

Vulcan Materials CO
Form S-3ASR
December 03, 2007

As filed with the Securities and Exchange Commission on December 3, 2007
Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION
Washington D.C. 20549**

**Form S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

VULCAN MATERIALS COMPANY
(Exact name of Registrant as specified in its charter)

New Jersey
*(State or other jurisdiction of
incorporation or organization)*

20-8579133
*(IRS Employer
Identification No.)*

**1200 Urban Center Drive
Birmingham, Alabama 35242
205-298-3000**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**William F. Denson, III, Esq.
Senior Vice President and General Counsel
Vulcan Materials Company
1200 Urban Center Drive
Birmingham, Alabama 35242
205-298-3000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

**Edward D. Herlihy, Esq.
Igor Kirman, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
212-403-1000**

Approximate date of commencement of proposed sale to public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or

reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

CALCULATION OF REGISTRATION FEE

of Each Class of Securities to be Registered	Amount to be Registered/Proposed Maximum Offering Price Per Security	Proposed Maximum Aggregate Off Price/Amount of Registration F
Securities, Common Stock, \$1 par value(1), Preference Stock, Depository Shares, Warrants, Stock Purchase Contracts and Stock Purchase Units	(2)	(2)

- (1) Each share of common stock includes one preference share purchase right. No separate consideration is payable for the preference share purchase rights. The registration fee for these securities is included in the fee for the common stock.
- (2) An indeterminate aggregate initial offering price or number of securities is being registered as may from time to time be issued at indeterminate prices. Separate consideration may or may not be received for securities that are issuable upon conversion of, or in exchange for, or upon exercise of, convertible or exchangeable securities. In accordance with Rule 456(b) and Rule 457(r), the registrant is deferring payment of the entire registration fee.
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EXPLANATORY NOTE

We are a New Jersey corporation formerly named Virginia Holdco, Inc. Unless otherwise stated or the context otherwise requires, references in this registration statement to Vulcan, we, our, or us refer to Vulcan Materials Company and its consolidated subsidiaries. We entered into an Agreement and Plan of Merger, or the merger agreement, dated as of February 19, 2007, as amended on April 9, 2007, with Legacy Vulcan Corp., a New Jersey corporation formerly named Vulcan Materials Company (Legacy Vulcan), Florida Rock Industries, Inc., a Florida corporation (Florida Rock), Virginia Merger Sub, Inc. and Fresno Merger Sub, Inc. Pursuant to the merger agreement, on November 16, 2007, our newly created wholly-owned subsidiary, Virginia Merger Sub, Inc., merged with and into Legacy Vulcan (the Vulcan merger), and our newly created wholly-owned subsidiary, Fresno Merger Sub, Inc., merged with and into Florida Rock (the Florida Rock merger). As a result of the Vulcan merger and the Florida Rock merger, each of Legacy Vulcan and Florida Rock became our wholly-owned subsidiaries. These mergers are referred to in this registration statement as the mergers. Pursuant to the mergers, the existing shareholders of Legacy Vulcan and Florida Rock became our shareholders. As a result of the mergers, each Legacy Vulcan shareholder received one share of our common stock for each outstanding share of common stock of Legacy Vulcan held and 30% of the outstanding shares of Florida Rock common stock were each converted into the right to receive 0.63 shares of our common stock. In addition, after the consummation of the transactions contemplated by the merger agreement, our name was changed from Virginia Holdco, Inc. to Vulcan Materials Company, and Legacy Vulcan's name was changed from Vulcan Materials Company to Legacy Vulcan Corp.

For purposes of our eligibility to file this registration statement on Form S-3, we are a successor registrant to both Legacy Vulcan and Florida Rock within the meaning of General Instruction I.A.7 to Form S-3.

PROSPECTUS

VULCAN MATERIALS COMPANY

**Debt Securities
Common Stock
Preference Stock
Depository Shares
Warrants
Stock Purchase Contracts
Stock Purchase Units**

Vulcan Materials Company may, from time to time, in one or more offerings, offer and sell debt securities, common stock, preference stock, depository shares, warrants, stock purchase contracts and stock purchase units to the public. We will provide specific terms of any offering and the offered securities in supplements to this prospectus. You should read this prospectus and each applicable prospectus supplement, together with the documents incorporated by reference, carefully before you invest.

This prospectus may not be used to sell our securities unless it is accompanied by a prospectus supplement.

As more fully described below under Mergers, on November 16, 2007, Vulcan Materials Company, a New Jersey corporation (Legacy Vulcan), and Florida Rock Industries, Inc., a Florida corporation (Florida Rock), each consummated a merger transaction with a separate wholly-owned subsidiary of ours, as a result of which Legacy Vulcan and Florida Rock became our wholly-owned subsidiaries. In connection with the mergers, we were renamed Vulcan Materials Company and Legacy Vulcan was renamed Legacy Vulcan Corp. After the mergers, the shareholders of Legacy Vulcan and Florida Rock became the shareholders of Vulcan.

You should carefully read and evaluate the risk factors included in the documents we incorporate by reference, the risk factors described under the caption Risk Factors in any applicable prospectus supplement and in our periodic reports as well as the other information that we file with the Securities and Exchange Commission (the SEC). See Risk Factors on page 2.

We may offer and sell these securities to or through agents, underwriters, dealers or directly to purchasers. The names of any underwriters and the terms of the arrangements with such entities will be stated in an accompanying prospectus supplement.

NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Our common stock is listed on the New York Stock Exchange under the symbol VMC. Each prospectus supplement will indicate if the securities offered thereby will be listed on any securities exchange.

The date of this prospectus is December 3, 2007.

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ABOUT THIS PROSPECTUS

This document is called a prospectus and is part of a registration statement that we filed with the SEC using a shelf registration or continuous offering process. Under this shelf process, we may from time to time offer and/or sell any combination of the securities described in this prospectus in one or more offerings.

This prospectus provides you with a general description of the debt securities, common stock, preference stock, depository shares, warrants, stock purchase contracts, and stock purchase units we may offer. Each time we sell any such securities, we will provide a prospectus supplement containing specific information about the terms of the securities being offered. That prospectus supplement may include a discussion of any risk factors or other special considerations applicable to those securities. The prospectus supplement may also add, update or change information in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in that prospectus supplement. You should read both this prospectus and the applicable prospectus supplement and the exhibits filed with our registration statement together with the additional information described under the heading Where You Can Find More Information and Incorporation by Reference of Certain Documents.

You should rely only on the information contained in or incorporated by reference in this prospectus and the applicable prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer or soliciting a purchase of these securities in any jurisdiction in which the offer or solicitation is not authorized or in which the person making the offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make the offer or solicitation. You should not assume that the information in or incorporated by reference into this prospectus or any prospectus supplement is accurate as of any date other than as of its date. Our business, financial condition, results of operations and prospects may have changed since that date.

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Unless we have indicated otherwise, references in this prospectus to Vulcan, we, us and our or similar terms are to Vulcan Materials Company and its consolidated subsidiaries. References in this prospectus to Legacy Vulcan are to Legacy Vulcan Corp. and its consolidated subsidiaries. References to Florida Rock are to Florida Rock Industries, Inc. and its consolidated subsidiaries.

THE COMPANY

Vulcan Materials Company provides infrastructure materials that are required by the American economy. Headquartered in Birmingham, Alabama, we are the nation's leading producer of construction aggregates: primarily crushed stone, sand and gravel. We are traded on the New York Stock Exchange under the symbol VMC. We are a New Jersey corporation that was incorporated on February 14, 2007 and has held Legacy Vulcan, formerly named Vulcan Materials Company, and Florida Rock as direct wholly-owned subsidiaries since the completion of the mergers described below. We were previously named Virginia Holdco, Inc. and were renamed Vulcan Materials Company after consummation of the mergers. Our principal executive offices are located at 1200 Urban Center Drive, Birmingham, Alabama 35242. Our telephone number is (205) 298-3000.

Our website is located at <http://www.vulcanmaterials.com>. We do not incorporate the information on our website into this prospectus and you should not consider it part of this prospectus.

Legacy Vulcan

Legacy Vulcan Corp. is a New Jersey corporation incorporated in 1956 and is the nation's largest producer of construction aggregates and a major producer of asphalt mix and concrete. Legacy Vulcan's construction materials business produces and sells aggregates primarily crushed stone, sand and gravel that are used in nearly all forms of construction. In particular, large quantities of aggregates are used to build roads and nonresidential infrastructure.

Florida Rock

Florida Rock, a Florida corporation incorporated in 1945, is one of the nation's leading producers of construction aggregates, a major provider of ready-mix concrete and concrete products in the Southeastern and mid-Atlantic states and a significant supplier of cement in Florida and Georgia. Florida Rock is engaged in the mining, processing, distribution and sale of sand, gravel and crushed stone, the production of ready-mix concrete and concrete products, as well as the sales of other building materials, the production and sales of Portland and masonry cement, the importation of cement and slag and the sale of calcium products to the animal feed industry.

MERGERS

On February 19, 2007, Legacy Vulcan and Florida Rock announced that they entered into a definitive merger agreement. The transactions contemplated by the merger agreement were consummated on November 16, 2007, at which time 30% of the outstanding shares of common stock of Florida Rock were each converted into the right to receive 0.63 shares of our common stock, and each outstanding share of Legacy Vulcan was converted into one share of our common stock. In connection with the merger, Legacy Vulcan and Florida Rock both became our wholly-owned subsidiaries.

RISK FACTORS

Investing in our securities involves risks. Before purchasing any securities we offer, you should carefully consider the risk factors that are incorporated by reference herein from the section captioned "Risk Factors" in Legacy Vulcan's Annual Report on Form 10-K for the year ended December 31, 2006 and the section captioned "Risk Factors" in Florida Rock's Annual Report on Form 10-K for the year ended September 30, 2007, as the same may be updated from time to time, together with all of the other information included in this prospectus and any prospectus supplement and any other information that we have incorporated by reference, including filings made with the SEC subsequent to the date hereof. Any of these risks, as well as other risks and uncertainties, could harm our financial condition, results of

operations or cash flows. Please also refer to the section below entitled Information Regarding Forward-Looking Statements.

WHERE YOU CAN FIND MORE INFORMATION AND INCORPORATION BY REFERENCE OF CERTAIN DOCUMENTS

Vulcan files annual, quarterly and current reports, proxy statements and other information with the SEC. You may obtain any document we file with the SEC at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington D.C. 20549. You may obtain information on the operation of the SEC's public reference facilities by calling the SEC at 1-800-SEC-0330. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Our SEC filings are also accessible through the Internet at the SEC's web site at <http://www.sec.gov> and through the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

The SEC permits us to incorporate by reference into this prospectus the information in documents we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and later information that we file with the SEC will update and supersede any information contained in this prospectus or incorporated by reference in this prospectus. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), until the offering of the securities by means of this prospectus is terminated.

These documents contain important business and financial information about Legacy Vulcan, Florida Rock and us that is not included in or delivered with this prospectus.

**Vulcan Materials Company (File No. 001-33841)
(formerly Virginia Holdco, Inc.)**

Period

Current Reports on Form 8-K

November 16, 2007 (the description of our common stock is contained in this filing, which is also the filing pursuant to which our common stock is deemed registered pursuant to Section 12(b) of the Exchange Act), as revised by our Current Report on Form 8-K/A filed on November 21, 2007, and November 21, 2007

**Legacy Vulcan Corp. (File No. 001-04033)
(formerly Vulcan Materials Company)**

Period

Annual Report on Form 10-K

Fiscal year ended December 31, 2006, as revised by our Current Report on Form 8-K filed on July 12, 2007

Quarterly Reports on Form 10-Q

Quarters ended March 31, 2007, June 30, 2007 and September 30, 2007

Current Reports on Form 8-K

February 20, 2007, July 12, 2007, July 17, 2007 and October 15, 2007

Florida Rock Industries, Inc. (File No. 001-07159)

Period

Annual Report on Form 10-K

Fiscal year ended September 30, 2007

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To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, was or is furnished, rather than filed with, the SEC such information or exhibit is specifically not incorporated by reference into this document.

If you request a copy of any or all of the documents incorporated by reference, we will send to you the copies you requested at no charge. However, we will not send exhibits to such documents, unless such exhibits are specifically incorporated by reference in such documents. You should direct requests for such copies to Vulcan Materials Company, 1200 Urban Center Drive, Birmingham, Alabama 35242, Attention: Jerry F. Perkins, Jr.

If you find inconsistencies between the documents, or between the documents and this prospectus or the applicable prospectus supplement, you should rely on the most recent document or prospectus supplement.

INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the documents we incorporate by reference, contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act. Generally, these statements relate to future financial performance, results of operations, business plans or strategies, projected or anticipated revenues, expenses, earnings, or levels of capital expenditures. Statements to the effect that we or our management anticipate, believe, estimate, expect, plan, predict, intend, or project a result or course of events or target objective, or goal, or that a result or event should occur, and other similar expressions, identify these forward-looking statements. These statements are subject to numerous risks, uncertainties, and assumptions, including but not limited to general business conditions, competitive factors, pricing, energy costs, and other risks and uncertainties discussed in the reports we periodically file with the SEC. These risks, uncertainties, and assumptions may cause our actual results or performance to be materially different from those expressed or implied by the forward-looking statements. We caution prospective investors that forward-looking statements are not guarantees of future performance and that actual results, developments, and business decisions may vary significantly from those expressed in or implied by the forward-looking statements. We undertake no obligation to update publicly or revise any forward-looking statement for any reason, whether as a result of new information, future events or otherwise.

In addition to the risk factors identified in Legacy Vulcan's Annual Report on Form 10-K for the year ended December 31, 2006 and Florida Rock's Annual Report on Form 10-K for the year ended September 30, 2007, the following risks related to our business, among others, could cause actual results to differ materially from those described in the forward-looking statements:

- the possibility that problems may arise in successfully integrating the businesses of the two companies;
- the possibility that the mergers may involve unexpected costs;
- the possibility that the combined company may be unable to achieve cost-cutting synergies;
- the possibility that the businesses may suffer as a result of uncertainty surrounding the mergers;
- the possibility that the industry may be subject to future regulatory or legislative actions;
- the outcome of pending legal proceedings;
- changes in interest rates;
- the timing and amount of federal, state and local funding for infrastructure;
- changes in the level of spending for residential and private nonresidential construction;

the highly competitive nature of the construction materials industry;

pricing of our products;

our ability to secure and permit aggregate reserves in strategically located areas;

weather and other natural phenomena;

energy costs;

costs of hydrocarbon-based raw materials;

increasing healthcare costs;

risks relating to certain divestitures that we are required by the Antitrust Division of the United States Department of Justice to complete as a result of the mergers;

the timing and amount of any future payments to be received under two earn-outs contained in the agreement for the divestiture of Legacy Vulcan's chemicals business; and

other risks and uncertainties.

RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges for Legacy Vulcan is set forth below for the periods indicated. In addition to the historical ratios, pro forma ratios of earnings to fixed charges are presented that give effect to the mergers as if they had occurred on January 1, 2006. The pro forma ratios have been derived from, and should be read in conjunction with, Vulcan's pro forma consolidated condensed financial statements for the year ended December 31, 2006 and the nine months ended September 30, 2007, including the notes thereto, included in our Current Report on Form 8-K/A filed on November 21, 2007 and incorporated by reference in this registration statement. See "Where You Can Find More Information and Incorporation by Reference of Certain Documents."

For purposes of computing the ratio of earnings to fixed charges, earnings were calculated by adding (1) earnings from continuing operations before income taxes; (2) fixed charges; (3) capitalized interest credits; (4) amortization of capitalized interest; and (5) distributed income of equity investees. Fixed charges consist of: (1) interest expense before capitalization credits; (2) amortization of financing costs; and (3) one-third of rental expense.

	Historical					Pro Forma		
	Year Ended December 31,					Nine Months Ended	Year Ended	Nine Months Ended
2002	2003	2004	2005	2006	September 30, 2007	December 31, 2006	September 30, 2007	
	5.4x	5.7x	7.3x	8.7x	12.9x	13.0x	5.2x	4.8x

USE OF PROCEEDS

Unless otherwise specified in a prospectus supplement accompanying this prospectus, we will add the net proceeds from the sale of the securities to which this prospectus and the prospectus supplement relate to our general funds, which we will use for repaying debt incurred in connection with the mergers, retiring our outstanding commercial paper, financing any increase in working capital, acquisitions, general corporate purposes and any other purpose

specified in a prospectus supplement. We may conduct concurrent or additional financings at any time.

DESCRIPTION OF DEBT SECURITIES

The following is a general description of the debt securities which may be issued from time to time by us under this prospectus. The particular terms relating to each debt security will be set forth in a prospectus supplement.

General

We may issue from time to time one or more series of debt securities under an indenture (the *Indenture*) between us and Wilmington Trust Company, as trustee (the *Trustee*). The Indenture will not limit the amount of debt securities that we may issue. Citibank, N.A. will act as authenticating agent, paying agent, registrar and transfer agent for the debt securities under a paying agency agreement among us, Citibank, N.A. and the Trustee.

The debt securities will be our direct, unsecured obligations. The debt securities will either rank as senior debt or subordinated debt, and may be issued either separately or together with, or upon the conversion of, or in exchange for, other securities. We currently conduct substantially all of our operations through subsidiaries, and the holders of our debt securities (whether senior or subordinated) will be effectively subordinated to the creditors of our subsidiaries. This means that creditors of our subsidiaries will have a claim to the assets of our subsidiaries that is superior to the claim of our creditors, including holders of our debt securities.

The following description is only a summary of the material provisions of the Indenture for the debt securities and is qualified by reference to the Indenture, a form of which is filed as an exhibit to the registration statement of which this prospectus is a part. The terms of any indenture that we may enter into may differ from the terms we describe below. We urge you to read the Indenture because it, and not this description, define your rights as a holder of the debt securities. The summary below of the general terms of the debt securities will be supplemented by the more specific terms in the prospectus supplement for a particular series of debt securities. In some instances, certain of the precise terms of the debt securities you are offered may be described in a further prospectus supplement, known as a pricing supplement.

Terms Applicable to Debt Securities

The prospectus supplement, including any separate pricing supplement, for a particular series of debt securities will specify the following terms of that series of debt securities:

the designation, the aggregate principal amount and the authorized denominations, if other than \$1,000 and integral multiples of \$1,000;

the percentage of the principal amount at which the debt securities will be issued;

the date or dates on which the debt securities will mature;

the currency, currencies or currency units in which payments on the debt securities will be payable;

the rate or rates at which the debt securities will bear interest, if any, or the method of determination of such rate or rates;

the date or dates from which the interest, if any, shall accrue, the dates on which the interest, if any, will be payable and the method of determining holders to whom any of the interest shall be payable;

the prices, if any, at which, and the dates at or after which, we may or must repay, repurchase or redeem the debt securities;

any sinking fund obligation with respect to the debt securities;

any terms pursuant to which the debt securities may be convertible or exchangeable into equity or other securities;

whether such debt securities will be senior debt securities or subordinated debt securities and, if subordinated debt securities, the subordination provisions and the applicable definition of senior indebtedness ;

any special United States federal income tax consequences;

any addition to or change in the events of default described in this prospectus or the Indenture;

any addition to or change in the covenants described in this prospectus or the Indenture;

whether the debt securities will be issued in the form of one or more permanent global debt securities;

the exchanges, if any, on which the debt securities may be listed; and

any other material terms of the debt securities consistent with the provisions of the Indenture.

Unless otherwise specified in the prospectus supplement, we will compute interest payments on the basis of a 360-day year consisting of twelve 30-day months.

Original Issue Discount Securities

Some of the debt securities may be issued as original issue discount securities to be sold at a substantial discount below their stated principal amount. Original issue discount securities may include zero coupon securities that do not pay any cash interest for the entire term of the securities. In the event of an acceleration of the maturity of any original issue discount security, the amount payable to the holder thereof upon such acceleration will be determined in the manner described in the applicable prospectus supplement. Conditions pursuant to which payment of the principal of the debt securities may be accelerated will be set forth in the prospectus supplement relating to those debt securities. The prospectus supplement relating to a particular series of discounted debt securities will describe any Federal income tax consequences and other special consequences applicable to those discounted debt securities.

Reopening of Issue

We may, from time to time, reopen an issue of debt securities and issue additional debt securities with the same terms (including issue date, maturity and interest rate) as the debt securities of that series issued on an earlier date. (Section 301) After such additional debt securities are issued, they will be fungible with the debt securities of that series issued on the earlier date.

Ranking

The senior debt securities will be unsecured and will rank equal in right of payment with all of our existing and future unsecured and unsubordinated indebtedness. Any subordinated debt securities will be obligations of ours and will be subordinated in right of payment to both our existing and any future senior indebtedness. The prospectus supplement

relating to those debt securities will describe the subordination provisions and set forth the definition of senior indebtedness applicable to those subordinated debt securities and the approximate amount of senior indebtedness outstanding as of a then recent date.

Redemption and Repurchase

Debt securities of any series may be redeemable at our option, may be subject to mandatory redemption pursuant to a sinking fund or otherwise, or may be subject to repurchase by us at the option of the holders, in each case upon the terms, at the times and at the prices set forth in the applicable prospectus supplement.

Conversion and Exchange

The terms, if any, on which debt securities of any series are convertible into or exchangeable for common stock, preference stock, or other debt securities will be set forth in the applicable prospectus supplement. Such terms of conversion or exchange may be either mandatory, at the option of the holders, or at our option.

Covenants

Unless the applicable prospectus supplement specifies otherwise, the debt securities will be subject to certain restrictive covenants described below. Any additional restrictive covenants applicable to a particular series of debt securities that we offer will be described in the applicable prospectus supplement.

Restrictions on Secured Debt

In the Indenture, we covenant that we will not, and each of our restricted subsidiaries (as defined below) will not, incur, issue, assume or guarantee any debt (as defined in the Indenture) secured by a pledge, mortgage or other lien (1) on a principal property (as defined below) owned or leased by us or any restricted subsidiary or (2) on any shares of stock or debt of any restricted subsidiary, unless we secure the debt securities equally and ratably with or prior to the debt secured by the lien. If we secure the debt securities in this manner, we have the option of securing any of our other debt or obligations, or those of any subsidiary, equally and ratably with the debt securities, as long as the other debt or obligations are not subordinate to the debt securities. This covenant has significant exceptions; it does not apply to the following liens:

- liens on the property, shares of stock or debt of any person (as defined in the Indenture) existing at the time the person becomes our restricted subsidiary or, with respect to a particular series of debt securities, liens existing as of the time such debt securities are first issued;

- liens in favor of us or any of our restricted subsidiaries;

- liens in favor of U.S. governmental bodies to secure progress, advance or other payments required under any contract or provision of any statute or regulation;

- liens on property, shares of stock or debt, either:

 - existing at the time we acquire the property, stock or debt, including acquisition through merger or consolidation;

 - securing all or part of the cost of acquiring the property, stock or debt or construction on or improvement of the property; or

 - securing debt to finance the purchase price of the property, stock or debt or the cost of acquiring, constructing on or improving of the property that were incurred prior to or at the time or within one year after we acquire the property, stock or debt or complete

construction on or improvement of the property and commence full operation thereof;

liens securing all of the debt securities; and

any extension, renewal or replacement of the liens described above if the extension, renewal or replacement is limited to the same property, shares or debt that secured the lien that was extended, renewed or replaced (plus improvements on such property), except that if the debt secured by a lien is increased as a result of such extension, renewal or replacement, we will be required to include the increase when we compute the amount of debt that is subject to this covenant. (Section 1006)

In addition, this covenant restricting secured debt does not apply to any debt that either we or any of our restricted subsidiaries issue, assume or guarantee if the total principal amount of the debt, when added to (1) all of the other outstanding debt that this covenant would otherwise restrict, and (2) the total amount of remaining rent, discounted by 11% per year, that we or any restricted subsidiary owes under any lease arising out of a sale and leaseback transaction, is less than or equal to 15% of our consolidated net tangible assets. (Section 1006) When we talk about consolidated net tangible assets, we mean, in general, the aggregate amount of the assets of us and our consolidated subsidiaries after deducting (a) all current liabilities (excluding any thereof constituting funded debt, as defined in the Indenture, by reason of being renewable or extendible) and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense, and similar intangible assets. (Section 101)

When we talk about a restricted subsidiary, we mean, in general, a corporation (as defined in the Indenture) more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by us or by one or more of our other subsidiaries, or us and one or more of our other subsidiaries, and has substantially all its assets located in, or carries on substantially all of its business in, the United States of America; provided, however, that the term shall not include any entity which is principally engaged in leasing or in financing receivables, or which is principally engaged in financing our operations outside the United States of America. (Section 101)

When we talk about a principal property, we mean, in general, any building, structure or other facility that we or any restricted subsidiary leases or owns, together with the land on which the facility is built and fixtures comprising a part thereof, which is located in the United States, used primarily for manufacturing or processing and which has a gross book value in excess of 3% of our consolidated net tangible assets, other than property financed pursuant to certain exempt facility sections of the Internal Revenue Code or which in the opinion of our board of directors, is not of material importance to the total business. (Section 101)

Limitation on Sale and Leasebacks

We have agreed that neither we nor any of our restricted subsidiaries will enter into a sale and leaseback transaction (as defined in the Indenture) related to a principal property which would take effect more than one year after the acquisition, construction, improvement and commencement of full operation of the property, except for temporary leases for a term of not more than three years (or which we or such restricted subsidiary may terminate within three years) and except for leases between us and a restricted subsidiary or between our restricted subsidiaries, unless one of the following applies:

we or our restricted subsidiary could have incurred debt secured by a lien on the principal property to be leased back in an amount equal to the remaining rent, discounted by 11% per year, for that sale and leaseback transaction, without being required to equally and ratably secure the debt securities as required by the Restrictions on Secured Debt covenant described above, or

within one year after the sale or transfer, we or a restricted subsidiary apply to (1) the purchase, construction or improvement of other property used or useful in the business of, or other capital

expenditure by, us or any of our restricted

subsidiaries or (2) the retirement of long-term debt, which is debt with a maturity of a year or more, or the pre