

CASELLA WASTE SYSTEMS INC

Form S-8

March 02, 2007

As filed with the Securities and Exchange Commission on March 2, 2007

Registration No. 333-

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

FORM S-8

**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

Casella Waste Systems, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation

or Organization)

03-0338873

(I.R.S. Employer

Identification No.)

25 Greens Hill Lane, Rutland, Vermont

(Address of Principal Executive Offices)

05701

(Zip Code)

2006 Stock Incentive Plan

(Full Title of the Plan)

John W. Casella

President and Chief Executive Officer

25 Greens Hills Lane

Rutland, Vermont 05701

(Name and Address of Agent For Service)

(802) 775-0325

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

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Class A Common Stock, \$0.01 par value per share	1,275,000 shares (2)	\$11.615 (3)	\$14,809,125.00 (3)	\$454.64

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Consists of 1,275,000 shares issuable under the 2006 Stock Incentive Plan.

(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Registrant's Common Stock as reported on the NASDAQ Global Select Market on March 1, 2007.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

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

Item 2. Registrant Information and Employee Plan Annual Information.

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The written statement required by Item 2 is included in documents sent or given to participants in the plans covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

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

- (a) **The registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed**
- (b) **All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.**
- (c) **The description of the securities contained in the registrant's registration statement on Form 8-A filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.**

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

Item 4. Description of Securities.

- (a) **The registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or the la**

Not applicable.

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Item 5. Interests of Named Experts and Counsel.

Wilmer Cutler Pickering Hale and Dorr LLP has opined as to the legality of the securities being offered by this registration statement.

Item 6. Indemnification of Directors and Officers.

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Section 145 of the Delaware General Corporation Law (DGCL) statute permits a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

In the case of an action by or in the right of the corporation, Section 145 permits the corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification may be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnified for such expenses which the Court of Chancery or such other court shall deem proper.

To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the preceding two paragraphs, Section 145 requires that he be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

Section 145 provides that expenses, including attorneys' fees, incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in Section 145.

Pursuant to Section 102(b)(7) of the DGCL, Article Sixth of Casella's Amended and Restated Certificate of Incorporation eliminates the personal liability of the directors of Casella to Casella or its stockholders for monetary damages for breach of fiduciary duty as directors, with certain exceptions. In addition, Article Seventh requires indemnification of Casella's directors and officers and advancement of their litigation expenses to the fullest extent permitted by Section 145 of DGCL.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

Item 9. Undertakings.

1. **Item 512(a) of Regulation S-K.** The undersigned registrant hereby undertakes:
 - (1) **To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:**
 - (i) **To include any prospectus required by Section 10(a)(3) of the Securities Act;**
 - (ii) **To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and**
 - (iii) **To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;**

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

- (2) **That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.**
- (3) **To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.**

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

3. **Item 512(h) of Regulation S-K.** Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities

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Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Rutland, state of Vermont, on this first day of March, 2007.

**CASELLA WASTE SYSTEMS,
INC.**

By: /s/ John W. Casella
John W. Casella
Chairman and Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

We, the undersigned officers and directors of Casella Waste Systems, Inc., hereby severally constitute and appoint John W. Casella and James W. Bohlig, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, the registration statement on Form S-8 filed herewith and any and all subsequent amendments to said registration statement, and generally to do all such things in our names and on our behalf in our capacities as officers and directors to enable Casella Waste Systems, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ John W. Casella John W. Casella	Chairman and Chief Executive Officer (Principal executive officer)	March 1, 2007
/s/ James W. Bohlig James W. Bohlig	President and Chief Operating Officer Director	March 1, 2007
/s/ Richard A. Norris Richard A. Norris	Senior Vice President and Chief Financial Officer (Principal financial and accounting officer)	March 1, 2007
/s/ James F. Callahan Jr. James F. Callahan Jr.	Director	March 1, 2007
/s/ Douglas R. Casella Douglas R. Casella	Director	March 1, 2007
/s/ John F. Chapple III John F. Chapple III	Director	March 1, 2007
Joseph G. Doody	Director	March 1, 2007
/s/ James P. McManus James P. McManus	Director	March 1, 2007
/s/ D. Randolph Peeler D. Randolph Peeler	Director	March 1, 2007
/s/ Gregory B. Peters		

Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than

Gregory B. Peters

Director

March 1, 2007

INDEX TO EXHIBITS

Number	Description
4.1(1)	Amended and Restated Certificate of Incorporation of the Registrant
4.2(2)	Second Amended and Restated By-Laws of the Registrant
4.3(3)	Certificate of Designation creating Series A Convertible Preferred Stock of the Registrant
4.4(4)	Exchange and Registration Rights Agreement relating to the 9.75% Senior Subordinated Notes due 2013 of the Registrant
5.1	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Registrant
23.1	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5.1)
23.2	Consent of PricewaterhouseCoopers LLP
24.1	Power of attorney (included on the signature pages of this registration statement)

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- (1) Previously filed with the Securities and Exchange Commission as Exhibit 4.1 to the Registrant's Registration Statement on Form S-8 as filed on November 18, 1998 (File No. 333-67487) and incorporated herein by reference.
 - (2) Previously filed with the Securities and Exchange Commission as Exhibit 3.1 to the Registrant's Current Report on Form 8-K as filed on August 18, 2000 (File No. 000-23211) and incorporated herein by reference.
 - (3) Previously filed with the Securities and Exchange Commission as Exhibit 4.1 to the Registrant's Current Report on Form 8-K as filed on August 18, 2000 (File No. 000-23211) and incorporated herein by reference.
 - (4) Previously filed with the Securities and Exchange Commission as Exhibit 4.2 to the Registrant's Registration Statement on Form S-4 as filed on February 11, 2003 (file no. 333-103106) and incorporated herein by reference.
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