

US CONCRETE INC
Form 8-K
August 09, 2012

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

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 7, 2012

U.S. CONCRETE, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34530
(Commission File Number)

76-0586680
(IRS Employer
Identification No.)

331 N. Main Street
Eules, Texas 76039
(Address of principal executive offices, including ZIP code)

(817) 835-4100
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 2.02 Results of Operations and Financial Condition

On August 9, 2012, U.S. Concrete, Inc. (the “Company”) issued a press release announcing its second quarter 2012 financial results. A copy of the press release is furnished as Exhibit 99.1 hereto, and the information contained in Exhibit 99.1 is incorporated herein by reference.

The information furnished pursuant to this Item 2.02, including Exhibit 99.1, will not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities under that section and will not be incorporated by reference into any registration statement filed under the Securities Act of 1933, as amended, unless specifically identified therein as being incorporated therein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On August 7, 2012, the Board of Directors of the Company appointed William Matthew Brown as the Company’s Senior Vice President and Chief Financial Officer, effective as of August 22, 2012 (the “Effective Date”).

From November 2007 to August 2012, Mr. Brown, age 48, served as the Treasurer & Executive Assistant to the Chief Executive Officer of Drummond Company, Inc., and, from 2005 to November 2007, as the Treasurer of Drummond Company, Inc. From 1999 through 2005, Mr. Brown served in the investment banking department of Citigroup Global Markets Inc., including as a Vice President in the basic industries coverage group. From 1988 through 1997, Mr. Brown served in the United States Navy as a Naval Special Warfare Officer. Mr. Brown holds a Master of Business Administration degree from The Wharton School of the University of Pennsylvania and a Bachelor of Science degree in Mechanical Engineering from the United States Naval Academy.

The terms and conditions of Mr. Brown’s employment with the Company will be governed by an Offer Letter, dated as of August 7, 2012 (the “Offer Letter”). Among other things, the Offer Letter provides that:

Annual Salary/Annual Bonus – Mr. Brown will be paid an annual base salary of \$280,000 and will be eligible for an annual bonus pursuant to the terms and conditions of the Company Salaried Team Member Annual Incentive Plan (as described in the Company’s most recent definitive proxy statement) with a target annual bonus of 40% of annual base salary and a maximum annual bonus of 200% of base salary, which will be payable on the same date as the payout of annual bonuses to other executives generally. For 2012, Mr. Brown’s annual bonus is guaranteed in an amount equal to his target bonus, pro-rated according to his length of service in 2012. For 2013, Mr. Brown’s annual bonus is guaranteed in an amount equal to 50% of his target bonus.

Sign-On Bonus – Within 30 days of the Effective Date, Mr. Brown will be paid a lump-sum cash bonus in the gross amount of \$25,000. If Mr. Brown voluntarily terminates his employment within one year following the Effective Date, then he will be required to repay such bonus, on a pro-rated basis according to his length of service.

Equity Grant – On the Effective Date, Mr. Brown will be granted 30,000 restricted shares of the Company’s common stock. Sixty percent (60%) of such restricted shares will vest over four (4) years in equal annual installments from the date of grant, and forty percent (40%) of such restricted shares will vest based on satisfaction of both time and performance targets (the “Performance Shares”). Fifty percent (50%) of the Performance Shares will vest if the Company’s common stock attains a closing market price of \$10.00/share for a period of ten (10) consecutive business days within three (3) years of the Effective Date. Fifty percent (50%) of the Performance Shares will vest if the Company’s common stock attains a closing market price of \$14.00/share within three (3) years of the Effective Date. Mr. Brown will be eligible for additional equity awards in the same manner as similarly situated executive officers of the Company as approved by the Board of Directors of the Company.

Vacation – Mr. Brown will be eligible for two weeks of vacation for the remainder of 2012 and four weeks of vacation per annum thereafter.

Relocation – Mr. Brown will be entitled to reimbursement for the usual and customary selling and closing costs associated with (i) the sale of his current primary residence and the purchase of a new primary residence in or near Dallas, Texas, (ii) the physical move of his household goods, (iii) the payment of the appraisal fee performed for his current primary residence and (iv) the difference between the fair market value of his current primary residence (based on an appraisal) and a subsequent lower sales price, not to exceed fifteen percent (15%) of the fair market value of his current primary residence.

The Company will reimburse Mr. Brown for the costs associated with his initial trip to Dallas to search for his new residence and provide him with a lump-sum cash payment of \$65,000 to reimburse him for expenses associated with subsequent similar trips.

For a period of one year following the Effective Date, Mr. Brown will be eligible for a tax-gross up for taxes incurred in connection with his relocation benefits (other than taxes incurred in connection with reimbursement for the loss on the sale of Mr. Brown's current primary residence and the \$65,000 lump-sum cash payment).

Other Benefits – Mr. Brown will be eligible to participate in all health and welfare benefit programs available to similarly situated Company executives.

On August 8, 2012, the Company and Mr. Brown entered into an Executive Severance Agreement (the "Executive Severance Agreement"), which will become effective on August 22, 2012 and provides that if Mr. Brown's employment is terminated without "cause" by the Company or by Mr. Brown for "good cause" prior to, or more than one year following, a "change in control," he would be entitled to the following severance payments and benefits:

a lump-sum cash payment equal to his monthly base salary in effect on the date of termination multiplied by 12, in addition to any accrued but unpaid monthly base salary for any partial month in which the termination occurs;

a lump-sum cash payment equal to the amount of (i) his target annual bonus in respect of the bonus year in which the termination occurs, prorated according to his length of service during the bonus year, and (ii) the value of unused vacation days earned in the year prior to the year in which the termination occurs, plus the value of any unused vacation days earned in the year in which the termination occurs;

payment by the Company of all applicable medical continuation premiums for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), for the benefit of Mr. Brown (and his covered dependents as of the date of his termination, if any) under his then-current plan election for 18 months after his termination; and

accelerated vesting of 50% of all outstanding and previously unvested stock options, restricted stock awards, restricted stock units and similar awards granted to Mr. Brown prior to the date of termination that would otherwise have vested during the twelve-month period following the date of termination (assuming for such purpose such termination had not occurred). Any vested stock options then held by Mr. Brown will remain exercisable until the earlier of (i) the expiration of the twelve-month period following his termination and (ii) the expiration date of the original term of the applicable stock option. Any stock options, restricted stock awards, restricted stock units and similar awards granted to Mr. Brown that remain unvested on the date of termination will be immediately forfeited and cancelled.

In the event that Mr. Brown's employment is terminated by the Company without "cause" or by Mr. Brown for "good cause" within one year following a "change in control," he would be entitled to the following severance payments and benefits:

a lump-sum cash payment equal to two times the sum of (1) his monthly base salary in effect on the termination date multiplied by 12 and (2) the amount of his full target bonus in respect of the bonus year in which the termination occurs;

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a lump-sum cash payment equal to the value of his accrued but unpaid salary through the date of such termination, plus his unused vacation days earned for the year prior to the year in which the termination occurs and his unused vacation days earned for the year in which the termination occurs;

payment by the Company of all applicable medical continuation premiums for continuation coverage under COBRA for the benefit of Mr. Brown (and his covered dependents as of the date of his termination, if any) under his then-current plan election for 18 months after termination; and

accelerated vesting of all outstanding and previously unvested stock options, restricted stock awards, restricted stock units and similar awards granted to Mr. Brown by the Company prior to his termination.

In the event that the Company consummates a change in control, whether or not Mr. Brown's employment is terminated, Mr. Brown will be entitled to acceleration of all stock options, restricted stock awards, restricted stock units and similar awards granted to Mr. Brown by the Company prior to the change in control.

In the event that Mr. Brown's employment is terminated by reason of his death or long-term/permanent disability, he or his heirs would be entitled to substantially the same benefits as described above with respect to a termination by the Company without cause or by Mr. Brown for good cause in the absence of a change in control, except that any unvested equity awards held by Mr. Brown would be forfeited immediately upon such termination.

Mr. Brown's Executive Severance Agreement is generally designed to avoid the adverse effects of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"). The Executive Severance Agreement provides that if any portion of the payments or benefits under such agreement or under any other agreement for Mr. Brown would constitute an excess parachute payment for purposes of the Code, such payments and benefits will be reduced so that Mr. Brown will be entitled to receive \$1 less than the maximum amount that he could receive without becoming subject to the 20% excise tax imposed by the Code on certain excess parachute payments.

In consideration of the benefits due to Mr. Brown under the Executive Severance Agreement, Mr. Brown agrees not to compete with the Company or solicit the Company's customers or employees during Mr. Brown's employment and for a period of one year (or, in the event of a termination of employment within one year following a change in control, two years) after his employment is terminated.

Under the Executive Severance Agreement, "good cause" for Mr. Brown to terminate his employment means:

a material diminution in his then-current monthly base salary;

a material change in the location of his principal place of employment by the Company;

any material diminution in his current position or any title or position to which he has been promoted;

any material diminution of his authority, duties or responsibilities from those commensurate and consistent with the character, status and dignity appropriate to his current position or any title or position to which he has been promoted (provided, however, that if at any time he ceases to have such duties and responsibilities because the Company ceases to have any securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, or cease to be required to file reports under Section 15(d) of the Securities Exchange Act of 1934, as amended, then his authority, duties and responsibilities will not be deemed to have been materially diminished solely due to the cessation of such publicly traded company duties and responsibilities); or

any material breach by the Company of any material provision of the Executive Severance Agreement.

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Under the Executive Severance Agreement, a “change in control” will be deemed to have occurred on the earliest of any of the following dates:

the date the Company merges or consolidates with any other person or entity, and the voting securities of the Company outstanding immediately prior to such merger or consolidation do not continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the total voting power of the voting securities of our company or such surviving entity outstanding immediately after such merger or consolidation;

the date the Company sells all or substantially all of our assets to any other person or entity;

the date the Company is dissolved;

the date any person or entity together with its affiliates becomes, directly or indirectly, the beneficial owner of voting securities representing more than 50% of the total voting power of all then outstanding voting securities of the Company; or

the date the individuals who constituted the nonemployee members of the Company’s Board of Directors (the “Incumbent Board”) as of the Effective Date cease for any reason to constitute at least a majority of the nonemployee members of the Company’s Board of Directors, provided that, any person becoming a director whose election or nomination for election by our stockholders was approved by a vote of at least 80% of the directors comprising the Incumbent Board then still in office (or whose election or nomination was previously so approved) will be considered as though such person were a member of the Incumbent Board;

provided, however, a “change in control” will not be deemed to have occurred in connection with any bankruptcy or insolvency of the Company, or any transaction in connection therewith.

Under the Executive Severance Agreement, “cause” for the Company to terminate the Mr. Brown’s employment means (i) his gross negligence, willful misconduct or willful neglect in the performance of his material duties and services as the Chief Financial Officer of the Company; (ii) his final conviction of a felony by a trial court, or his entry of a plea of nolo contendere to a felony charge; (iii) any criminal indictment relating to an event or occurrence for which he was directly responsible which, in the business judgment of a majority of our Board of Directors, exposes the Company to ridicule, shame or business or financial risk; or (iv) a material breach by the officer of any material provision of the Executive Severance Agreement.

In addition, on August 8, 2012, the Company and Mr. Brown entered into the Company’s form of Indemnification Agreement, which will become effective on August 22, 2012 and will provide indemnification for Mr. Brown for certain events or occurrences while he serves the Company as an officer or director or in certain other capacities at the Company’s request.

The foregoing descriptions are qualified in their entirety by reference to the Offer Letter attached hereto as Exhibit 10.1, the Executive Severance Agreement attached hereto as Exhibit 10.2 and the Indemnification Agreement attached hereto as Exhibit 10.3, each of which is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| Exhibit No. | Exhibit |
|-------------|--|
| <u>10.1</u> | Offer Letter to William Matthew Brown, dated August 7, 2012. |
| <u>10.2</u> | Executive Severance Agreement, between U.S. Concrete, Inc. and William Matthew Brown, dated August 8, 2012. |
| <u>10.3</u> | Indemnification Agreement, by and between U.S. Concrete, Inc. and William Matthew Brown, dated August 8, 2012. |
| <u>99.1</u> | Press Release of U.S. Concrete, Inc. dated August 9, 2012. |

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.

U.S. CONCRETE, INC.

Date: By: /s/ William J. Sandbrook

August
9, 2012

William J. Sandbrook
President and Chief Executive Officer

EXHIBIT INDEX

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