

SMITH MIDLAND CORP
Form 10-K/A
October 16, 2008

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM 10-K/A
(AMENDMENT NO. 2)**

x ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2007

Or

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

**Commission File Number:
1-13752**

**SMITH-MIDLAND CORPORATION
(Name of registrant as specified in its charter)**

**Delaware
(State or Other Jurisdiction of
Incorporation)**

**54-1727060
(I.R.S. Employer Identification
Number)**

**P.O. Box 300, 5119 Catlett Road
Midland, Virginia 22728
(Address of principal executive offices, Zip Code)**

**(540) 439-3266
(Registrant's Telephone Number, Including Area Code)**

Securities Registered Under Section 12(b) of the Exchange Act:

| Title of Each Class | Name on Each Exchange on Which Registered |
|--|--|
| Common Stock, \$.01 par value per share | Boston Stock Exchange |

Securities Registered Pursuant to Section 12(g) of the Exchange Act:

Common Stock, \$.01 par value per share
(Title of Class)

Preferred Stock Purchase Rights
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act.

Yes No

Indicate by check mark whether the issuer: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to the 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 the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (check one)

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 shares of Common Stock, held by non-affiliates, based upon the closing price for such stock on June 30, 2007, was \$10,039,171.

As of April 10, 2008, the Company had outstanding 4,629,962 shares of Common Stock, \$.01 par value per share.

SMITH-MIDLAND CORPORATION

**AMENDMENT NO. 2 TO FORM 10-K
For the Fiscal Year Ended December 31, 2007**

Explanatory Note

This Amendment No. 2 to the Annual Report on Form 10-K/A (“Amendment No. 2”) is being filed to amend the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2007, previously filed on April 15, 2008 (the “Original Filing”) and amends the registrant’s Amendment No. 1 on Form 10-K/A filed with the SEC on September 26, 2008 (“Amendment No. 1”).

Amendment No. 2 is being filed solely for the purpose of correcting an inadvertent error on Amendment No. 1, Item 9A(T). Controls and Procedures, paragraph 3. The final sentence of paragraph 3 is amended to read “However, based on the stage of completion of our assessment, in particular, the lack of the testing phase of the operating effectiveness of our internal controls, our principal executive officer and principal financial officer can only conclude that our internal control procedures over financial reporting as of December 31, 2007 were not effective”.

This Amendment No. 2 on Form 10-K/A continues to describe conditions as of the date of the Original Filing, and we have not updated the disclosures contained herein to reflect events that occurred at a later date. Accordingly, this Amendment No. 2 should be read in conjunction with the Company’s SEC filings made subsequent to the Original Filing.

Item 9A(T). Controls and Procedures.

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of the financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. This process includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) 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 are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the internal control over financial reporting to future periods are subject to risk that the internal control may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate.

Our management conducted an initial phase evaluation of the effectiveness of our internal control over financial reporting based on the framework in "Internal Control – Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), as of December 31, 2007. This initial phase consisted of a top-down approach to risk assessment as provided for by SEC guidance and did not identify any material weaknesses. However, based on the stage of completion of our assessment, in particular, the lack of the testing phase of the operating effectiveness of our internal controls, our principal executive officer and principal financial officer can only conclude that our internal control procedures over financial reporting as of December 31, 2007 were not effective.

The Company was unable to complete the testing phase of the operating effectiveness of our internal controls due to the unexpected departure of our Chief Financial Officer and our controller going on medical leave. The Company secured the services provide financial management while the Company aggressively searches for a permanent CFO.

Since the completion of the internal control design phase of our evaluation of the effectiveness of our internal control over financial reporting, we have been working with our consulting firm to develop a plan which will be designed to test the operating effectiveness of our internal controls. We anticipate that this phase of the project will be completed by the end of 2008, in order to be in a position to provide a full and complete evaluation of the effectiveness of our internal control over financial reporting to be filed as part of the Form 10-K filing for the year ending December 31, 2008.

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to such attestation pursuant to temporary rules of the SEC that require only management's report.

Disclosure controls and procedures

We carried out our evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer, of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report, pursuant to Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended. Based on that evaluation and the remaining testing phase to be completed, our principal executive officer and principal financial officer can only conclude that our disclosure controls and procedures as of December 31, 2007 were not effective.

Changes in Internal Control over Financial Reporting

There has been no change in the Company's internal control over financial reporting during the quarter ended December 31, 2007 that has materially affected, or is reasonably likely to materially affect, its internal control over financial reporting except as disclosed above.

Item 15. Exhibits and Financial Statement Schedules

| Exhibit Number | Description |
|---------------------------|---|
| 31.1 | Certification of Chief Executive Officer. |
| 31.2 | Certification of principal Accounting Officer |

SIGNATURES

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

SMITH-MIDLAND CORPORATION

Date: October 16, 2008

By: /s/ Rodney I. Smith
Rodney I. Smith, President
(principal executive officer)

Date: October 16, 2008

By: /s/ Wesley A. Taylor
Wesley A. Taylor,
(principal financial officer)

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

| Name | Capacity | Date |
|--|-----------------|------------------|
| /s/ Rodney I. Smith Rodney I. Smith | Director | October 16, 2008 |
| /s/ Wesley A. Taylor Wesley A. Taylor | Director | October 16, 2008 |
| /s/ Ashley B. Smith Ashley B. Smith | Director | October 16, 2008 |
| /s/ Andrew G. Kavounis Andrew G. Kavounis | Director | October 16, 2008 |
