ADA-ES INC
Form 10-Q
November 09, 2012

United States

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2012

or

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

For the transition period from to

Commission File Number: 000-50216

ADA-ES, INC.

(Exact name of registrant as specified in its charter)

Colorado	**84-1457385**
(State or other jurisdiction of	**(I.R.S. Employer**
incorporation or organization)	**Identification No.)**
9135 South Ridgeline Boulevard, Suite 200,	
Highlands Ranch, Colorado	**80129**
(Address of principal executive offices)	**(Zip Code)**

(303) 734-1727

(Registrant s telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (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 x No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ¨

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	x
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. (Check one): Yes ¨ No x

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes ¨ No ¨

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

Class	**Outstanding at October 31, 2012**

Common Stock, no par value	10,026,469

Part I. - FINANCIAL INFORMATION

Item 1. Consolidated Financial Statements

ADA-ES, Inc. and Subsidiaries

Consolidated Balance Sheets

(*Amounts in thousands, except share data*)

	September 30, 2012 (Unaudited)	December 31, 2011 (Restated, See Note 14)
ASSETS		
Current Assets		
Cash and cash equivalents	$ 17,531	$ 40,879
Receivables, net of allowance for doubtful accounts	10,042	5,914
Investment in securities	1,893	508
Prepaid expenses and other assets	2,792	1,532
Total current assets	32,258	48,833
Property and Equipment, at cost	52,724	41,771
Less accumulated depreciation and amortization	(7,769)	(4,651)
Net property and equipment	44,955	37,120
Other Assets		
Investment in unconsolidated entity	1,490	590
Other assets	3,891	931
Total other assets	5,381	1,521
Total Assets	**$ 82,594**	**$ 87,474**
LIABILITIES, TEMPORARY EQUITY AND STOCKHOLDERS DEFICIT		
Current Liabilities		
Accounts payable	$ 6,745	$ 8,849
Accounts payable - related parties	3,327	1,209
Accrued payroll and related liabilities	1,611	2,545
Line of credit and current portion of notes payable	10,903	10,873
Deposits	11,900	14,900
Deferred revenue and other liabilities	10,914	5,105
Settlement awards and related accrued liabilities	3,801	3,983
Total current liabilities	49,201	47,464
Long-term Liabilities		
Line of credit and long-term portion of notes payable	2,447	3,624
Settlement awards and indemnity liability	2,500	5,200
Deferred revenue	1,965	
Accrued warranty and other liabilities	692	632
Total long-term liabilities	7,604	9,456

Total Liabilities	56,805	56,920
Commitments and Contingencies (Note 12)		
Temporary Equity - Non-controlling Interest Subject to Possible Redemption	60,000	60,000
Stockholders Deficit		
ADA-ES, Inc. stockholders deficit		
Preferred stock: 50,000,000 shares authorized, none outstanding		
Common stock: no par value, 50,000,000 shares authorized, 10,020,106 and 9,996,144 shares issued and outstanding, respectively	63,578	63,184
Accumulated deficit	(74,360)	(66,694)
Total ADA-ES, Inc. stockholders deficit	(10,782)	(3,510)
Non-controlling interest	(23,429)	(25,936)
Total Stockholders Deficit	(34,211)	(29,446)
Total Liabilities, Temporary Equity and Stockholders Deficit	**$ 82,594**	**$ 87,474**

See accompanying notes.

ADA-ES, Inc. and Subsidiaries

Consolidated Statements of Operations

(*Amounts in thousands, except per share data*)

(Unaudited)

	Three Months Ended September 30, 2012	Three Months Ended September 30, 2011 (Restated, See Note 14)	Nine Months Ended September 30, 2012	Nine Months Ended September 30, 2011 (Restated, See Note 14)
Revenues				
Refined coal	$ 70,197	$ 9,160	$ 133,722	$ 19,994
Emission control	3,480	3,095	10,209	6,837
CO_2 capture	676	977	1,153	1,894
Total revenues	74,353	13,232	145,084	28,725
Cost of Revenues				
Refined coal	67,269	3,487	121,220	4,075
Emission control	2,683	1,955	7,838	3,753
CO_2 capture	444	636	643	1,201
Total cost of revenues	70,396	6,078	129,701	9,029
Gross Margin before Depreciation and Amortization	3,957	7,154	15,383	19,696
Other Costs and Expenses				
General and administrative	5,173	2,932	12,852	14,596
Research and development	882	506	2,064	1,396
Depreciation and amortization	1,239	216	3,444	608
Total expenses	7,294	3,654	18,360	16,600
Operating Income (Loss)	(3,337)	3,500	(2,977)	3,096
Other Income (Expense):				
Net equity in net income (loss) from unconsolidated entities	232	(2,050)	400	(5,761)
Other income (expense) including interest	(19)	71	122	2,161
Interest expense	(144)	(889)	(1,045)	(889)
Settlement of litigation and arbitration award, net	(800)	(2,182)	(1,553)	(41,684)
Total other income (expense)	(731)	(5,050)	(2,076)	(46,173)
Loss from Continuing Operations Before Income Tax Benefit and Non-controlling Interest	(4,068)	(1,550)	(5,053)	(43,077)
Income Tax Benefit				(10,980)
Net Loss Before Non-controlling Interest	(4,068)	(1,550)	(5,053)	(32,097)
Non-controlling Interest	120	(3,053)	(2,613)	(7,888)
Net Loss Attributable to ADA-ES, Inc.	**$ (3,948)**	**$ (4,603)**	**$ (7,666)**	**$ (39,985)**
Net Loss Per Common Share Basic and Diluted Attributable to ADA-ES, Inc.	$ (0.39)	$ (0.60)	$ (0.77)	$ (5.25)

Weighted Average Common Basic and Diluted Shares Outstanding	10,017	7,661	10,008	7,621

See accompanying notes.

ADA-ES, Inc. and Subsidiaries

Consolidated Statements of Changes in Stockholders Deficit

Nine Months Ended September 30, 2012 and 2011

(Amounts in thousands, except share data)

(Unaudited)

	Common Stock Shares	Common Stock Amount (Restated)	Accumulated Deficit (Restated)	Total ADA-ES Stockholders Deficit (Restated)	Non-controlling Interest (Restated)	Total Deficit (Restated)
Balances, January 1, 2011 (restated, See Note 14)	7,538,861	$ 39,627	$ (43,875)	$ (4,248)	$ 2,035	$ (2,213)
Stock-based compensation	96,411	761		761		761
Issuance of stock to 401(k) plan	21,829	264		264		264
Issuance of stock on exercise of options	11,134	81		81		81
Income tax impact of sale of temporary equity in joint venture (restated)		(10,980)		(10,980)		(10,980)
Equity contributions by non-controlling interest					250	250
Distributions to non-controlling interest					(36,203)	(36,203)
Expense of stock issuance and registration		(16)		(16)		(16)
Net income (loss) (restated)			(39,985)	(39,985)	7,888	(32,097)
Balances, September 30, 2011, as restated	**7,668,235**	**$ 29,737**	**$ (83,860)**	**$ (54,123)**	**$ (26,030)**	**$ (80,153)**
Balances, January 1, 2012 (restated, See Note 14)	9,996,144	$ 63,184	$ (66,694)	$ (3,510)	$ (25,936)	$ (29,446)
Stock-based compensation	8,818	103		103		103
Issuance of stock to 401(k) plan	13,178	292		292		292
Issuance of stock on exercise of options	1,966	21		21		21
Distributions to non-controlling interest					(106)	(106)
Expense of stock issuance and registration		(22)		(22)		(22)
Net income (loss)			(7,666)	(7,666)	2,613	(5,053)
Balances, September 30, 2012	**10,020,106**	**$ 63,578**	**$ (74,360)**	**$ (10,782)**	**$ (23,429)**	**$ (34,211)**

See accompanying notes.

ADA-ES, Inc. and Subsidiaries

Consolidated Statements of Cash Flows

(Amounts in thousands)

(Unaudited)

	Nine Months Ended September 30, 2012	2011 (Restated, See Note 14)
Cash Flows from Operating Activities		
Net loss	$ (7,666)	$ (39,985)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,444	608
Deferred tax benefit		(10,980)
Loss on disposal of assets	49	60
Expenses paid with stock, restricted stock and stock options	395	1,025
Net equity in net (income) loss from unconsolidated entities	(400)	5,761
Non-controlling interest in income from subsidiaries	2,613	7,888
Changes in operating assets and liabilities:		
Receivables, net	(4,128)	(4,284)
Prepaid expenses and other assets	(1,164)	(1,536)
Accounts payable	14	3,495
Accrued payroll, expenses and other related liabilities	(992)	800
Deferred revenue and other liabilities	4,834	6,726
Settlement awards and related accrued liabilities	(2,882)	8,703
Net cash used in operating activities	(5,883)	(21,719)
Cash Flows from Investing Activities		
Investment in securities	(1,385)	
Acquistion of BCSI	(2,000)	
Proceeds from sale of property and equipment	32	
Principal payments received on notes receivable		1,580
Capital expenditures for equipment, patents and development projects	(9,358)	(11,975)
Net cash used in investing activities	(12,711)	(10,395)
Cash Flows from Financing Activities		
Net borrowings (repayments) under line of credit	(4,147)	7,887
Loan to unconsolidated entity	(500)	
Sale of temporary equity in joint venture		60,000
Non-controlling interest equity contributions		250
Distributions to non-controlling interest	(106)	(36,203)
Exercise of stock options	21	81
Stock issuance and registration costs	(22)	(16)
Net cash provided by (used in) financing activities	(4,754)	31,999
Decrease in Cash and Cash Equivalents	(23,348)	(115)
Cash and Cash Equivalents, beginning of period	40,879	9,696
Cash and Cash Equivalents, end of period	**$ 17,531**	**$ 9,581**
Supplemental Schedule of Non-Cash Flow Investing and Financing Activities		

Stock and stock options issued for services	$	395	$	1,025
Cash paid for interest	$	1,328	$	889
Accrued capital expenditures	$		$	3,234
Deposits transferred to deferred revenue	$	3,000	$	
Notes payable related to acquisition of BCSI	$	3,000	$	

See accompanying notes.

ADA-ES, Inc. and Subsidiaries

Notes to Consolidated Financial Statements (Unaudited)

September 30, 2012

(1) Basis of Presentation

Nature of Operations

ADA-ES, Inc. (ADA), its direct and indirect wholly-owned subsidiaries, Advanced Emissions Solutions, Inc., a Delaware corporation (ADES) and ADA Intellectual Property, LLC, a Colorado limited liability company (ADA IP), both of which had no operations during the first nine months of 2012, BCSI, LLC, a Delaware limited liability company (BCSI), ADA Environmental Solutions, LLC, a Colorado limited liability company (ADA LLC) and ADA s joint venture interest in Clean Coal Solutions, LLC (Clean Coal) are collectively referred to as the Company . The Company is principally engaged in providing environmental technologies and specialty chemicals to the coal-burning electric power generation industry. The Company generates a substantial part of its revenue from the sale of refined coal (RC), the sale of Activated Carbon Injection (ACI) and Dry Sorbent Injection (DSI) systems, contracts co-funded by the government and industry and the development and lease of equipment for the RC market. The Company s sales occur principally throughout the United States.

The consolidated balance sheet as of December 31, 2011, which has been derived from restated audited financial statements, and the accompanying unaudited interim consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial statements and with the instructions to Form 10-Q and Article 10 of Regulation S-X. They do not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. The consolidated financial statements include the financial statements of ADA, ADES, ADA IP, BCSI, ADA LLC and Clean Coal. All significant intercompany balances and transactions have been eliminated in consolidation.

In the opinion of management, the consolidated financial statements include all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the results of operations, financial position and cash flows for the interim periods presented. Operating results for the three and nine months ended September 30, 2012 are not necessarily indicative of the results that may be expected for the year ending December 31, 2012.

These statements should be read in conjunction with the consolidated financial statements and related notes to the consolidated financial statements included in our Annual Report on Form 10-K/A for the year ended December 31, 2011, as amended and restated. The accounting policies used in preparing these consolidated financial statements are the same as those described in our Form 10-K and its amendments. The financial information included in these Notes relating to the Company s financial position as of December 31, 2011, and results of operations for the interim periods ended September 30, 2011 have been restated to give effect to the accounting adjustments discussed in Note 14.

The Company prepares its consolidated financial statements in conformity with U.S. generally accepted accounting principles. The preparation of these financial statements requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

Certain amounts have been reclassified from the prior periods to conform to the current period financial statement presentation. Such reclassification had no effect on the net loss reported.

New Accounting Standard

In September 2011, the Financial Accounting Standards Board issued Accounting Standards Update (ASU) 2011-08 which provides an entity the option to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative test for goodwill impairment. If an entity believes, as a result of its qualitative assessment, that it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount, the quantitative impairment test is required. Otherwise, no further testing is required. The revised standard is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The Company performs its annual goodwill impairment test in the fourth quarter and does not expect the adoption of this ASU to significantly impact its consolidated financial statements.

(2) Acquisition of BCSI

On August 31, 2012, pursuant to an Asset Purchase Agreement (Purchase Agreement) executed on July 26, 2012, BCSI acquired certain assets of two related privately held companies (Seller Companies) that fabricated and supplied DSI systems and other material handling equipment and provided testing and related DSI services for a purchase price of $2 million and other amounts payable over the next five years as described below. This acquisition provided the Company with DSI market experience and expanded manufacturing capabilities for ACI systems.

In conjunction with the Purchase Agreement, the Seller Companies sole stockholder (Sellers Stockholder) and BCSI also executed a personal goodwill purchase agreement and goodwill promissory note whereby BCSI agreed to pay the Sellers Stockholder a total of $2.8 million (subject to adjustment pursuant to the terms of the Purchase Agreement) as payment for the personal goodwill generated in connection with the Seller Companies.

In addition, the Sellers Stockholder and BCSI entered into a consulting and non-competition agreement and non-compete promissory note whereby BCSI will pay the Sellers Stockholder $200,000 plus a monthly consulting fee of approximately $21,000 per month for five years beginning August 31, 2012 in exchange for professional services provided by the Sellers Stockholder, subject to terms and conditions as specified in the Purchase Agreement.

The terms for both the $2.8 million and $200,000 promissory notes include interest at an annual rate of 4%, with interest and principal payable in twenty quarterly installments of approximately $154,000 and $11,000, respectively, beginning in November 2012, with the final installment of outstanding principal and interest due on September 30, 2017. The Notes are guaranteed by ADA and are secured by letters of credit in the amounts of $308,000 and $20,000, respectively, with August 31, 2017 expiration dates.

The transaction was accounted for using the purchase method of accounting and the operating results related to the acquired assets have been consolidated into the Company s results of operations beginning August 31, 2012.

The purchase price was allocated to the identifiable assets acquired and liabilities assumed based on their estimated fair values on the acquisition date. The following table summarizes the fair value of the Seller Companies assets acquired and liabilities assumed as of August 31, 2012:

	(in thousands)
Assets acquired:	
Inventory	$ 109
Property and equipment	2,001
Intangible assets	2,748
Other assets	200
Total assets acquired	5,058
Liabilities assumed:	
Accrued liabilities	58
Total liabilities assumed	58
Net assets acquired	$ 5,000
Purchase consideration:	
Deposit paid	$ 200
Cash paid at closing	1,800
Notes payable	3,000
Total purchase consideration	$ 5,000

(3) Investment in Unconsolidated Entity

Clean Coal Solutions Services

On January 20, 2010, the Company, together with NexGen Resources Corporation (NexGen), formed Clean Coal Solutions Services, LLC (CCSS) for the purpose of operating RC facilities leased or sold to third parties by Clean Coal. The Company has a 50% ownership interest in CCSS (but does not have management control of it) and the Company s investment in and advances to CCSS which totaled approximately $1.5 million as of September 30, 2012 includes its share of CCSS income since its formation and are accounted for under the equity method of accounting. The following schedule shows unaudited consolidated summarized information as to assets, liabilities and revenues and net income attributed to CCSS before consolidation. CCSS consolidated financial statements include the financial results of the entities that lease RC facilities and its revenues includes the sale of RC and its cost of sales include raw coal purchases.

	As of September 30, 2012		As of December 31, 2011
	(in thousands)		
Current assets	$ 68,336	$	22,609
Property, equipment, and other long-term assets	959		3,682
Total Assets	$ 69,295	$	26,291
Total Liabilities	$ 31,678	$	15,988

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
	(in thousands)			
Net revenue	$ 66,692	$ 46,769	$ 172,664	$ 129,718
Net income- attributed to CCSS	$ 466	$ 93	$ 801	$ 292

(4) Joint Venture Investment in Clean Coal

In November 2006, the Company sold a 50% interest in its joint venture called Clean Coal Solutions, LLC, which was formed in 2006 with NexGen, to market RC technology. In May 2011, ADA and NexGen entered into a transaction in which Clean Coal sold an effective 15% interest of the equity in Clean Coal to an affiliate of The Goldman Sachs Group, Inc. (GS) which is included in temporary equity subject to possible redemption in the consolidated balance sheets (see Note 10). GS has certain preferences over ADA and NexGen as to liquidation and profit distribution. GS has no further capital call requirements and does not have a voting interest but does have approval rights over certain corporate transactions.

In September 2011, ADA, NexGen, and GS entered into the First Amendment to the Second Amended and Restated Operating Agreement (the Operating Agreement) pursuant to which ADA and NexGen each transferred their 2.5% member interests in each of Clean Coal s subsidiaries back to Clean Coal. As a result of these transactions, ADA s interest in Clean Coal s net profits and losses is now 42.5%. This restructuring of ownership interests did not change the financial relationships of the parties and ADA still maintains a 50% governance interest in Clean Coal. In July 2012, ADA, NexGen and GS entered into the Second Amendment to the Operating Agreement which, among other things, expanded Clean Coal s board of managers to allow for the appointment of an additional manager not directly representative of any of the members. Since its inception, ADA has been considered the primary economic beneficiary of this joint venture and has consolidated the accounts of Clean Coal.

Clean Coal s function is to supply technology, equipment and technical services to cyclone-fired and other boiler users, but Clean Coal s primary purpose is to put into operation facilities that produce RC that qualifies for tax credits available under Section 45 of the Internal Revenue Code (Section 45 tax credits). Clean Coal qualified two facilities in 2009 for such purposes and leased those facilities to a third party in 2010.

In December 2010, the Tax Relief and Job Creation Act of 2010 extended the placed in service deadline for the Section 45 tax credits to January 1, 2012. In consideration of the extension, Clean Coal built and qualified an additional 26 RC facilities in 2011 which met the extended placed in service date. In November and December 2011, the two leased RC facilities qualified in 2009 were exchanged with newly constructed, redesigned RC facilities. The new leases carry over most of the substantive terms and conditions of the initial leases. A third RC facility was leased to GS at the end of the first quarter of 2012 and a fourth facility was leased to a third party investor during the third quarter of 2012.

The Operating Agreement requires NexGen and ADA to each pay 50% of the costs of operating Clean Coal and specifies certain duties that both parties are obligated to perform. Pursuant to the Operating Agreement and Exclusive Right to Lease Agreement, GS is in the process of exercising its exclusive right (but not the obligation) to lease additional facilities that will produce up to approximately 12 million tons of RC per year on pre-established lease terms similar to those currently in effect for Clean Coal s first two leased facilities.

Following is unaudited summarized information as to assets, liabilities and results of operations of Clean Coal:

	As of September 30, 2012	As of December 31, 2011
	(in thousands)	
Primary assets		
Cash and cash equivalents	$ 4,722	$ 8,804
Accounts receivable, net	5,457	3,177
Prepaid expenses and other assets	3,054	3,028
Property, plant and equipment including assets under lease and assets placed in service, net	41,047	36,751
Primary liabilities		
Accounts payable and accrued liabilities	$ 8,774	$ 11,735
Line of credit	10,350	14,497
Deposits	11,900	14,900
Deferred revenue	11,700	3,600

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
	(in thousands)			
Net revenue	$ 70,197	$ 8,843	$ 133,722	$ 19,645
Net revenue excluding RC sales	$ 11,176	$ 6,263	$ 27,189	$ 17,065
Net income (loss)	$ (208)	$ 4,668	$ 4,544	$ 13,496

Amounts due to CCSS

Clean Coal has recorded accounts payable due to CCSS totaling $2.4 million and $604,000 as of September 30, 2012 and December 31, 2011, respectively, which are included in accounts payable - related parties in the accompanying consolidated balance sheets.

(5) Deferred Revenue and Deposits

Deferred revenue consists of:

billings in excess of costs and earnings on uncompleted contracts; and

deferred rent revenue related to Clean Coal s lease of its RC facilities.

Clean Coal Deferred Rent Revenue

In June 2010, Clean Coal executed agreements to lease two RC facilities. These agreements provided for, among other things, a prepaid rent payment of $9 million for both facilities that was received before June 30, 2010. In November and December 2011, Clean Coal entered into transactions to exchange the existing facilities. There was no change to the prepaid rent payment or amortization period as a result of the exchange. Clean Coal received an additional $6.3 million in prepaid rent from GS related to this facility and an additional $1.5 million from another financial party in July 2012.

Following is a table of current deferred revenue which is included in deferred revenue and other liabilities in the consolidated balances sheets and long-term deferred revenue which is included in deferred revenue in the consolidated balance sheets related to these rent revenues:

	As of September 30, 2012	As of December 31, 2011

	(in thousands)	
Deferred revenue, short-term	$ 10,084	$ 3,600
Deferred revenue, long-term	$ 1,965	$

The following table presents total rent revenues recognized and amortization with respect to the prepaid rents:

	Three Months Ended September 30, 2012	2011	Nine Months Ended September 30, 2012	2011
	(in thousands)			
Rent revenue recognized	$ 11,073	$ 6,100	$ 27,053	$ 16,900
Amortization of deferred revenues included in amounts above	$ 900	$ 900	$ 2,700	$ 2,700

Clean Coal Deposits

Clean Coal has deposits of $11.9 million towards RC facilities which may be leased upon attainment of certain milestones that are included in deposits in the consolidated balance sheets at September 30, 2012. In October 2012, GS determined that it would not pursue leases on two particular RC facilities on which it had paid deposits totaling $4.7 million and concurrently gave notice for the return of the related deposits. While Clean Coal has not yet returned the deposits, it plans to do so by January 30, 2013 as required by the Lease Agreement unless GS selects other facilities in which to participate for which deposits could be applied.

(6) Net Loss Per Share

Basic loss per share is computed based on the weighted average common shares outstanding in the period. Diluted loss per share is computed based on the weighted average common shares outstanding in the period and the effect of dilutive securities (stock options and awards) except where the inclusion is anti-dilutive.

All outstanding stock options (see Note 9) to purchase shares of common stock for the three months and nine months ended September 30, 2012 and 2011 were excluded from the calculation of diluted shares as their effect is anti-dilutive.

(7) Property and Equipment

Property and equipment consisted of the following at the dates indicated:

	Years	As of September 30, 2012	As of December 31, 2011
		(in thousands)	
Machinery and equipment	3-10	$ 6,397	$ 3,937
Leasehold improvements	2-5	1,094	624
Furniture and fixtures	3-7	730	281
RC assets under lease and placed in service	10	44,503	36,929
		52,724	41,771
Less accumulated depreciation and amortization		(7,769)	(4,651)
Total property and equipment, net		$ 44,955	$ 37,120

	Three Months Ended September 30, 2012	2011	Nine Months Ended September 30, 2012	2011
	(in thousands)			
Depreciation and amortization	$ 1,239	$ 216	$ 3,444	$ 608

(8) Income Taxes

Income taxes are accounted for under the asset and liability approach. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax bases using the enacted tax rates in effect for the year in which the differences are expected to reverse. A valuation allowance is provided if and when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period when the change is enacted. At each reporting date, management reviews existing income tax assessments and, if necessary, revises them to reflect changed circumstances. In a situation where recent losses have been incurred, the accounting standards require convincing evidence that there will be sufficient future taxable income to realize deferred tax assets.

In August 2012, after extensive discussions with the SEC s Division of Corporation Finance and Office of the Chief Accountant and the Company s outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that the objective and verifiable negative evidence represented by historical losses outweighed more subjective positive evidence of anticipated future income. As a result, management determined it necessary to record a full valuation allowance against the Company s net deferred tax assets and has restated the consolidated financial statements for the quarterly period ended September 30, 2011 and as of December 31, 2011. See Note 14 for additional discussion.

The Company has provided a full valuation allowance against the net deferred tax assets of $27.6 million and $18.6 million as of September 30, 2012 and December 31, 2011, respectively.

The tax benefit included in the consolidated statement of operations for the nine months ended September 30, 2011 was recorded as a result of the sale of the equity interest in Clean Coal to GS in May 2011. Since the transaction did not result in a change in control of Clean Coal, the $11 million tax effect of the amount received from this transaction was recorded directly to stockholders deficit.

(9) Share Based Compensation

Since 2003, ADA has had several stock and option plans, including the Amended and Restated 2007 Equity Incentive Plan dated as of August 31, 2010, as amended (the 2007 Plan) and the ADA-ES, Inc. Profit Sharing Retirement Plan, which is a plan qualified under Section 401(k) of the Internal Revenue Code (the 401(k) Plan) described below. These plans allow ADA to issue stock or options for shares of common stock to employees, Board of Directors and non-employees.

Following is a table of options activity for the nine months ended September 30, 2012:

	Employee and Director Options	Weighted Average Exercise Price
Options outstanding, January 1, 2012	182,942	$ 9.95
Options granted		
Options expired		
Options exercised	(1,966)	10.73
Options outstanding and exercisable, September 30, 2012	180,976	$ 9.94

Following is a table of aggregate intrinsic value of options exercised and exercisable for the nine months ended September 30, 2012:

	Intrinsic Value	Average Market Price
Exercised, September 30, 2012	$ 25,800	$ 23.85
	Intrinsic Value	**Market Price**
Exercisable, September 30, 2012	$ 2,474,200	$ 23.61

Stock options outstanding and exercisable at September 30, 2012 are summarized in the table below:

Range of Exercise Prices	Number of Options Outstanding and Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Lives
$8.60 - $10.20	142,583	$ 8.66	3.1
$13.80 - $15.20	38,393	$ 14.70	2.8
	180,976	$ 9.94	3.1

No options were granted and/or vested during the three or nine months ended September 30, 2012.

Although ADA adopted the 2007 Plan in 2007, it was further amended and restated as of August 31, 2010 to make non-material changes to assure Internal Revenue Code Section 409A compliance and to increase the non-management director annual grant limit to 15,000 shares of common stock from 10,000 shares. The 2007 Plan authorized the issuance to employees, directors and non-employees of up to 1 million shares of common stock, either as restricted stock grants or to underlie options to purchase shares of ADA s common stock. On July 19, 2012, the stockholders of ADA approved an amendment to the 2007 Plan to increase the number of shares presently issuable to 1.3 million and increase the number of shares authorized for issuance to 1.8 million. In addition, the stockholders also approved an increase in the number of shares with respect to which awards may be granted in any fiscal year increased from 30,000 to 50,000 and the annual grant limit for the non-management director annual grant was increased to 30,000 shares.

In 2009, the Company revised its 401(k) Plan. The revision permits ADA to issue shares of its common stock to employees to satisfy its obligation to match employee contributions under the terms of the Plan in lieu of matching contributions in cash. ADA reserved 300,000 shares of its common stock for this purpose. The value of common stock issued as matching contributions under the Plan is determined based on the per share market value of ADA s common stock on the authorization date.

Following is a table summarizing the activity under various stock issuance plans for the nine months ended September 30, 2012:

Stock Issuance Plans

	2007 Plan	401(k) Plan	2005 Plan
Balance available, January 1, 2012	30,954	156,025	5,065
Evergreen addition	209,628		
Additional shares authorized for issuance	300,000		
Restricted stock issued to new and anniversary employees	(8,464)		
Restricted stock cancelled	510		
Stock issued based on incentive and matching programs to employees		(13,178)	
Stock issued to executives, directors and non-employees	(864)		
Balance available, September 30, 2012	531,764	142,847	5,065
Expense recognized under the different plans for the periods ended September 30, 2012:			
		(in thousands)	
three months	$ 25	$ 95	$
nine months	$ 103	$ 292	$
Unrecognized expense under the different plans:			
		(in thousands)	
as of September 30, 2012	$ 630	$	$

A summary of the status of the non-vested shares under the 2007 Plan as of September 30, 2012 is presented below:

	Shares	Weighted Average Grant Date Fair Value
Non-vested at January 1, 2012	107,991	$ 6.98
Granted	8,464	24.18
Vested	(7,973)	23.84
Forfeited	(510)	11.51
Non-vested at September 30, 2012	107,972	$ 8.07

(10) Temporary Equity Subject to Possible Redemption

As described in Note 4, in May 2011, ADA and NexGen entered into a transaction in which Clean Coal sold an effective 15% interest of the equity in Clean Coal to GS. Approximately 15.8 units of non-voting Class B membership interests were issued to GS for $60 million in cash. ADA and NexGen each received $30 million as a result of the sale. The terms of the Operating Agreement permit GS to require redemption of the unreturned portion of its initial $60 million investment in Clean Coal plus a return of 15% under certain limited circumstances. As a result, $60 million is classified as temporary equity subject to possible redemption in the consolidated balance sheets.

(11) Stockholders Deficit

As described in Note 14, the consolidated financial statements as of December 31, 2011 and for the three and nine months ended September 30, 2011 were restated to properly account for GS s interest in Clean Coal and to recognize a full valuation allowance against the Company s deferred tax assets. The restated ADA portion of stockholders deficit for the nine months ended September 30, 2011 includes a $22 million reduction attributable to the recognition of a valuation allowance against the Company s deferred tax assets. The restated ADA portion of stockholders deficit for the fiscal year ended December 31, 2011 includes a $30 million reduction attributable to the reclassification of temporary equity and an $18.6 million reduction attributable to the recognition of a valuation allowance against the Company s deferred tax assets. See Notes 8 and 14 for additional discussion.

Non-Controlling Interest

The non-controlling interest portion of stockholders deficit consists of the non-controlling interest related to Clean Coal. The amounts for the periods ended September 30 and December 31, 2011 have been restated for the restatement of equity held by GS (see Note 14).

(12) Commitments and Contingencies

Line of Credit

Clean Coal has available a revolving line of credit with a bank for $15 million that is secured by substantially all the assets of Clean Coal (including its subsidiaries). The line of credit expires in March 2013 with payment due in four equal quarterly installments of principal of $3.75 million (plus all accrued interest at such time) beginning June 30, 2012. Borrowings under the line of credit bear interest at the higher of the Prime Rate (as defined in the related credit agreement) plus one percent (1%) or 5% per annum (effective rate of 5% at September 30, 2012).

In May 2012, an amendment was made to the line of credit agreement to increase the amount available by $3 million under an increased commitment note issued in conjunction with the line of credit. This amount is secured by a cash collateral account of $3 million held by the bank issuing the line of credit with funds received equally from ADA and NexGen. Interest is payable monthly at 3% over the rate paid by the bank on the cash collateral account and is due on or before December 1, 2012. At September 30, 2012, the outstanding balance on the line of credit was $10.4 million. On October 1, 2012, a payment of $3.75 million was made against the line of credit. Borrowings under the line of credit and increased commitment note are subject to certain financial covenants applicable to Clean Coal.

Retirement Plan

ADA assumed the 401(k) plan covering all eligible employees as of January 1, 2003 which was revised in 2009, and makes matching contributions to the plan in the form of cash and its common stock. Such contributions are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
	(in thousands)			
Matching contributions in stock	$ 95	$ 83	$ 292	$ 265

Performance Guarantee on Emission Control Systems

Under certain contracts to supply emission control systems, the Company may guarantee certain aspects of the performance of the associated equipment for a specified period to the owner of the power plant. The Company may also guarantee the achievement of a certain level of mercury removal if certain conditions around injecting the specified quantity of a qualified AC at the specified injection rate and other plant operating conditions are met. In the event the equipment fails to perform as specified, the Company may have an obligation to correct or replace the equipment. In the event the level of mercury removal is not achieved, the Company may have a make right obligation within the contract limits. The Company assesses the risks inherent in each applicable contract and accrues an amount that is based on estimated costs that may be incurred over the performance period of the contract. Such costs are included in the Company s accrued warranty and other liabilities in the accompanying consolidated balance sheets. Any warranty costs paid out in the future will be charged against the accrual. The adequacy of warranty accrual balance is assessed at least quarterly based on the then current facts and circumstances and adjustments are made as needed. The changes in the carrying amount of the Company s performance guaranties are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
	(in thousands)			
Beginning balance	$ 562	$ 547	$ 547	$ 612
Performance guaranties accrued	37	44	54	82
Expenses paid	(27)	(65)	(29)	(168)

Ending balance	$ 572	$ 526	$ 572	$ 526

In some cases, a performance bond may be purchased and held for the period of the warranty that can be used to satisfy the obligation.

Clean Coal

The Company also has certain obligations in connection with the activities of Clean Coal. The Company, NexGen and two entities affiliated with NexGen have provided GS and the GS affiliate that is the lessee for certain RC facilities with joint and several guaranties (the CCS Party Guaranties) guaranteeing all payments and performance due under the related transaction agreements. The Company also entered into a contribution agreement with NexGen under which any party called upon to pay on a CCS Party Guaranty is entitled to receive contribution from the other party equal to 50% of the amount paid.

The parent of the lessee in the RC facilities lease transactions has provided Clean Coal with a guaranty as to the payment only of all the initial term fixed rent payments and the renewal term fixed rent payments under the related leases, which, although terminable at any time, cannot be terminated without the substitution of such guaranty with another guaranty on similar terms from a creditworthy guarantor.

Arbitration Award Liabilities

As previously reported in various filings, ADA had been engaged in litigation with Norit Americas, Inc. and Norit International N.V. f/k/a Norit N.V (Norit). The Norit lawsuit initially filed in Texas was moved to arbitration, and on April 8, 2011, the arbitration panel issued an interim award holding ADA liable for approximately $37.9 million for a non-solicitation breach of contract claim and held ADA and certain other defendants liable for royalties of 10.5% for the first three years beginning in mid-2010 and 7% for the following five years based on adjusted sales of AC from the Red River plant.

On August 29, 2011, ADA and Norit entered into a settlement agreement whereby the Company paid a lump-sum payment to Norit totaling $33 million on August 30, 2011. In addition, the Company agreed to pay an additional $7.5 million over a three-year period commencing on June 1, 2012, payable in three installments without interest of $2.5 million. Under the terms of the settlement agreement, ADA is also required to pay the royalty noted above and a lesser royalty on certain treated activated carbons. Payments of amounts due under the royalty award for each quarter are payable three months after such quarter ends. On October 18, 2011, the arbitration panel endorsed and confirmed the terms of the settlement agreement.

The Company has accrued a current liability as of September 30, 2012 of $3.3 million which is included in settlement awards and related accrued liabilities and a long-term liability of $2.5 million which is included in settlement awards and indemnity liability in the consolidated balance sheets related to this agreement.

Indemnity Liability Settlement

As previously reported in various filings, in November 2011, ADA entered into an Indemnity Settlement Agreement whereby ADA agreed to settle certain indemnity obligations asserted against ADA related to the Norit litigation and relinquish all of its interest in ADA Carbon Solutions, LLC (Carbon Solutions). Our net investment in Carbon Solutions was accounted for under the equity method of accounting and our respective share of Carbon Solutions losses of $2.1 million and $5.9 million for the three and nine months ended September 30, 2011, respectively, is included in the consolidated statements of operations. Under the terms of the Indemnity Settlement Agreement, ADA paid a $2 million payment on November 28, 2011 and agreed to make 16 additional monthly payments of $100,000 with the first one paid on November 28, 2011, and the remaining 15 payments commencing on December 1, 2011, relinquished all of its equity interest in Carbon Solutions to Carbon Solutions and amended the Intellectual Property License Agreement dated October 1, 2008 between ADA and Carbon Solutions.

The Company has accrued a current liability as of September 30, 2012 of $500,000 which is included in settlement awards and related accrued liabilities in the consolidated balance sheets related to this agreement.

(13) Business Segment Information

The following information relates to the Company s three reportable segments: Refined coal (RC), Emission control (EC) and CO_2 capture (CC). All assets are located in the U.S. and are not evaluated by management on a segment basis. All significant customers are U.S. companies and the U.S. Government.

	Three Months Ended September 30, 2012	Three Months Ended September 30, 2011	Nine Months Ended September 30, 2012	Nine Months Ended September 30, 2011
		(in thousands)		
Revenue				
RC				
Rental income	$ 11,072	$ 6,239	$ 27,053	$ 16,907
Coal sales	59,021	2,580	106,533	2,580
Other revenues	104	341	136	507
	70,197	9,160	133,722	19,994
EC				
Systems and equipment	2,299	906	6,456	2,047
Consulting and development	968	2,054	3,162	4,015
Chemicals	213	135	591	775
	3,480	3,095	10,209	6,837
CC	676	977	1,153	1,894
Total	$ 74,353	$ 13,232	$ 145,084	$ 28,725
Segment profit				
RC	$ 2,672	$ 4,903	$ 11,860	$ 14,277
EC	(147)	802	30	1,718
CC	(67)	110	11	144
Total	$ 2,458	$ 5,815	$ 11,901	$ 16,139

A reconciliation of the reported total segment profit to the net loss attributable to ADA for the periods shown above is as follows:

	Three Months Ended September 30, 2012	Three Months Ended September 30, 2011 (restated)	Nine Months Ended September 30, 2012	Nine Months Ended September 30, 2011 (restated)
		(in thousands)		
Total segment profit	$ 2,458	$ 5,815	$ 11,901	$ 16,139
Non-allocated general and administrative expenses	(4,556)	(2,099)	(11,434)	(12,435)
Depreciation and amortization	(1,239)	(216)	(3,444)	(608)
Other income (expense) including interest	(19)	71	122	2,161
Interest expense	(144)	(889)	(1,045)	(889)
Settlement of litigation and arbitration award, net	(800)	(2,182)	(1,553)	(41,684)
Net equity in net income (loss) of unconsolidated entities	232	(2,050)	400	(5,761)
Deferred income tax benefit				10,980
Net (income) loss attributable to non-controlling interest	120	(3,053)	(2,613)	(7,888)
Net loss attributable to ADA	$ (3,948)	$ (4,603)	$ (7,666)	$ (39,985)

Non-allocated general and administrative expenses include costs that benefit the business as a whole and are not directly related to any one of our segments. Such costs include but are not limited to accounting and human resources staff, information systems costs, facility costs, legal fees, audit fees and corporate governance expenses.

(14) Restatement of Consolidated Financial Statements

The consolidated financial statements as of December 31, 2011 and for the three and nine months ended September 30, 2011 have been restated. The restatement resulted from management s determination that the Company had not properly accounted for the interest held by GS in our joint venture, Clean Coal, since May 2011 and that a full valuation allowance against the Company s deferred tax assets should have been recognized as of December 31, 2010 and all subsequent quarters thereafter. The restatement reflected non-cash adjustments and had no effect on previously reported operating income results or cash flows from operations. The Company amended its Annual Report on Form 10-K for the fiscal year ended December 31, 2011 and its Quarterly Report on Form 10-Q for the quarter ended September 30, 2011 on October 19, 2012.

Financial Statement Effect of the Restatement

The tables below show the effect of the above restatement on the Consolidated Balance Sheet as of December 31, 2011, the Consolidated Statement of Operations for the three and nine months ended September 30, 2011, Consolidated Statement of Changes in Stockholders Deficit for the nine months ended September 30, 2011 and Consolidated Statement of Cash Flows for the nine months ended September 30, 2011.

Effect on Consolidated Balance Sheet

	As Previously Reported December 31, 2011	Restatement Adjustments: Deferred Tax Valuation Allowance	Restatement Adjustments: Temporary Equity	As Restated December 31, 2011
	(Amounts in thousands)			
Current Assets				
Cash and cash equivalents	$ 40,879	$	$	$ 40,879
Receivables, net of allowance for doubtful accounts	5,914			5,914
Investment in securities	508			508
Prepaid expenses and other assets	3,924	(2,392)		1,532
Total current assets	51,225	(2,392)		48,833
Property and Equipment, at cost	41,771			41,771
Less accumulated depreciation and amortization	(4,651)			(4,651)
Net property and equipment	37,120			37,120
Investment in unconsolidated entities	590			590
Other assets	931			931
Deferred taxes and other assets	16,233	(16,233)		
Total other assets	17,754	(16,233)		1,521
Total Assets	**$ 106,099**	**$ (18,625)**	**$**	**$ 87,474**
Total Liabilities	**$ 56,920**	**$**	**$**	**$ 56,920**
Temporary Equity - Non-controlling Interest Subject to Possible Redemption			60,000	**60,000**
Stockholders Equity (Deficit)				
ADA-ES, Inc. stockholders equity (deficit)				
Preferred stock: 50,000,000 shares authorized, none outstanding				
Common stock: no par value, 50,000,000 shares authorized, 9,996,144 shares issued and outstanding	93,184		(30,000)	63,184
Accumulated deficit	(48,069)	(18,625)		(66,694)
Total ADA-ES, Inc. stockholders equity (deficit)	45,115	(18,625)	(30,000)	(3,510)
Non-controlling interest	4,064		(30,000)	(25,936)
Total Stockholders Equity (Deficit)	**49,179**	**(18,625)**	**(60,000)**	**(29,446)**
Total Liabilities, Temporary Equity and Stockholders Equity (Deficit)	**$ 106,099**	**$ (18,625)**	**$**	**$ 87,474**

Effect on Consolidated Statement of Operations

	Three Months Ended September 30, 2011			
		Restatement Adjustments		
	As Previously Reported	Deferred Tax Valuation Allowance	Temporary Equity	As Restated
		(Amounts in thousands)		
Loss from Continuing Operations Before Income Tax Expense (Benefit) and Non-controlling Interest	$ (1,550)	$	$	$ (1,550)
Income Tax Expense (Benefit)	(792)	792		
Net Loss Before Non-controlling Interest	(758)	(792)		(1,550)
Non-controlling Interest	(3,053)			(3,053)
Net Loss Attributable to ADA-ES, Inc.	$ (3,811)	$ (792)	$	$ (4,603)
Net Loss Per Common Share - Basic and Diluted Attributable to ADA-ES, Inc.	$ (0.50)	$ (0.10)	$	$ (0.60)

	Nine Months Ended September 30, 2011			
		Restatement Adjustments		
	As Previously Reported	Deferred Tax Valuation Allowance	Temporary Equity	As Restated
		(Amounts in thousands)		
Loss from Continuing Operations Before Income Tax Expense (Benefit) and Non-controlling Interest	$ (43,077)	$		