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SMITH MIDLAND CORP
Form 8-K
January 24, 2003

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-1004

FORM 8-K

CURRENT REPORT PURSUANT TO SECTION 13 OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): January 21, 2003

SMITH-MIDLAND CORPORATION
(Exact name of registrant as specified in its charter)

| | | |
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| DELAWARE (State or other jurisdiction of incorporation) | 1-13752 (Commission File Number) | 54-1727060 (I.R.S. Employer Identification Number) |
|---|--|--|

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|---|---------------------|
| ROUTE 28, P.O. BOX 300 MIDLAND, VIRGINIA (Address of principal executive offices) | 22728 (Zip Code) |
|---|---------------------|

(540) 439-3266
(Registrant's telephone number, including area code)

ITEM 5. OTHER EVENTS

A. Shareholders Rights Plan.

On January 21, 2003, the board of directors of our Company, Smith-Midland Corporation, a Delaware corporation, declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of common stock, par value \$.01 per share. The dividend is payable on February 11, 2003 to the stockholders of record on February 11, 2003. The press release issued by the Company announcing the declaration of the Rights dividend is attached as Exhibit 99.1 to this Form 8-K.

For those interested in the specific terms of the Rights Agreement as made between our Company and Computershare Trust Company, Inc., as rights agent, on January 21, 2003 (the "Rights Agreement"), we provide the following summary description. Please note, however, that this description is only a summary, and is not complete, and should be read together with the entire Rights Agreement, which has been filed as Exhibit 4.1 to this Current Report on Form 8-K. A copy of the Rights Agreement is available free of charge from our Company.

The Rights. Our board of directors authorized the issuance of a Right with respect to each outstanding share of common stock on February 11, 2003. The Rights will initially trade with, and will be inseparable from, the common stock. The Rights are evidenced only by certificates that represent shares of

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common stock. New Rights will accompany any new shares of common stock we issue after February 11, 2003 until the distribution date described below.

Exercise Price. Each Right will allow its holder to purchase from our Company one one-hundredth of a share of Series A Junior Participating Preferred Stock ("preferred share") for \$8.00, once the Rights become exercisable. This portion of a preferred share will give the stockholder approximately the same dividend, voting, and liquidation rights as would one share of common stock. Prior to exercise, the Right does not give its holder any dividend, voting, or liquidation rights.

Exercisability. The Rights will not be exercisable until

- 10 days after the public announcement that a person or group has become an "Acquiring Person" by obtaining beneficial ownership of 15% or more of our outstanding common stock, or, if earlier,
- 10 business days (or a later date determined by our board of directors before any person or group becomes an Acquiring Person) after a person or group begins a tender or exchange offer which, if completed, would result in that person or group becoming an Acquiring Person.

We refer to the date when the Rights become exercisable as the "Distribution Date." Until that date, the common stock certificates will also evidence the Rights, and any transfer of shares of common stock will constitute a transfer of Rights. After the Distribution Date, the

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Rights will separate from the common stock and be evidenced by book-entry credits or by Rights certificates that we will mail to all eligible holders of common stock. Any Rights held by an Acquiring Person are null and void and may not be exercised.

Our board of directors may reduce the threshold at which a person or group becomes an Acquiring Person from 15% to not less than 10% of the outstanding common stock.

Excluded Persons. The following will be deemed not to be an Acquiring Person: (i) our Company, (ii) any subsidiary of our Company, (iii) any employee benefit plan of our Company or any subsidiary of our Company, (iv) any entity holding shares of common stock of our Company for or pursuant to the terms of any such plan or (v) Mr. Rodney I. Smith, his affiliates and associates, his heirs, and any trust or foundation to which he has transferred or may transfer common stock of our Company ("Rodney I. Smith").

Consequences of a Person or Group Becoming an Acquiring Person.

- **Flip In.** If a person or group becomes an Acquiring Person, all holders of Rights except the Acquiring Person may, for \$8.00, purchase shares of our common stock with a market value of \$16.00, based on the market price of the common stock prior to such acquisition.
- **Flip Over.** If our Company is later acquired in a merger or similar transaction after the Distribution Date (other than by Rodney I. Smith), all holders of Rights except the Acquiring Person may, for

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\$8.00, purchase shares of the acquiring corporation with a market value of \$16.00 based on the market price of the acquiring corporation's stock, prior to such merger.

Preferred Share Provisions.

Each one one-hundredth of a preferred share, if issued:

- will not be redeemable.
- will entitle holders to quarterly dividend payments of \$.01, or an amount equal to the dividend paid on one share of common stock, whichever is greater.
- will entitle holders upon liquidation either to receive \$1 or an amount equal to the payment made on one share of common stock, whichever is greater.
- will have the same voting power as one share of common stock.
- if shares of our common stock are exchanged via merger, consolidation, or a similar transaction, will entitle holders to a per share payment equal to the payment made on one share of common stock.

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The value of one one-hundredth interest in a preferred share should approximate the value of one share of common stock.

Expiration. The Rights will expire on January 20, 2013.

Redemption. Our board of directors may redeem the Rights for \$.001 per Right at any time before any person or group becomes an Acquiring Person. If our board redeems any Rights, it must redeem all of the Rights. Once the Rights are redeemed, the only right of the holders of Rights will be to receive the redemption price of \$.001 per Right. The redemption price will be adjusted if we have a stock split or pay stock dividends on our common stock.

Exchange. After a person or group becomes an Acquiring Person, but before an Acquiring Person owns 50% or more of our outstanding common stock, our board of directors may extinguish the Rights by exchanging one share of common stock or an equivalent security for each Right, other than Rights held by the Acquiring Person.

Anti-Dilution Provisions. Our board of directors may adjust the purchase price of the preferred shares, the number of preferred shares issuable and the number of outstanding Rights to prevent dilution that may occur from a stock dividend, a stock split or a reclassification of the preferred shares or common stock. No adjustments to the exercise price of less than 1% will be made.

Amendments. The terms of the share purchase rights plan may be amended by our board of directors without the consent of the holders of the Rights. However, our board may not amend the share purchase rights plan to lower the threshold at which a person or group becomes an Acquiring Person to below 10% of our outstanding common stock. In addition, the board may not cause a person or group to become an Acquiring Person by lowering this threshold below the percentage interest that such person or group already owns. After a person

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or group becomes an Acquiring Person, our board may not amend the agreement in a way that adversely affects holders of the Rights.

B. Amended By-Laws.

On January 21, 2003, our board of directors adopted new By-Laws, to replace the previous By-Laws of our Company. The new By-Laws are different from the prior By-Laws in a number of respects, including, without limitation: (1) the new By-Laws do not permit stockholders to call Special Meetings (Section 2.2); (2) the new By-Laws provide that no business may be entertained at a Stockholders Meeting other than as set forth in the Notice of Meeting (Section 2.4); (3) the new By-Laws provide for advance notice of director nominations by stockholders (Section 2.7); and (4) the new By-Laws provide procedural protections in the event that stockholders seek to act by written consent (Sections 2.10 and 2.11). Reference is made to Exhibit 3.1 hereto, which is incorporated herein by reference, for the complete By-Laws.

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C. New Chief Financial Officer.

On January 22, 2003, John K. Johnson commenced employment as Chief Financial Officer of our Company, replacing the then current Chief Financial Officer. For a description of Mr. Johnson, reference is made to the Press Release dated January 23, 2003, which press release is attached hereto as Exhibit 99.2 and incorporated herein by reference.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits.

- 3.1 By-Laws of Smith-Midland Corporation adopted on January 21, 2003 (incorporated by reference to Exhibit 3.2 to Smith-Midland Corporation's Form 8-A filed on January 24, 2003).
- 4.1 Rights Agreement, dated as of January 21, 2003 between Smith-Midland Corporation and Computershare Trust Company, Inc., as rights agent, including the Form of Certificate of Designations, the Form of Rights Certificate and the Summary of Rights to Purchase Preferred Shares attached thereto as Exhibits A, B, and C, respectively (incorporated by reference to Exhibit 4.1 to Smith-Midland Corporation's Form 8-A filed on January 24, 2003).
- 99.1 Press Release dated January 23, 2003 related to Shareholders Right Plan.
- 99.2 Press Release dated January 23, 2003 related to the new Chief Financial Officer.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SMITH-MIDLAND CORPORATION

Date: January 24, 2003

By: /s/ Wesley A. Taylor

Name: Wesley A. Taylor

Title: Vice President of Administration

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EXHIBIT INDEX

Exhibit
Number

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