Furnace Company, Inc and Red River Environmental Products, LLC dated September 5, 2008\*\*\* (7)
- (a) Unit 1- Project No. 65214-RFP No. EFH-101
- (b) Unit 2- Project No. 65214-RFP No. EFH-101
- (c) Unit 3- Project No. 65214-RFP No. EFH-101
- (d) Unit 4- Project No. 65214-RFP No. EFH-101
- 10.51 Amended and Restated Engineering, Procurement and Construction Agreement between Red River Environmental Products, LLC and BE&K Construction Company, LLC dated September 8, 2008\*\*\* (7)
- 10.52 Guaranty of ADA-ES, Inc. to BE&K Construction Company, LLC dated September 8, 2008 regarding Amended and Restated Engineering, Procurement and Construction Agreement (7)
- 10.53 Securities Purchase Agreement between ADA-ES, Inc. and Energy Capital Partners I, LP, Energy Capital Partners I-A LP, Energy Capital Partners I-B, LP and Energy Capital Partners I (TEF IP), LP dated October 1, 2008 (7)
- 10.54 Joint Development Agreement between ADA-ES, Inc. and Energy Capital Partners I, LP, Energy Capital Partners I-A LP, Energy Capital Partners I-B IP, LP and Energy Capital Partners I (Crowfoot IP), LP dated October 1, 2008 \*\*\* (26)
- 10.55 Amended and Restated ADA Carbon Solutions, LLC Limited Liability Company Agreement \*\*\* (36)
- 10.56 Intellectual Property License Agreement between ADA-ES, Inc. and Crowfoot Development, LLC\*\*\* (7)
- 10.57 Project Crowfoot Incentive Program, as amended and restated on August 13, 2008 and October 15, 2008\*\*, \*\*\* (27)
- 10.58 Amendment to the Master Agreement for the Purchase of Activated Carbon between Red River Environmental Products, LLC and Southern Company Services, Inc dated December 17, 2008 (28)

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- 10.59 Site Work Agreement between Red River Environmental Products, LLC and BE&K Construction Company, LLC dated January 23, 2009 (29)
- 10.60 First Amendment to the Securities Purchase Agreement between ADA-ES, Inc. and Energy Capital Partners I, LP, Energy Capital Partners I-A LP, Energy Capital Partners I-B, LP and Energy Capital Partners I (TEF IP), LP dated March 6, 2009 (29)
- 10.61 [Intentionally omitted]

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- 10.62 First Amendment to the Carbon Supply Agreement between Red River Environmental Products, LLC and Luminant Generation Company, LLC dated March 31, 2009\*\*\* (29)
  - 10.63 Second Amendment to the Agreement for the Purchase of Activated Carbon between Red River Environmental Products, LLC and Southern Company Services, Inc. dated February 26, 2009 (29)
  - 10.64 First Amendment to Purchase and Sale Agreement dated as of October 26, 2009 by and among ADA-ES, Inc., NexGen Refined Coal, LLC and Clean Coal Solutions, LLC (f/k/a ADA-NexCoal, LLC) (30)
  - 10.65 Loan Commitment Agreement dated as of October 26, 2009 by and among ADA-ES, Inc., NexGen Refined Coal Holding, LLC and Clean Coal Solutions, LLC (30)
  - 10.66 First Amendment to Chemicals, Equipment, and Technical Engineering Services Supply Agreement dated as of October 26, 2009 by and among ADA-ES, Inc., and Clean Coal Solutions, LLC (30)
  - 10.67 Continuing Unconditional Guaranty dated as of October 26, 2009 by and among ADA-ES, Inc., and NexGen Refined Coal Holdings, LLC (30)
  - 10.68 Security and Pledge Agreement dated as of October 26, 2009 by and among ADA-ES, Inc., and NexGen Refined Coal Holdings, LLC (30)
  - 10.69 Promissory Notes dated as of October 26, 2009 by and among ADA-ES, Inc., Clean Coal Solutions, LLC and NexGen Refined Coal Holdings, LLC (30)
  - 10.70 Project Crowfoot Incentive Program as amended and restated on August 13, 2008, October 15, 2008 and March 23, 2010 \*\*\* (31)
  - 10.71 Development and License Agreement with Arch Coal, Inc. dated June 25, 2010\*\*\* (32)
  - 10.72 Equipment Lease between AEC-NM, LLC and GS RC Investments LLC dated June 29, 2010\*\*\* (32)
  - 10.73 Equipment Lease between AEC-TH, LLC and GS RC Investments LLC dated June 29, 2010\*\*\* (32)
  - 10.74 Technology Sublicense Agreement between ADA-ES, Inc., Clean Coal Solutions, LLC and GS RC Investments LLC dated June 29, 2010 (32)
  - 10.75 ADA-ES, Inc. Guaranty for the benefit of GS RC Investments LLC dated June 29, 2010 (32)
  - 10.76 Agreement to Lease between Clean Coal Solutions, LLC, AEC-NM, LLC, AEC-TH, LLC, and GS RC Investments LLC dated June 29, 2010\*\*\* (32)
  - 10.77 Amended and Restated License Agreement between ADA-ES, Inc. and Clean Coal Solutions, LLC dated October 30, 2009 (32)
  - 10.78 Refined Coal Activities Supplemental Compensation Plan for Employees, Contractors and Consultants of ADA-ES, Inc dated April 20, 2010 (32)
  - 10.79 Amended and Restated 2007 Equity Incentive Plan, dated August 31, 2010 (33)
  - 10.80 US Department of Energy Cooperative Agreement No. DE-FE0004343 Evaluation of Solid Sorbents as an Industrial Retrofit Technology for Carbon Dioxide Capture , dated September 30, 2010 (33)
  - 10.81 First Amendment to the Amended and Restated License Agreement between ADA-ES, Inc. and Clean Coal Solutions, LLC dated as of August 4, 2010 (35)
  - 10.82 2010 Non-Management Compensation and Incentive Plan (34)
  - 21.1 Subsidiaries of ADA-ES, Inc.(35)
  - 23.1\* Consent of Ehrhardt Keefe Steiner & Hottman PC
  - 31.1\* Certification of Chief Executive Officer of ADA-ES, Inc. Pursuant to 17 CFR 240.13a-14(a) or 17 CFR 240.15d-14(a)
  - 31.2\* Certification of Chief Financial Officer of ADA-ES, Inc. Pursuant to 17 CFR 240.13a-14(a) or 17 CFR 240.15d-14(a)
  - 32.1\* Certification of Chief Executive Officer of ADA-ES, Inc. Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
  - 32.2\* Certification of Chief Financial Officer of ADA-ES, Inc. Pursuant to 18 U.S.C Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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Notes:

\* Filed herewith.

\*\* Management contract or compensatory plan or arrangement.

\*\*\* Portions of this exhibit have been omitted pursuant to a request for confidential treatment

(1) Incorporated by reference to Exhibit 3.1 to the Form 10-QSB for the quarter ended September 30, 2005 filed on November 10, 2005 (File No. 000-50216).



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- (2) Incorporated by reference to Exhibit 3.2 to the Form 10-Q for the quarter ended September 30, 2010 filed on November 12, 2010 (File No. 000-50216).
- (3) Incorporated by reference to Exhibit 4.1 to the Form 8-K dated October 21, 2005 filed on October 26, 2005 (File No. 000-50216).
- (4) Incorporated by reference to Exhibit 10.1 to the Form 8-K dated October 21, 2005 filed on October 26, 2005 (File No. 000-50216).
- (5) Incorporated by reference to the same numbered Exhibit to the Form 10-KSB for the year ended December 31, 2005 filed on March 30, 2006 (File No. 000-50216).
- (6) Incorporated by reference to Exhibit A to Exhibit 10.1 to the Form S-3 filed on October 18, 2004 (File No. 333-119795).
- (7) Incorporated by reference to the same numbered Exhibit to the Form 10-Q for the quarter ended September 30, 2008 filed on November 07, 2008 (File No. 000-50216).
- (8) Incorporated by reference to Exhibit 4.1 to the form S-8 filed on June 3, 2009 (File No. 333-159715).
- (9) Incorporated by reference to Exhibit 4.1 to the form S-8 filed on June 3, 2009 (File No. 333-159715).
- (10) Incorporated by reference to Exhibit 4.2 to the form S-8 filed on June 3, 2009 (File No. 333-159715).
- (11) Incorporated by reference to Exhibit 4.4 to the form S-8 filed on June 3, 2009 (File No. 333-159715).
- (12) Incorporated by reference to Exhibit 4.1 to the Form 10-Q for the quarter ended March 31, 2010 filed on May 13, 2010 (File No. 000-50216).
- (13) Incorporated by reference to the same numbered Exhibit to the Form 10-KSB for the year ended December 31, 2005 filed on March 30, 2006 (File No. 000-50216).
- (14) Incorporated by reference to Exhibit 99.2 to the Form S-8 filed on November 14, 2003 (File No. 333-110479).
- (15) Incorporated by reference to Exhibit 99.1 to the Form S-8 filed on February 6, 2004 (File No. 333-112587).
- (16) Incorporated by reference to Exhibit 99.3 to the Form S-8 filed on December 14, 2004 (File No. 333-121234).
- (17) Incorporated by reference to the same numbered Exhibit to the Form 10-KSB for the year ended December 31, 2004 filed on March 30, 2005 (File No. 000-50216).
- (18) Incorporated by reference to Exhibit 99.1 to the Form S-8 filed on April 16, 2004 (File No. 333-114546).
- (19) Incorporated by reference to Exhibit 10.2 to the Form 10-Q for the quarter ended September 30, 2006 filed on November 8, 2006 (File No. 000-50216).
- (20) Incorporated by reference to Exhibit 10.3 to the Form 10-Q for the quarter ended September 30, 2006 filed on November 8, 2006 (File No. 000-50216).
- (21) Incorporated by reference to Exhibit 10.4 to the Form 10-Q for the quarter ended September 30, 2006 filed on November 8, 2006 (File No. 000-50216).
- (22) Incorporated by reference to the same numbered Exhibit to the Form 10-K for the year ended December 31, 2006 filed on March 27, 2007 (File No. 000-50216).
- (23) Incorporated by reference to definitive proxy material proposal No. 2 for the 2007 Annual Meeting filed on April 30, 2007 (File No. 000-50216).
- (24) Incorporated by reference to the same numbered Exhibit to the Form 10-K for the year ended December 31, 2007 filed on March 14, 2008 (File No. 000-50216).
- (25) Incorporated by reference to the same numbered Exhibit to the Form 10-Q for the quarter ended June 30, 2008 filed on August 6, 2008 (File No. 000-50216).
- (26) Incorporated by reference to the same numbered Exhibit to the Form 10-Q/A for the quarter ended September 30, 2008 filed on December 24, 2008 (File No. 000-50216).
- (27) Incorporated by reference to Exhibit 10.38 to the Form 10-Q for the quarter ended September 30, 2008 filed on November 07, 2008 (File No. 000-50216).
- (28) Incorporated by reference to the same numbered Exhibit to the Form 10-K for the year ended December 31, 2008 filed on March 27, 2009 (File No. 000-50216).
- (29) Incorporated by reference to the same numbered Exhibit to the Form 10-Q for the quarter ended March 31, 2009 filed on May 14, 2009 (File No. 000-50216).
- (30) Incorporated by reference to the same numbered Exhibit to Form 10-K for the year ended December 31, 2009 filed on March 29, 2010 (File No. 000-50216).
- (31) Incorporated by reference to the same numbered Exhibit to the Form 10-Q for the quarter ended March 31, 2010 filed on May 13, 2010 (File No. 000-50216).
- (32) Incorporated by reference to the same numbered Exhibit to the Form 10-Q for the quarter ended June 30, 2010 filed on August 16, 2010 (File No. 000-50216).
- (33) Incorporated by reference to the same numbered Exhibit to the Form 10-Q for the quarter ended September 30, 2010 filed on November 12, 2010 (File No. 000-50216).
- (34) Incorporated by reference to Exhibit 99.1 to the Form S-8 filed on February 9, 2010 (File No. 333-164792).
- (35) Incorporated by reference to the same numbered Exhibit to the Form 10-K for the year ended December 31, 2010 filed on March 28, 2011 (File No. 000-50216).
- (36) Incorporated by reference to the same numbered Exhibit to the Form 10-K/A for the year ended December 31, 2010 filed on July 1, 2011 (File No. 000-50216).
- (b) **See (a)(3) above.**
- (c) **See (a)(2) above.**



SIGNATURES

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

**ADA-ES, Inc.**  
**(Registrant)**

By /s/ Mark H. McKinnies  
Mark H. McKinnies, Senior Vice  
President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

/s/ Michael D. Durham  
Michael D. Durham  
President (Chief Executive Officer)

Date: October 19, 2012

Date: October 19, 2012

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of

ADA-ES, Inc. and Subsidiaries

Littleton, Colorado

We have audited the accompanying consolidated balance sheets of ADA-ES, Inc. and subsidiaries as of December 31, 2010 and 2009, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 8, Note 12, Note 14 and Note 15 to the consolidated financial statements, the Company amended its consolidated financial statements to reflect the restatement of the Company's consolidated financial statements and related disclosures as of December 31, 2010. The Company's consolidated financial statements have been restated to record a full valuation allowance against the Company's net deferred tax assets as of December 31, 2010.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of ADA-ES, Inc. and subsidiaries as of December 31, 2010 and 2009, and the results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

/s/ Ehrhardt Keefe Steiner & Hottman PC

March 28, 2011, except for Notes 8, 12, 14 and 15 as to which the date is October 19, 2012

Denver, Colorado

## ADA-ES, Inc. and Subsidiaries

## Consolidated Balance Sheets

December 31, 2010 and 2009

*(Amounts in thousands, except share data)*

	2010 (Restated, see Note 15)	2009
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 9,696	\$ 1,456
Receivables, net of allowance for doubtful accounts of \$10 and \$17, respectively	9,066	5,812
Investment in securities	505	400
Notes receivable	1,580	
Assets held for resale and inventory	9	2,059
Prepaid expenses and other	406	1,110
<b>Total current assets</b>	<b>21,262</b>	<b>10,837</b>
<b>Property and Equipment</b> , at cost	8,041	3,100
Less accumulated depreciation and amortization	(3,235)	(2,252)
Net property and equipment	4,806	848
<b>Goodwill</b>	435	435
<b>Intangible assets</b> , net of \$71 and \$61 in amortization, respectively	260	229
<b>Investment in unconsolidated entities</b>	14,021	21,776
<b>Other assets</b>	227	6,842
<b>Total Assets</b>	<b>\$ 41,011</b>	<b>\$ 40,967</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY (DEFICIT)</b>		
<b>Current Liabilities</b>		
Accounts payable	\$ 3,646	\$ 5,312
Accrued payroll and related liabilities	1,852	578
Deferred revenue	5,639	1,452
Accrued expenses and other liabilities	244	1,306
<b>Total current liabilities</b>	<b>11,381</b>	<b>8,648</b>
<b>Long-term Liabilities</b>		
Accrued indemnity (Notes 6 and 9)	27,411	6,822
Accrued warranty and other	4,432	1,146
<b>Total Liabilities</b>	<b>43,224</b>	<b>16,616</b>
<b>Commitments and Contingencies (Notes 6, 7 and 9)</b>		
<b>Stockholders Equity (Deficit)</b>		
ADA-ES, Inc. stockholders equity (deficit)		
Preferred stock: 50,000,000 shares authorized, none outstanding		
Common stock: no par value, 50,000,000 shares authorized, 7,538,861 and 7,093,931 shares issued and outstanding at December 31, 2011 and 2010, respectively	39,627	37,000

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Accumulated deficit		(43,875)	(12,748)
Total ADA-ES, Inc. stockholders equity (deficit)		(4,248)	24,252
Non-controlling interest		2,035	99
<b>Total Stockholders Equity (Deficit)</b>		<b>(2,213)</b>	<b>24,351</b>
<b>Total Liabilities and Stockholders Equity (Deficit)</b>	<b>\$</b>	<b>41,011</b>	<b>\$ 40,967</b>

See accompanying notes.

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## ADA-ES, Inc. and Subsidiaries

## Consolidated Statements of Operations

For the Years Ended December 31, 2010 and 2009

*(Amounts in thousands, except per share data)*

	2010 (Restated, See Note 15)	2009
<b>Revenues</b>		
Emission control	\$ 9,825	\$ 15,947
CO <sub>2</sub> capture	2,073	1,526
Refined coal	10,383	2,588
<b>Total revenues</b>	<b>22,281</b>	<b>20,061</b>
<b>Cost of Revenues</b>		
Emission control	6,107	9,544
CO <sub>2</sub> capture	1,066	969
Refined coal	1,440	3,357
<b>Total cost of revenues</b>	<b>8,613</b>	<b>13,870</b>
<b>Gross Margin before Depreciation and Amortization</b>	<b>13,668</b>	<b>6,191</b>
<b>Other Costs and Expenses</b>		
General and administrative	32,790	16,745
Research and development	911	709
Depreciation and amortization	917	577
<b>Total expenses</b>	<b>34,618</b>	<b>18,031</b>
<b>Operating Loss</b>	<b>(20,950)</b>	<b>(11,840)</b>
<b>Other Income (Expense)</b>		
Interest and other income	2,494	34
Settlement of litigation, net	6,072	
Net equity in net income (loss) from unconsolidated entities	(8,037)	(3,243)
<b>Total other income (expense)</b>	<b>529</b>	<b>(3,209)</b>
<b>Loss from Continuing Operations Before Income Tax (Expense) Benefit and Non-controlling Interest</b>	<b>(20,421)</b>	<b>(15,049)</b>
<b>Income Tax (Expense) Benefit</b>	<b>(7,093)</b>	<b>5,546</b>
<b>Net Loss Before Non-controlling Interest</b>	<b>(27,514)</b>	<b>(9,503)</b>
<b>Non-controlling Interest</b>	<b>(3,613)</b>	<b>732</b>



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<b>Net Loss Attributable to ADA-ES, Inc.</b>	<b>\$ (31,127)</b>	<b>\$ (8,771)</b>
<b>Net Loss Per Common Share Basic and Diluted Attributable to ADA-ES, Inc.</b>	<b>\$ (4.21)</b>	<b>\$ (1.26)</b>
<b>Weighted Average Common Shares Outstanding</b>	<b>7,393</b>	<b>6,973</b>
<b>Weighted Average Diluted Common Shares Outstanding</b>	<b>7,393</b>	<b>6,973</b>

See accompanying notes.

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## ADA-ES, Inc. and Subsidiaries

## Consolidated Statements of Changes in Stockholders Equity (Deficit)

For the Years Ended December 31, 2010 and 2009

*(Amounts in thousands, except share data)*

	Common Stock		(Accumulated	Total ADA-ES	Non-	Total
	Shares	Amount	Deficit)	Stockholders	controlling	Equity
				Equity	Interest	(Deficit)
				(Deficit)		
<b>Balances, December 31, 2008</b>	<b>6,755,932</b>	<b>\$ 35,812</b>	<b>\$ (3,977)</b>	<b>\$ 31,835</b>	<b>\$ 25,152</b>	<b>\$ 56,987</b>
Stock-based compensation	265,649	997		997		997
Issuance of stock on exercise of options	1,250	4		4		4
Issuance of stock to 401(k) plan	71,100	204		204		204
Equity contributions					738	738
Deconsolidation of ADA Carbon Solutions, LLC					(25,059)	(25,059)
Expense of stock registration		(17)		(17)		(17)
Net loss			(8,771)	(8,771)	(732)	(9,503)
<b>Balances, December 31, 2009</b>	<b>7,093,931</b>	<b>\$ 37,000</b>	<b>\$ (12,748)</b>	<b>\$ 24,252</b>	<b>\$ 99</b>	<b>\$ 24,351</b>
Stock-based compensation	214,089	1,024		1,024		1,024
Issuance of stock on exercise of options	41,850	347		347		347
Issuance of stock to 401(k) plan	45,106	282		282		282
Issuance of stock for cash	143,885	1,000		1,000		1,000
Equity contributions by non-controlling interest					2,090	2,090
Distributions to non-controlling interest					(3,767)	(3,767)
Expense of stock issuance and registration		(26)		(26)		(26)
Net (loss) income (restated)			(31,127)	(31,127)	3,613	(27,514)
<b>Balances, December 31, 2010, as restated, see Note 15</b>	<b>7,538,861</b>	<b>\$ 39,627</b>	<b>\$ (43,875)</b>	<b>\$ (4,248)</b>	<b>\$ 2,035</b>	<b>\$ (2,213)</b>

See accompanying notes.

## ADA-ES, Inc. and Subsidiaries

## Consolidated Statements of Cash Flows

Years Ended December 31, 2010 and 2009

*(Amounts in thousands)*

	2010 (Restated, see Note 15)	2009
<b>Cash Flows from Operating Activities</b>		
Net loss	\$ (31,127)	\$ (8,771)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	917	577
Loss on disposal of assets		17
Provision for doubtful accounts	(7)	
Deferred tax expense (benefit)	7,093	(5,555)
Expenses paid with stock, restricted stock and stock options	1,306	1,201
Non-controlling interest in income (loss) from subsidiaries	3,613	(732)
Net equity in net income/loss from unconsolidated entities	8,037	3,243
Non-cash gain from joint venture partner	(1,768)	
Changes in operating assets and liabilities:		
Trade receivables, net	(3,247)	282
Assets held for resale and inventory		(2,056)
Prepaid expenses and other	289	(155)
Accounts payable	(1,666)	2,567
Accrued expenses	20,589	(407)
Deferred revenue and other	7,686	8,186
Net cash provided by (used in) operating activities	11,715	(1,603)
<b>Cash Flows from Investing Activities</b>		
Capital expenditures for equipment, patents and development projects	(2,919)	(296)
Investment in securities	(105)	(400)
Cash balance held in deconsolidated entity		(25,171)
Cash contributions to equity in unconsolidated entity	(283)	
Principal payments received on notes receivable	188	
Net cash used in investing activities	(3,119)	(25,867)
<b>Cash Flows from Financing Activities</b>		
Non-controlling interest equity contributions	2,090	738
Distributions to non-controlling interest	(3,767)	
Issuance of common stock and exercise of stock options	1,347	4
Stock issuance and registration costs	(26)	(17)
Net cash (used in) provided by financing activities	(356)	725
<b>Increase (Decrease) in Cash and Cash Equivalents</b>	<b>8,240</b>	<b>(26,745)</b>
<b>Cash and Cash Equivalents, beginning of year</b>	<b>1,456</b>	<b>28,201</b>
<b>Cash and Cash Equivalents, end of year</b>	<b>\$ 9,696</b>	<b>\$ 1,456</b>

**Supplemental Schedule of Non-Cash Flow Financing Activities**

Stock and stock options issued for services	\$	1,306	\$	1,201
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See accompanying notes.

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## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. **SUMMARY OF NATURE OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES:**

**Nature of Operations** ADA-ES, Inc. ( ADA ), its wholly-owned subsidiary, ADA Environmental Solutions, LLC ( ADA LLC ) and ADA s 50% joint venture interest in Clean Coal Solutions, LLC ( Clean Coal ), are collectively referred to as the Company . Our Company is principally engaged in providing environmental technologies and specialty chemicals to the coal-burning electric power generation industry. Our Company generates a substantial part of its revenue from the sale of Activated Carbon Injection ( ACI ) systems, contracts co-funded by the government and industry and development and sale of technology and services for the refined coal ( RC ) market. The Company s sales occur principally throughout the United States.

**Principles of Consolidation** The Company s consolidated financial statements include the accounts of ADA, ADA LLC and Clean Coal and its wholly owned subsidiaries. All significant intercompany transactions have been eliminated from the consolidated financial statements.

**Cash and Cash Equivalents** The Company considers all highly liquid debt instruments with purchased maturities of three months or less to be cash equivalents. The Company maintains the majority of its cash in money market accounts. The amount on deposit at December 31, 2010, was held in two commercial banks both of which deposits were in excess of the insurance limits of the Federal Deposit Insurance Corporation.

**Receivables and Credit Policies** Trade receivables are uncollateralized customer obligations due under normal trade terms requiring payment within 30 days from the invoice date. Management reviews trade receivables periodically and reduces the carrying amount by a valuation allowance that reflects management s best estimate of the amount that may not be collectible. The balance was as follows:

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
Receivables balance	\$ 8,239	\$ 5,041
Unbilled revenues balance	827	771
<b>Total</b>	<b>\$ 9,066</b>	<b>\$ 5,812</b>

**Assets Held for Resale and Inventory** Assets held for resale and inventory consisted of chemicals used for the production of RC and the RC facilities held for sale at December 31, 2009. The Company records inventory at the lower of cost or market as determined on a first-in, first-out basis and consisted of:

	At December 31,	
	2010	2009
	<i>(In thousands)</i>	
Chemicals and materials	\$ 0	\$ 69
Equipment held for sale	0	1,987
ACI parts	9	3
<b>Total inventory</b>	<b>\$ 9</b>	<b>\$ 2,059</b>

**Goodwill** The Company reviews the recoverability of goodwill at least annually as of December 31 and any time business conditions indicate a potential change in recoverability. During 2010 and 2009, we did not have any recognized goodwill impairment charges.

**Intangible Assets** Intangible assets principally consist of patents.



## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

	At December 31,	
	2010	2009
	(In thousands)	
<b>Patents:</b>		
Cost	\$ 331	\$ 290
Less accumulated amortization	(71)	(61)
Total intangible assets, net	\$ 260	\$ 229
Amortization expense of intangible assets for the year	\$ 10,000	\$ 12,000
Amortization life in years of patents	17	17
Anticipated annual amortization expense over the next 5 years	\$ 15,000	\$ 13,000
Weighted average amortization period in years	14	13

**Investments** Investments in securities represents a certificate of deposit which is recorded at its fair value.

**Investment in Unconsolidated Entities** On October 1, 2008, the Company entered into a Joint Development Agreement ( JDA ) and formed a joint venture with Energy Capital Partners I, LP and its affiliated funds ( ECP ) known as ADA Carbon Solutions, LLC ( Carbon Solutions ). As of December 31, 2010, ADA owns a 25.9% interest in Carbon Solutions. Among Carbon Solutions eight wholly-owned subsidiaries are ADA Carbon Solutions (Red River), LLC ( Red River ), and Crowfoot Supply Company, LLC ( Crowfoot Supply ). As of December 31, 2010, our net investment in Carbon Solutions was \$13.6 million and is being accounted for under the equity method of accounting. Accordingly, our respective share of Carbon Solutions net loss for the period has been recognized in the consolidated statement of operations and our investment in Carbon Solutions has been reduced by our respective share of such loss. Carbon Solutions is principally engaged in development activities related to its activated carbon business and selling of activated carbon from its AC manufacturing facility (the AC Facility ).

On January 20, 2010, the Company, together with NexGen Resources Corporation ( NexGen ), formed Clean Coal Solutions Services, LLC ( CCSS ) for the purpose of operating the RC facilities leased to a third party. The Company has a 50% ownership interest in CCSS (but does not control it) and accordingly has accounted for the investment under the equity method of accounting.

The Company evaluates these investments annually for impairment other than temporary declines in value. At December 31, 2010, no such declines existed on such investments.

**Property and Equipment** Property and equipment is stated at cost. Depreciation on assets is provided using the straight-line method based on estimated useful lives ranging from 3 to 10 years. Maintenance and repairs are charged to operations as incurred and maintenance and repair of the RC facilities are the responsibility of CCSS under agreements with the lessee of the facilities. When assets are retired, or otherwise disposed of, the property accounts are relieved of costs and accumulated depreciation and any resulting gain or loss is credited or charged to income.

**Leasehold Improvements** Leasehold improvements are recorded at cost and included with property and equipment. Amortization expense is computed using the straight-line method over the shorter of the estimated useful lives of the assets or the period of the related lease.

**Warranty Costs** Under certain ACI Systems contracts, the Company may grant performance guaranties for a specified period and the achievement of a certain plant operating conditions. In the event the equipment fails to perform as specified, the Company is obligated to correct or replace the equipment. Estimated warranty costs are recorded at the time of sale based on current industry factors.

**Impairment of Long-Lived Assets (other than Goodwill)** The Company routinely performs an evaluation of the recoverability of the carrying value of its long-lived assets to determine if facts and circumstances indicate that the carrying value of assets or intangible assets may be impaired and if any adjustment is warranted. Based on the Company s evaluation as of December 31, 2010 and 2009, no impairment of value existed for long-lived assets.

**Fair Value of Financial Instruments** The carrying amounts of financial instruments, including cash, cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value due to the short maturity of these instruments. The fair values of investments were estimated based on quoted market prices for those investments.

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Revenue Recognition ADA follows the percentage of completion method of accounting for all significant contracts excluding government contracts and chemical sales. The percentage of completion method of reporting income takes into account the percent of work completed and overall revenue for contracts in progress. The Company recognizes revenue on government contracts based on the time and expenses incurred to date.

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## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
Cost in excess of billing included in accounts receivable, net	\$ 602	\$ 659
Billing in excess of recognized income included in deferred revenue	\$ 452	\$ 1,300

Chemical sales are recognized when products are shipped to customers. RC revenues are recognized when RC production occurs. Based upon historical trends no reserve has been established for any returns. Chemicals are shipped FOB shipping point and title passes to the customer when the chemicals are shipped. RC products are typically produced by adding proprietary chemicals to coal at the customer's site and title passes to the customer when the production process is complete. The Company's sales agreements for chemicals do not contain a right of inspection or acceptance provision and products are generally received by customers within one day of shipment. The Company has had no significant history of non-acceptance, or of replacing goods damaged or lost in transit.

Consulting revenue is recognized as services are performed and collection is assured.

Cost of Revenues Costs of revenues include all labor, fringe benefits, subcontract labor, chemical and coal costs, materials, equipment, supplies and travel costs directly related to the Company's production of revenue.

General and Administrative General and administrative costs include personnel related fringe benefits, sales and administrative staff labor costs, legal expenses, facility costs and other general costs of conducting business.

Penalties and Interest Costs Under certain circumstance(s), the Company might have a penalty or interest charge that is classified as an expense and is shown in our general and administrative costs. The cost is charged in the period the Company was notified of the charge.

	Year Ended December 31,	
	2010	2009
	<i>(In thousands)</i>	
Penalty and interest charges	\$ 1	\$ 6

Research and Development Costs Research and development costs are charged to operations in the period incurred.

Income Taxes The Company accounts for income taxes under the liability method whereby deferred tax assets and liabilities are determined based on tax rates and laws enacted as of the date of the consolidated balance sheets. A valuation allowance is provided if and when deferred tax assets are not expected to be realized. At each reporting date, management reviews deferred tax assets and liabilities and any related valuation allowance and, if necessary, revises them to reflect changed circumstances. In a situation where recent losses have been incurred, the accounting standards require convincing evidence that there will be sufficient future taxable income to realize deferred tax assets. Carbon Solutions and Clean Coal are flow-through tax entities and therefore the owners are taxed or receive tax benefits on their respective ownership interests.

**ADA-ES, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Net Income (Loss) Per Share** Basic EPS is calculated by dividing the income or (loss) available to common stockholders by the weighted average number of common shares outstanding for the period. Diluted EPS is calculated using the same numerator as basic EPS and further reflects the potential dilution that could occur if outstanding stock options were exercised. No stock options were included in the calculations for 2010 or 2009 as their inclusion would be anti-dilutive due to our net losses for those periods.

**Stock-Based Compensation** The Company records equity compensation to employees at estimated fair value.

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
Stock based compensation before tax	\$ 1,306	\$ 1,201
Stock based compensation after tax	833	720
Basic and diluted (loss) per share	(0.11)	(0.11)

**Use of Estimates** The preparation of the Company's consolidated financial statements in conformity with generally accepted accounting principles requires the Company's management to make estimates and assumptions that affect the amounts reported in these financial statements and accompanying notes. Actual results could differ from those estimates.

The Company makes significant assumptions concerning:

the impairment of and the remaining realizability of its long-lived assets including equity method investments, goodwill and intangibles;

estimates of certain overhead and other rates on research contracts with the U.S. Government, which are subject to future audits;

fair value of stock options;

warranty costs;

the allowance for doubtful accounts, which is based on historical experience;

the percentage of completion method of accounting for significant long-term contracts, which is based on estimates of gross margins and of the costs to complete such contracts;

the deferred tax assets expected to be realized in future periods; and

the period over which we estimate we will earn up front license payments.

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Segment Information The Company follows established standards on the way that public companies report financial information about operating segments in annual financial statements and required reporting of selected information about operating segments in interim financial statements issued to the public. The standard also provides for disclosures regarding products and services, geographic areas, and major customers. These standards define operating segments as components of a company about which discrete financial information is available that is evaluated regularly by the chief operating decision maker(s) in deciding how to allocate resources and in assessing performance.

In applying these standards, the Company has defined its components as three reportable segments:

emission controls and other ( EC ),

CO<sub>2</sub> Capture ( CC ) and

refined coal ( RC ).

Reclassification Certain amounts in the 2009 consolidated financial statements have been reclassified to conform to the 2010 presentation. Such reclassification had no effect on net income.

## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Recently Issued Accounting Pronouncements No pronouncements have been issued which would have a significant impact on the Company.

2. **NOTES RECEIVABLE:**

NexGen Refined Coal, LLC ( NexGen ), the Company's partner in Clean Coal, is required to pay the Company up to \$4 million in order to maintain its 50% interest in Clean Coal. In June 2010, NexGen executed notes payable to the Company for approximately \$1.8 million with a due date of June 2012. Prior to that date, the Company expects to receive payments from NexGen based upon a portion of cash distributed to NexGen from Clean Coal, with a portion of that amount to be applied as payment on the notes and any additional amounts to be applied to the remainder of the total \$4 million expected to be paid by NexGen. The notes and remaining balance are accruing interest at the rate of 5% per annum.

Full payment of the principal amount of the notes is expected to be received by the Company by the end of 2011. During the second quarter of 2010, the Company recognized a non-operating gain of \$1.8 million as a result of these notes, which is included in interest and other income on the consolidated statement of operations. The Company has received \$188,000 through December 31, 2010 in principal payments on these notes.

3. **PROPERTY AND EQUIPMENT:**

Property and equipment consisted of the following at the dates indicated:

	Life in Years	As of December 31,	
		2010	2009
		<i>(In thousands)</i>	
Machinery and equipment	3-10	\$ 2,497	\$ 2,346
Leasehold improvements	2-5	535	504
Furniture and fixtures	3-7	284	250
Assets under lease (See Note 10)	10	4,725	0
		8,041	3,100
Less accumulated depreciation and amortization		(3,235)	(2,252)
<b>Total property and equipment, net</b>		<b>\$ 4,806</b>	<b>\$ 848</b>

	Year Ended December 31,	
	2010	2009
	<i>(In thousands)</i>	
Depreciation and amortization of property and equipment	\$ 906	\$ 565

4. **DEFERRED REVENUE:**

Deferred Revenue consists of:

billing in excess of costs and earnings on uncompleted contracts;

unearned revenues on licensing of the Company's intellectual property (as discussed further below); and

deferred rent revenue related to Clean Coal's lease of its RC facilities (also as discussed further below).

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**ADA-ES, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS***Arch Coal*

In June 2010, the Company entered into a Development and License Agreement with Arch Coal, Inc. ( Arch ) in which the Company licensed, on an exclusive non-transferable basis, the use of certain of its technology to enhance coal by the application of additives and received a non-refundable license fee of \$2 million in cash. The Company expects to recognize these revenues as the technology is further evaluated and developed and the licensee realizes the benefits of the technology. The Company expects to sell certain chemical additives to the licensee, which is expected to enhance the licensee's coal. Future revenues, which are expected to be recognized in the next year are included in current deferred revenues. The Company expects to recognize approximately \$1.3 million by the end of 2011.

*Clean Coal*

In June 2010, Clean Coal executed agreements to lease its RC facilities. These agreements provided for, among other things, a prepaid rent payment of \$9 million for both leases that was made before June 30, 2010.

During 2010, the Company has recognized \$10.4 million in total rent revenues which includes \$1.8 million from the initial prepaid rent payment. Future revenues expected to be recognized with respect to the prepaid rent paid by the lessee are included in deferred revenues for the current period and in deferred revenues, accrued warranty and other for the long-term period, and are as follows:

Year ending December 31,	Expected revenue recognition (In thousands)
2011	\$ 3,600
2012	3,600
<b>Total</b>	<b>\$ 7,200</b>

**5. GOVERNMENT AND INDUSTRY FUNDED CONTRACTS:**

The Company has participated in several contracts awarded by the Department of Energy (the DOE ). The Company typically invoices the DOE and industry cost-share partners monthly for labor and expenditures plus estimated overhead factors, less any cost share amounts. The contracts under which the Company has performed are subject to audit and future appropriation of funds by Congress. The Company has not experienced adverse adjustments as a result of government audits, however, the government audits for years ended 2004 through 2010 have not yet been finalized.

	As of December 31,	
	2010	2009
	(In thousands)	
Revenue recognized related to CC Segment	\$ 2,073	\$ 1,526
Unearned contract amount	\$ 18,800	\$ 1,600
Expected revenue in 2011	\$ 2,400	\$ 0

**6. INVESTMENTS IN UNCONSOLIDATED ENTITIES:***Carbon Solutions*

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In October 2008, the Company entered into the Joint Development Agreement (the JDA ), a Limited Liability Company Agreement (the LLC Agreement ) and other related agreements with ECP, for the purposes of funding and constructing the activated carbon manufacturing facility in Red River Parish, Louisiana and similar projects.

Also in October 2008, the Company entered into a Securities Purchase Agreement ( SPA ) providing for the potential sale to ECP of 1,800,000 shares of Series A Convertible Preferred Stock and 1,800,000 shares of Series B Convertible Preferred Stock. The Company terminated the SPA on March 23, 2010.

Under the JDA and the LLC Agreement, the Company transferred the development assets and certain liabilities relating to the production, processing and supply of AC to the Company s then wholly-owned subsidiaries Red River, Morton, Underwood and Crowfoot Supply and subsequently transferred the equity in these subsidiaries and certain contracts, goodwill and intellectual property relating to its AC supply business to Carbon Solutions as our \$18.4 million initial contribution.

As of June 30, 2009, the Company deconsolidated Carbon Solutions as the Company no longer held a controlling interest in Carbon Solutions as the joint venture partner converted a portion of its preferred equity contribution to ordinary capital contributions as of that date. Additional preferred equity contributions have been converted in 2010 and accordingly, the Company s interest decreased to 25.9% as of December 31, 2010. After the deconsolidation, the Company has accounted for the investment in Carbon Solutions under the equity method.

In addition to the JDA and LLC Agreement, the Company has the following related agreements with Carbon Solutions:

*Master Services Agreement.* Pursuant to a Master Services Agreement ( MSA ), the Company provides certain accounting, administrative, oversight, and other services to Carbon Solutions at agreed-upon rates.

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
Service revenue related to MSA included in EC Segment	\$ 293	\$ 1,100
Amounts due from Carbon Solutions included in trade receivables	\$ 55	\$ 161

*Intellectual Property License.* Pursuant to an IP License Agreement, the Company has licensed to Carbon Solutions all intellectual property relating primarily to the manufacture of AC (that was not transferred to Carbon Solutions under the JDA) or any application or use of AC competitive with the control of mercury emissions from coal-fired power plants (the Field ) on an exclusive, perpetual, royalty-free basis and has provided certain rights of first refusal to Carbon Solutions with respect to intellectual property relating to the Field the Company may develop in the future.

Under the terms of the JDA, the Company is required to indemnify ECP and Carbon Solutions for certain damages and expenses they have incurred with respect to the Company's litigation with Norit Americas, Inc. ( Norit ) (See Note 9). As of December 31, 2010, the Company has recorded a liability to Carbon Solutions of approximately \$27.4 million related to such damages and expenses paid by Carbon Solutions. These amounts have been classified as non-current liabilities as the Company expects to satisfy the obligation through resources not involving current assets.



**ADA-ES, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Following is unaudited summarized information as to the assets, liabilities and results of operations of Carbon Solutions:

	As of December 31, 2010	As of December 31, 2009
	<i>(In thousands)</i>	
Current assets	\$ 40,589	\$ 29,029
Property, equipment and other long term assets	325,769	230,588
<b>Total assets</b>	<b>\$ 366,358</b>	<b>\$ 259,617</b>
Total liabilities	\$ 214,638	\$ 95,680
	Year Ended December 31, 2010	Year Ended December 31, 2009
	<i>(In thousands)</i>	
Net revenue	\$ 18,765	\$ 7,482
Net loss	\$ (27,806)	\$ (7,268)

As of December 31, 2010, a demand note payable to ECP for monies advanced in the amount of \$193.8 million is included in Carbon Solutions liabilities.

Clean Coal Solutions Services

As discussed in Note 1 above, on January 20, 2010, the Company, together with NexGen, formed Clean Coal Solutions Services, LLC. The Company's investment of \$401,000 as of December 31, 2010 includes its share of CCSS income since its formation, which has been accounted for under the equity method of accounting.

Following is unaudited summarized information as to assets, liabilities and results of operations of CCSS:

	As of December 31, 2010
	<i>(In thousands)</i>
Current assets	\$ 34,534
Property, equipment and other long term assets	17,644
<b>Total assets</b>	<b>\$ 52,178</b>
Total liabilities	\$ 33,896
	Year Ended December 31, 2010
	<i>(In thousands)</i>
Net revenue	\$ 90,854
Net income- attributed to CCSS	\$ 236

7. **JOINT VENTURE AND TRANSACTIONS WITH NEXGEN:**

In November 2006, the Company sold a 50% interest in its RC technology to a joint venture called Clean Coal Solutions, LLC, which was formed in 2006 with NexGen, to market RC technology. The Operating Agreement requires NexGen and the Company to each pay 50% of the costs of operating Clean Coal and specifies certain duties that both parties are obligated to perform.

**ADA-ES, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

At present, we are considered the primary economic beneficiary of this joint venture and have consolidated the accounts of Clean Coal. Clean Coal's function is to supply chemicals, additives, equipment and technical services to cyclone fired boiler users, but Clean Coal's primary purpose is to put into operation facilities that produce RC that qualifies for tax credits that are available under Section 45 of the Internal Revenue Code (Section 45 Tax Credits). Clean Coal qualified two facilities in 2009 for such purposes and monetized those facilities. As discussed in Note 2 above, NexGen has the right to maintain its 50% interest in Clean Coal by paying us an additional \$4 million. Under the terms of the agreement, as amended, NexGen may elect to retain its interest in Clean Coal by paying the Company up to \$4 million (plus any accrued interest under the notes described below) as follows: (a) \$1.8 million under NexGen's two-year promissory notes issued to the Company in June 2010, plus (b) 25% of cash distributions (other than for income taxes) due to NexGen from Clean Coal. NexGen's promissory notes are shown as notes receivable, bear interest at 5% per annum, are payable out of 35% of cash distributions to NexGen and are secured by NexGen's interest in Clean Coal. NexGen will make payments from cash that would otherwise be distributable to NexGen under the Clean Coal Operating Agreement. NexGen is not obligated to make those payments, but if it does not do so, it will forfeit a part of its interest in Clean Coal in direct proportion to the amount of \$4 million that it elects not to pay, if any. If NexGen fails to make any one payment, it cannot reclaim its interest by making later payments. In no event are we required to refund any of the cash payments made to us by NexGen.

Following is unaudited summarized information as to assets, liabilities and results of operations of Clean Coal:

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
<b>Primary assets of Clean Coal</b>		
Cash and cash equivalents	\$ 1,335	\$ 703
Accounts receivable, net	4,835	0
Chemical inventory and equipment for resale	0	2,300
Property plant and equipment including assets under lease, net	5,066	53
<b>Primary liabilities of Clean Coal</b>		
Accounts payable and accrued liabilities	\$ 362	\$ 1,800
Deferred revenue, current	3,600	1,000
Deferred revenue, long-term	3,600	0
Net costs included in net operating loss related to our RC efforts	\$ 318	\$ 388

**8. STOCKHOLDERS' EQUITY (DEFICIT) (RESTATED):**

Stockholders' equity (deficit) for the fiscal year ended December 31, 2010 has been restated. The restated portion of stockholders' equity (deficit) for the fiscal year ended December 31, 2010 includes a \$15.7 million reduction attributable to the recognition of a valuation allowance against the Company's net deferred tax assets. See Notes 12 and 15 for additional discussion.

Pursuant to certain agreements, on March 23, 2010, the Company issued 143,885 shares of its Common Stock to Arch and received proceeds, net of issuance costs, totaling \$974,000. The Company has filed a registration statement, which was effective September 1, 2010, to register these shares in accordance with provisions of the registration rights agreement, which was executed at the time of the stock subscription agreement.

For the years ended December 31, 2010 and 2009, the non-controlling interest portion of stockholders' equity (deficit) includes a non-controlling interest related to Clean Coal.

Since 2003, the Company has had several stock and option plans, in addition to the Amended and Restated 2007 Equity Incentive Plan dated as of August 31, 2010 (the 2007 Plan) and the ADA-ES, Inc. Profit Sharing Retirement Plan, which is a plan qualified under Section 401(k) of the Internal Revenue Code (the 401(k) Plan) described below. These plans allow the Company to issue stock or options for shares of Common Stock to employees, the Board of Directors and non-employees.



## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Following is a table of options activity for the two years ended December 31, 2010:

Options Activity	Employee and Director Options	Non-Employee Options	Weighted Average Exercise Price
Options Outstanding, December 31, 2008	272,806	9,000	\$ 10.21
Options granted	0	0	0
Options expired	(1,291)	0	13.80
Options exercised	(1,250)	0	2.80
Options Outstanding, December 31, 2009	270,265	9,000	10.23
Options granted	0	0	0
Options expired	(14,495)	(9,000)	14.11
Options exercised	(41,850)	0	8.60
Options Outstanding, December 31, 2010	213,920	0	\$ 10.18

Following is a table of aggregate intrinsic value of options exercised and exercisable for the two years ended December 31, 2010:

Aggregate Intrinsic Value of Options	Value	Average Market Price
Exercised, December 31, 2009	\$ 1,000	\$ 3.70
Exercised, December 31, 2010	\$ (86,000)	\$ 6.23
Exercisable, December 31, 2009	\$ (1,200,000)	\$ 6.10
Exercisable, December 31, 2010	\$ 209,000	\$ 11.16

Stock options outstanding and exercisable at December 31, 2010 are summarized in the table below:

Range of Exercise Prices	Number of Options Outstanding and Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Lives
\$2.80	8,165	\$ 2.80	2.8
\$8.60 - \$10.20	143,743	\$ 8.66	4.9
\$13.80 - \$15.20	62,012	\$ 14.70	3.5
	213,920	\$ 10.18	4.4

No stock options were granted and/or vested during the year ended December 31, 2010.

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Although the Company adopted the 2007 Plan in 2007, it was further amended and restated as of August 31, 2010 to make non-material changes to assure Internal Revenue Code Section 409A compliance and to increase the non-management director annual grant limit to 15,000 shares of Common Stock from 10,000 shares. The 2007 Plan authorizes the issuance to employees, directors and non-employees of up to 745,779 shares of Common Stock, either as restricted stock grants or to underlie options to purchase shares of the Company's Common Stock.

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*ADA-ES, INC. AND SUBSIDIARIES***NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

A summary of the status of the non-vested shares under the 2007 Plan for the two years ended December 31, 2010 is presented below:

		Weighted Average Grant Date Fair Value
Non-vested Shares	Shares	
Non-vested at December 31, 2008	110,786	\$ 8.82
Granted	67,689	5.05
Vested	(50,978)	8.81
Forfeited	(11,184)	8.37
Non-vested at December 31, 2009	116,313	\$ 6.65
Granted	34,175	5.94
Vested	(52,634)	8.06
Forfeited	(4,918)	5.55
Non-vested at December 31, 2010	92,936	\$ 5.46

In 2009, the Company revised its 401(k) Plan. The revision permits the Company to issue shares of its Common Stock to employees to satisfy its obligation to match employee contributions under the terms of the Plan in lieu of matching contributions in cash. The Company reserved 300,000 shares of its Common Stock for this purpose. The value of Common Stock issued as matching contributions under the Plan is determined based on the per share market value of our Common Stock on the date of issuance.

## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Following is a table summarizing the activity under various stock issuance plans for the two years ended December 31, 2010:

	Stock Issuance Plans		
	2007 Plan	401(k) Plan	Other Stock Plans
Balance available, December 31, 2008	418,657	300,000	26,065
Evergreen addition	107,224	0	0
Restricted stock issued to new, anniversary and executive employees	(67,689)	0	0
Restricted stock repurchased	11,184	0	0
Stock issued based on incentive and matching programs to employees	(5,500)	(71,100)	0
Stock issued to executives, directors and non- employees	(196,644)	0	(7,000)
Balance available, December 31, 2009	267,232	228,900	19,065
Evergreen addition	33,800	0	0
Restricted stock issued to new, anniversary and executive employees	(34,175)	0	0
Restricted stock repurchased	4,918	0	0
Stock issued based on incentive and matching programs to employees	(51,345)	(45,106)	0
Stock issued to executives, directors and non- employees	(126,487)	0	(7,000)
Balance available, December 31, 2010	93,943	183,794	12,065
Expense recognized under the different plans for the two years ended:	<i>(In thousands)</i>		
December 31, 2009	\$ 954	\$ 204	\$ 43
December 31, 2010	\$ 983	\$ 282	\$ 41
Unrecognized expense under the different plans for the two year ended:	<i>(In thousands)</i>		
December 31, 2009	\$ 363	\$ 0	\$ 0
December 31, 2010	\$ 341	\$ 0	\$ 0

**9. COMMITMENTS AND CONTINGENCIES:**

**Retirement Plan** The Company assumed a defined contribution and 401(k) plan covering all eligible employees as of January 1, 2003 which was revised in 2009, and makes matching contributions to the plan in the form of cash and its common stock. Such contributions (in 000 s) for the years ended December 31, are as follows:

	2010	2009
Matching contributions in stock	\$ 282	\$ 204
Matching contributions in cash	0	63



Total	\$ 282	\$ 267
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## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**Performance Guarantee on AC Injection Systems** Under certain contracts to supply ACI systems, the Company may guarantee the performance of the associated equipment for a specified period to the owner of the power plant. The Company may also guarantee the achievement of a certain level of mercury removal based upon the injection of a specified quantity of a qualified AC at a specified rate given other plant operating conditions. In the event the equipment fails to perform as specified, the Company may have an obligation to correct or replace the equipment. In the event the level of mercury removal is not achieved, the Company may have a make right obligation within the contract limits. The Company assesses the risks inherent in each applicable contract and accrues an amount that is based on estimated costs that may be incurred over the performance period of the contract. Such costs are included in the Company's accrued warranty and other liabilities in the accompanying consolidated balance sheets. Any warranty costs paid out in the future will be charged against the accrual. The adequacy of warranty accrual balance is assessed at least quarterly based on the then current facts and circumstances and adjustments are made as needed. The change in the carrying amount of the Company's performance guaranties for the years ended December 31, are as follows:

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
Beginning balance	\$ 604	\$ 546
Performance guaranties accrued	74	138
Expenses paid	(66)	(80)
Ending balance	\$ 612	\$ 604

In some cases, a performance bond may be purchased and held for the period of the warranty that can be used to satisfy the obligation. At December 31, 2010, the Company had a standby letter of credit for \$105,000 related to an installation of an ACI system. This commitment was not recorded on the Company's consolidated balance sheet, as the Company does not expect the funds to be called upon under the letter of credit.

**Purchase Obligations** As of December 31, 2010, the Company expects to pay purchase obligations totaling approximately \$433,000 primarily for the purchase of components and services related to our Emission Control Segment in 2011.

**Operating Lease Obligations** The Company leases office facilities under non-cancellable operating lease agreements. Our facilities leases generally provide for periodic rent increases and renewal options. Our operating lease agreements expire on August 31, 2012. Annual minimum commitments under the leases are shown in the table below:

	Operating Lease Commitments <i>(In thousands)</i>
Years ending December 31,	
2011	\$ 240
2012	162
Total operating lease commitments	\$ 402

Rental expense incurred for the years ended December 31, is as follows:

2010	2009
<i>(In thousands)</i>	

Rent expense	\$ 339	\$ 259
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*ADA-ES, INC. AND SUBSIDIARIES***NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The Company has subleased approximately 5,300 square feet of combined office and warehouse space to a related third party. The term of this lease runs through August 31, 2012. Future annual sublease payments are expected to be received as follows:

	<i>(In thousands)</i>
Years ending December 31,	
2011	\$ 84
2012	56
Total	\$ 140

**Litigation** The Company is involved in litigation with Norit. The Norit suit has been moved to arbitration with final arguments in this action conducted on February 8, 2011. The Company has made no estimate of potential loss resulting from the action as such losses, if any, cannot be determined at this time. Accordingly, no provision for a loss has been recognized in these financial statements other than the potential indemnity obligations related to Carbon Solutions discussed elsewhere and below.

In December 2010, we reached an agreement with Calgon Carbon Corporation ( Calgon ) settling their judgment award to us for \$7.2 million which is recognized net of certain additional fees in other income (expense) on the accompanying consolidated statement of operations.

**Carbon Solutions**

In 2008, the Company made certain guaranties and undertook other obligations related to Carbon Solutions. No liabilities associated with such guaranties and obligations were recorded on the Company's consolidated balance sheet as the Company does not expect such guaranties and obligations to be called upon.

Summaries of the guaranties and obligations related to Carbon Solutions are as follows:

	As of December 31, 2010 <i>(In thousands)</i>
AC Facility construction contract 1	\$ 12,300
Equipment contracts 2	6,700
Sales contract A guarantee 3	10,000
Sales contract B guarantee 4	1,000
Total guaranties and obligations	\$ 30,000

<sup>1</sup> The Company has guaranteed all amounts owed by Red River under its construction contract for the AC Facility. The amount shown is the approximate remaining obligation under the contract. Red River can terminate this contract at any time and would be liable for certain items.

<sup>2</sup> Red River entered into four contracts with an independent equipment supplier for the purchase of certain equipment. A parent guaranty is applicable to both the Company and our partner in the joint venture. The amount shown is the approximate remaining obligation remaining under these contracts. Red River may terminate these contracts at any time and would be liable for certain items.

<sup>3</sup> The Company has also guaranteed the obligations of Red River under an amended sales contract with another major electric power generating company. Both parties are entitled to require specific performance of the other in limited circumstances when the cover

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remedies prove inadequate. No later than five business days after the third party debt financing portion for the AC Facility is obtained, each party is obligated to deliver to the other a \$10 million standby, unconditional, irrevocable letter of credit to secure the obligations to the other party in the event of default.

<sup>4</sup> The Company has also guaranteed the obligations of Red River under an amended sales contract with a different major electric power generation company. The guaranty is effective until Red River has fulfilled its contractual obligations, which is estimated to occur in the second quarter of 2012, and may be terminated earlier based on Red River's financial position or the credit rating of its debt financing for the AC Facility. This is the Company's maximum aggregate liability under the guaranty.

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**ADA-ES, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Under the terms of the JDA, the Company is required to indemnify ECP and Carbon Solutions for certain damages and expenses they incur with respect to the Company's litigation and arbitration with Norit described in Part II, Item 1.

Under terms of agreements with Carbon Solutions, as amended in August, 2009, Red River has agreed to reimburse the Company and ECP in the event they are required to make payments related to these guaranties and guaranties provided by ECP and has granted a secured interest in its assets to ADA and ECP to secure the reimbursement agreement and any loans ECP makes to Red River. Carbon Solutions has guaranteed the obligations of Red River under the reimbursement and loan agreement and has pledged its equity interest in Red River to the Company and ECP as security for this guaranty. The Company has assigned its rights under these agreements to ECP, and any amounts payable to the Company would be paid directly to ECP until ECP's preferred equity in Carbon Solutions is fully redeemed or converted and all loans to Red River have been paid in full.

Following is unaudited contributions made by ECP:

	As of December 31,	
	2010	2009
	<i>(In thousands)</i>	
Preferred equity contributions	\$ 89,300	\$ 98,500
Loans to Red River by secured notes bearing interest at 12% per annum compounded quarterly.	\$ 193,800	\$ 76,300

**10. LEASING ACTIVITIES:**

Clean Coal leased two RC Facilities in June 2010 to an independent third party. The leases have initial terms that run through December 31, 2012 and automatically renew for annual terms through the end of 2019, subject to a number of termination clauses. Clean Coal receives fixed contingent rent payments as defined in the lease agreements. In addition, the lessee paid \$9 million at the inception of the lease, which was recorded as deferred revenue and is being amortized into revenue under the straight-line method over the initial term of the lease through December 31, 2012. During the year ended December 31, 2010, \$1.8 million of deferred revenue was recognized. Contingent rental income received during 2010 totaled \$6 million. Future minimum lease payments shown below do not include contingent rentals, which are based on the production of RC.

## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The following is a schedule, by year, of total fixed lease payments to be received, if all term extension options are exercised, through December 31, 2019.

Years ending December 31,	Operating lease payments expected (In thousands)
2011	\$ 7,963
2012	8,729
2013	12,805
2014	13,353
2015	13,941
Thereafter	61,483
Total minimum lease payments	\$ 118,274

11. **MAJOR CUSTOMERS:**

Sales to unaffiliated customers who represent 10% or more of the Company's sales were as follows:

Customer	As of December 31,	
	2010 (%)	2009 (%)
A	47	0
B	1	15
C	1	13

The Company's receivables were as follows:

Receivables for the two years ended:	Number of customers that made up percentage of balance	Percentage of balance (%)
December 31, 2010	1	67
December 31, 2009	2	51

12. **INCOME TAXES (RESTATED):**

Income taxes are accounted for under the asset and liability approach. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax bases using enacted tax rates in effect for the year in which the differences are expected to reverse. A valuation allowance is provided if and when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The effect on deferred

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tax assets and liabilities of a change in tax rates is recognized in income in the period when the change is enacted. At each reporting date, management reviews existing income tax assessments and, if necessary, revises them to reflect changed circumstances. In a situation where recent losses have been incurred, the accounting standards require convincing evidence that there will be sufficient future taxable income to realize deferred tax assets.

In August 2012, after extensive discussions with the SEC's Division of Corporation Finance and Office of the Chief Accountant and the Company's outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that the objective and verifiable negative evidence represented by historical losses outweighed more subjective positive evidence of anticipated future income. As a result, management determined it necessary to record a full valuation allowance against the Company's net deferred tax assets and is restating its consolidated financial statements with this Amendment for the fiscal year ended December 31, 2010. See Note 15 for additional discussion.

The Company has recorded a full valuation allowance against the net deferred tax assets of \$15.7 million as of December 31, 2010.

The Company's income tax (expense) benefit from continuing operations consists of the following:

	As of December 31,	
	2010	2009
	(restated)	
	<i>(In thousands)</i>	
Current	\$ 0	\$ (9)
Deferred	(7,093)	5,555
Income tax (expense) benefit	\$ (7,093)	\$ 5,546



## ADA-ES, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The following lists the Company's deferred tax assets and liabilities:

	As of December 31,	
	2010	2009
	(restated)	
	<i>(In thousands)</i>	
<b>Deferred tax assets:</b>		
Deferred compensation, warranty and other	\$ 223	\$ 229
Allowance for doubtful accounts	4	7
Deferred revenues, compensation and other	306	371
Net equity in net income/loss of unconsolidated entities	459	0
Net operating loss carryforward	14,072	6,235
Tax credits	753	568
<b>Total tax assets</b>	<b>15,817</b>	<b>7,410</b>
<b>Deferred tax liabilities</b>		
Prepaid expenses	122	107
Net equity in net income/loss of unconsolidated entities	0	187
Property and intangible asset differences	38	23
<b>Total tax liabilities</b>	<b>160</b>	<b>317</b>
Deferred tax assets, net of liabilities	15,657	7,093
Valuation allowance	(15,657)	0
<b>Net deferred tax assets</b>	<b>\$ 0</b>	<b>\$ 7,093</b>

A reconciliation of expected federal income taxes on income from operations at statutory rates with the (expense) benefit for income taxes follows:

	As of December 31,	
	2010	2009
	(restated)	
Expected income tax rate - expense (benefit)	34%	34%
Valuation allowance	(77)%	0%
Non-controlling interest	6%	0%
Permanent differences	<1%	<1%
Tax credits	1%	2%
State income taxes	2%	4%
Other	(1)%	(3)%
<b>Actual effective income tax rate</b>	<b>(35)%</b>	<b>37%</b>

The Company did not have any unrecognized tax benefits in 2009. Major components related to the permanent difference include goodwill impairment, investment items and incentive stock options for the year ended December 31, 2009. Permanent differences for the year ended December 31, 2010 are not considered significant. The primary jurisdictions in which the Company files income tax returns are the U.S. federal

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government and State of Colorado. The Company is no longer subject to U.S. federal examinations by tax authorities for years before 2007 and Colorado state examinations for years before 2006.

The Company records income tax related penalties and interest as incurred as general and administrative expenses.

The Company has a federal net operating loss carryforward of approximately \$38.9 million that will expire in the years from 2029 to 2030 and state net operating loss carryforward of approximately \$27.5 million that will expire in years ranging from 2016 to 2030.

### 13. **RELATED PARTY TRANSACTIONS:**

As discussed above in Note 4 and Note 8, the Company entered into a Development and License Agreement and executed a Securities Subscription and Investment Agreement with Arch in 2010.

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**ADA-ES, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Years Ended December 31,  
2010                      2009  
*(In thousands)*

Revenues recognized from activities with Arch	\$ 784	\$ 30
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John Eaves is the President and Chief Operating Officer and a director of Arch and also one of the members of the Company's Board of Directors. The initial appointment of Mr. Eaves to the Board was made pursuant to a 2003 Subscription and Investment Agreement with Arch whereby the Company's management agreed to make available one seat on our Board for an Arch designee and to vote all shares and proxies they are entitled to vote in favor of such designee for so long as Arch continues to hold at least 100,000 shares of our common stock. Mr. Eaves abstained from voting on the above-described transactions. In addition, as required by our related-party transaction policy, the transactions were approved by the Company's audit committee before being recommended to the Board for approval and were then approved by the disinterested members of the Board.

**14. BUSINESS SEGMENT INFORMATION (RESTATED):**

The following information relates to the Company's three reportable segments: Emissions control ( EC ), Capture ( CC ) and Refined coal ( RC ). All assets are located in the U.S. and are not evaluated by management on a segment basis. All significant customers are U.S. companies and the U.S. Government.

Years Ended December 31,  
2010                      2009  
*(In thousands)*

Revenue:		
EC	\$ 9,825	\$ 15,947
CC	2,073	1,526
RC	10,383	2,588
<b>Total</b>	<b>\$ 22,281</b>	<b>\$ 20,061</b>
Segment profit (loss):		
EC	\$ 2,114	\$ 5,326
CC	895	349
RC	7,842	(1,313)
<b>Total</b>	<b>\$ 10,851</b>	<b>\$ 4,362</b>

A reconciliation of the reported total segment profit to net income for the periods shown above is as follows:

Years Ended December 31,  
2010  
(restated)                      2009

Total segment profit	\$ 10,851	\$ 4,362
Non-allocated general and administrative expenses	(30,884)	(15,625)
Depreciation and amortization	(917)	(577)
Interest income and other income/expenses	8,566	34
Income tax (expense) benefit	(7,093)	5,546
Net equity in net income/loss from unconsolidated entities	(8,037)	(3,243)

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Net income (loss) attributable to non-controlling interest	(3,613)	732
Net loss	\$ (31,127)	\$ (8,771)

Non-allocated general and administrative expenses include costs that benefit the business as a whole and are not directly related to one of our segments. Such costs include but are not limited to accounting and human resources staff, information systems costs, facility costs, audit fees and corporate governance expenses.

(15) **RESTATEMENT OF CONSOLIDATED FINANCIAL STATEMENTS:**

**Deferred Tax Assets Valuation Allowance**

On its Current Report on Form 8-K dated August 14, 2012, the Company reported management's determination that the Company's consolidated financial statements contained in its Annual Reports on Form 10-K for the fiscal years ended December 31, 2010 and 2011 and its Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, September 30, 2011, March 31, 2012 and June 30, 2012 should no longer be relied upon and should be restated.

After extensive discussions with the SEC's Division of Corporation Finance and Office of the Chief Accountant and the Company's outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that a full valuation allowance against the Company's net deferred tax assets should have been recognized as of December 31, 2010 and for each subsequent quarter thereafter. Management determined that it was necessary to record the valuation allowance against the Company's deferred tax assets after reconsidering the weight given in the original assessment to the relevant information used to measure the positive and negative evidence regarding the potential for ultimate realization of the deferred tax assets.

Realization of the deferred tax assets is dependent upon the Company's ability to generate future taxable income. In its reassessment, management concluded that the objective and verifiable negative evidence represented by historical losses outweighed more subjective positive evidence of anticipated future income. As a result, the Company has restated its consolidated financial statements in this Amendment for the fiscal year ended December 31, 2010.

**Financial Statement Effect of the Restatement**

The tables below show the effect of the above restatement on the Consolidated Balance Sheet as of December 31, 2010, and Consolidated Statement of Operations, Consolidated Statement of Changes in Stockholders' Equity (Deficit) and Consolidated Statement of Cash Flows for the fiscal year ended December 31, 2010. The restatement reflects non-cash adjustments and has no effect on previously reported operating income results or cash flows from operations.

## Effect on Consolidated Balance Sheet

	As Previously Reported December 31, 2010	Deferred Tax Valuation Allowance <i>(Amounts in thousands)</i>	As Restated December 31, 2010
<b>Current Assets</b>			
Cash and cash equivalents	\$ 9,696	\$	\$ 9,696
Receivables, net of allowance for doubtful accounts	9,066		9,066
Investment in securities	505		505
Notes receivable	1,580		1,580
Assets held for resale and inventory	9		9
Prepaid expenses and other	594	(188)	406
<b>Total current assets</b>	<b>21,450</b>	<b>(188)</b>	<b>21,262</b>
<b>Property and Equipment, at cost</b>			
Less accumulated depreciation and amortization	(3,235)		(3,235)
<b>Net property and equipment</b>	<b>4,806</b>		<b>4,806</b>
Goodwill	435		435
Intangible assets, net of amortization	260		260
Investment in unconsolidated entities	14,021		14,021
Other assets		227	227
Deferred taxes and other assets	15,696	(15,696)	
<b>Total Assets</b>	<b>\$ 56,668</b>	<b>\$ (15,657)</b>	<b>\$ 41,011</b>
<b>Total Liabilities</b>	<b>\$ 43,224</b>	<b>\$</b>	<b>\$ 43,224</b>
<b>Stockholders Equity (Deficit)</b>			
ADA-ES, Inc. stockholders equity (deficit)			
Preferred stock: 50,000,000 shares authorized, none outstanding			
Common stock: no par value, 50,000,000 shares authorized, 7,538,861 shares issued and outstanding			
Accumulated deficit	(28,218)	(15,657)	(43,875)
<b>Total ADA-ES, Inc. stockholders equity (deficit)</b>	<b>11,409</b>	<b>(15,657)</b>	<b>(4,248)</b>
Non-controlling interest	2,035		2,035
<b>Total Stockholders Equity (Deficit)</b>	<b>13,444</b>	<b>(15,657)</b>	<b>(2,213)</b>
<b>Total Liabilities and Stockholders Equity (Deficit)</b>	<b>\$ 56,668</b>	<b>\$ (15,657)</b>	<b>\$ 41,011</b>

## Effect on Consolidated Statement of Operations

	Year Ended December 31, 2010		
	As Previously Reported	Deferred Tax Valuation Allowance <i>(Amounts in thousands)</i>	As Restated
	\$ (20,421)	\$	\$ (20,421)

<b>Loss from Continuing Operations Before Income Tax and Non-controlling Interest</b>			
<b>Income Tax (Expense) Benefit</b>	<b>8,564</b>	<b>(15,657)</b>	<b>(7,093)</b>
<b>Net Loss Before Non-controlling Interest</b>	<b>(11,857)</b>	<b>(15,657)</b>	<b>(27,514)</b>
<b>Non-controlling Interest</b>	<b>(3,613)</b>		<b>(3,613)</b>
<b>Net Loss Attributable to ADA-ES, Inc.</b>	<b>\$ (15,470)</b>	<b>\$ (15,657)</b>	<b>\$ (31,127)</b>
<b>Net Loss Per Common Share Basic and Diluted Attributable to ADA-ES, Inc.</b>	<b>\$ (2.09)</b>	<b>\$ (2.12)</b>	<b>\$ (4.21)</b>

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**Effect on Consolidated Statement of Changes in Stockholders Equity (Deficit)**

	As Previously Reported December 31, 2010	Deferred Tax Valuation Allowance <i>(Amounts in thousands)</i>	As Restated December 31, 2010
<b>ADA-ES Stockholders' Equity (Deficit)</b>			
Balance, December 31, 2009	\$ 24,252	\$	\$ 24,252
Stock-based compensation	1,024		1,024
Issuance of stock on exercise of options	347		347
Issuance of stock to 401(k) plan	282		282
Issuance of stock for cash	1,000		1,000
Expense of stock issuance and registration	(26)		(26)
Net income (loss)	(15,470)	(15,657)	(31,127)
Balance, December 31, 2010	11,409	(15,657)	(4,248)
<b>Non-controlling Interest, December 31, 2010</b>	<b>2,035</b>		<b>2,035</b>
<b>Total Stockholders' Equity (Deficit)</b>	<b>\$ 13,444</b>	<b>\$ (15,657)</b>	<b>\$ (2,213)</b>

**Effect on Consolidated Statement of Cash Flows**

	Year Ended December 31, 2010		
	As Previously Reported	Deferred Tax Valuation Allowance <i>(Amounts in thousands)</i>	As Restated
Net loss	\$ (15,470)	\$ (15,657)	\$ (31,127)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation and amortization	917		917
Provision for doubtful accounts	(7)		(7)
Deferred tax expense (benefit)	(8,563)	15,656	7,093
Expenses paid with stock, restricted stock and stock options	1,306		1,306
Non-controlling interest in income from subsidiaries	3,613		3,613
Net equity in net loss from unconsolidated entities	8,037		8,037
Non-cash gain from joint venture partner	(1,768)		(1,768)
Changes in operating assets and liabilities:			
Trade receivables, net	(3,247)		(3,247)
Prepaid expenses and other	288	1	289
Accounts payable	(1,666)		(1,666)
Accrued expenses	20,589		20,589
Deferred revenue and other	7,686		7,686
Net cash provided by operating activities	<b>11,715</b>		<b>11,715</b>
Net cash used in investing activities	<b>(3,119)</b>		<b>(3,119)</b>
Net cash used in financing activities	<b>(356)</b>		<b>(356)</b>
<b>Increase in Cash and Cash Equivalents</b>	<b>8,240</b>		<b>8,240</b>
<b>Cash and Cash Equivalents, beginning of period</b>	<b>1,456</b>		<b>1,456</b>



<b>Cash and Cash Equivalents, end of period</b>	<b>\$ 9,696</b>	<b>\$</b>	<b>\$ 9,696</b>
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