

ENVIRONMENTAL POWER CORP  
Form S-8  
May 19, 2006

As filed with the Securities and Exchange Commission on May 19, 2006

Registration No. 333-\_\_\_\_\_

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

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

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**ENVIRONMENTAL POWER CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

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

**One Cate Street, Fourth Floor**

**Portsmouth, New Hampshire**  
(Address of Principal Executive Offices)

**75-3117389**  
(I.R.S. Employer  
Identification No.)

**03801**  
(Zip Code)

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**2006 Equity Incentive Plan**

**2006 Director Option Plan**

(Full Title of the Plan)

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**Kamlesh R. Tejwani**

**President and Chief Executive Officer**

**Environmental Power Corporation**

**One Cate Street, 4th Floor**

**Portsmouth, New Hampshire 03801**

**(Name and Address of Agent For Service)**

**(603) 431-1780**

**(Telephone Number, Including Area Code, of Agent For Service)**

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*Copy to:*

**Scott E. Pueschel, Esq.**

**Pierce Atwood LLP**

**One New Hampshire Avenue, Suite 350**

**Portsmouth, New Hampshire 03801**

**(603) 433-6300**

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**CALCULATION OF REGISTRATION FEE**

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<b>Title of securities to be registered<sup>(1)</sup></b>	<b>Amount to be registered<sup>(2)</sup></b>	<b>Proposed maximum offering price per share<sup>(3)</sup></b>	<b>Proposed maximum aggregate offering price<sup>(2)</sup></b>	<b>Amount of registration fee</b>
Common Stock, par value \$0.01 per share	600,000	\$ 8.09	\$ 4,854,000	\$ 520.00

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<sup>(1)</sup> In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

<sup>(2)</sup> This Registration Statement shall be deemed to cover additional securities to be issued in connection with, or as a result of, stock splits, stock dividends or similar transactions.

<sup>(3)</sup> Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and Rule 457(h) under the Securities Act of 1933, as amended, and based on (i) 90,000 shares of Common Stock underlying outstanding options granted under the 2006 Director Option Plan as of the date hereof having a weighted average exercise price of \$8.89 per share, and (ii) an additional 210,000 shares of Common Stock which may be granted under the 2006 Director Option Plan, and 300,000 shares of Common Stock which may be granted under the 2006 Equity Incentive Plan, in each case at a maximum offering price of \$7.95 per share, which is estimated based on the reported average of the high and low prices of Environmental Power Corporation's Common Stock on the American Stock Exchange on

May 17, 2006.

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**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

The information required by Part I, Item 1 of Form S-8 is included in documents sent or given to participants in the plans covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the "1933 Act").

**Item 2. Registrant Information and Employee Plan Annual Information.**

The written statement required by Part I, Item 2 of Form S-8 is included in documents sent or given to participants in the plans covered by this registration statement pursuant to Rule 428(b)(1) of the 1933 Act.

**PART II**

**INFORMATION REQUIRED IN REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

Environmental Power Corporation (the "Company") is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The following documents, which are on file with the Commission, are incorporated in this registration statement by reference:

(a) The registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.

(c) The description of the securities contained in the registrant's registration statements on Form 8-A filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 102 of the Delaware General Corporation Law allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Environmental Power Corporation has included such a provision in its Certificate of Incorporation.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against amounts paid and expenses incurred in connection with an action or proceeding to which he is or is threatened to be made a party by reason of such position, if such person shall have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal proceeding, if such person had no reasonable cause to believe his conduct was unlawful; provided that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court determines that such indemnification is proper under the circumstances. Our bylaws substantively provide that we will indemnify such persons to the fullest extent allowed by the Delaware General Corporation Law.

In addition, our certificate of incorporation limits the liability our of directors for monetary damages for breach of their fiduciary duty as a director other than for intentional misconduct, fraud or a knowing payment of a dividend in violation of Delaware law. Such provision limits recourse for money damages that might otherwise be available to us or our shareholders for negligence by directors acting on our behalf. Although these provisions would not prohibit injunctive or similar actions against these individuals, the practical effect of such relief would be limited. This limitation of liability under state law does not apply to any liabilities that may exist under federal securities laws. We have also purchased directors and officers liability insurance which would indemnify our directors and officers against damages arising out of certain kinds of claims which might be made against them based on their negligent acts or omissions while acting in their capacity as such.

We have entered into an indemnification agreement with Joseph E. Cresci and Donald A. Livingston whereby we agree to indemnify these individuals against any loss, liability, cost or other expense that they incur in relation to certain of their activities related to them acting as either fiduciaries or agents of all of our employee welfare benefit plans, employee pension benefit plans and benefit plans.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

See the Exhibit Index following the signature pages to this registration statement, which is incorporated by reference herein.

**Item 9. Undertakings.**

1. Item 512(a) of Regulation S-K. The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

2. Item 512(b) of Regulation S-K. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. Item 512(h) of Regulation S-K. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Portsmouth, New Hampshire on this 19th day of May, 2006.

ENVIRONMENTAL POWER CORPORATION

By: /s/ Kamlesh R. Tejwani  
 Kamlesh R. Tejwani  
 President and Chief Executive Officer

**POWER OF ATTORNEY AND SIGNATURES**

We, the undersigned officers and directors of Environmental Power Corporation, hereby severally constitute and appoint Kamlesh R. Tejwani, Joseph E. Cresci, John F. O Neill and Scott E. Pueschel, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, the registration statement on Form S-8 filed herewith and any and all subsequent amendments to said registration statement, and generally to do all such things in our names and on our behalf in our capacities as officers and directors to enable Environmental Power Corporation to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Joseph E. Cresci	Chairman and Director	May 19, 2006
Joseph E. Cresci		
/s/ Kamlesh R. Tejwani	President, Chief Executive Officer and Director	May 19, 2006
Kamlesh R. Tejwani	(Principal Executive Officer)	
/s/ John F. O Neill	Chief Financial Officer and Treasurer	May 19, 2006
John F. O Neill	(Principal Financial and Accounting Officer)	
/s/ Donald A. Livingston	Executive Vice President and Director	May 19, 2006
Donald A. Livingston		
/s/ John R. Cooper	Director	May 19, 2006
John R. Cooper		
/s/ Jessie J. Knight, Jr.	Director	May 19, 2006
Jessie J. Knight, Jr.		
/s/ August Schumacher, Jr.	Director	May 19, 2006

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August Schumacher, Jr.

/s/ Lon Hatamiya

Director

May 19, 2006

Lon Hatamiya

/s/ Steven Kessner

Director

May 19, 2006

Steven Kessner

/s/ Robert L. Weisberg

Director

May 19, 2006

Robert L. Weisberg



**INDEX TO EXHIBITS**

<b>Number</b>	<b>Description</b>
4.1	Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.01 of the Registrant's Current Report on Form 8-K dated December 2, 2004).
4.2	Restated By-Laws of the Registrant (incorporated by reference to Exhibit 3.01 of the Registrant's Current Report on Form 8-K/A dated June 2, 2003).
5	Opinion of Pierce Atwood LLP, counsel to the Registrant
23.1	Consent of Deloitte & Touche LLP
23.2	Consent of Vitale, Caturano & Co., Ltd.
23.3	Consent of Pierce Atwood LLP (included in Exhibit 5)
24	Power of attorney (included on the signature pages of this registration statement)