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BION ENVIRONMENTAL TECHNOLOGIES INC

Form S-8

October 16, 2009

As Filed With the Securities and Exchange Commission on October 16, 2009
Registration Statement No. _____

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

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

BION ENVIRONMENTAL TECHNOLOGIES, INC.

(Exact Name of Registrant in its Charter)

Colorado

84-1176672

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer Identification No.)

Box 566/1774 Summitview Way, Crestone, Colorado 81131

(Address of Principal Executive Offices)

(Zip Code)

BION ENVIRONMENTAL TECHNOLOGIES, INC.
2006 CONSOLIDATED INCENTIVE PLAN

(Full title of plan)

Mark A. Smith, President
Bion Environmental Technologies, Inc.
Box 566/1774 Summitview Way, Crestone, Colorado 81131

(Name and address of agent for service)

(212) 758-6622

(Telephone number, including area code, for agent of service)

Copy to:

Jon D. Sawyer, Esq.
Jin, Schauer & Saad LLC
600 Seventeenth Street, Suite 2700 South
Denver, Colorado 80202
(720) 889-2211

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.

Large accelerated filer [] Accelerated filer []
Non-accelerated filer [] Smaller reporting company [X]
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

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| 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 |
|--------------------------------------|----------------------------|---|---|----------------------------|
| Common Stock, No Par Value | 1,800,000 | \$2.65 (2) | \$4,770,000 (2) | \$266.17 |
| | | | Total | \$266.17 |

(1) Represents increase in the total number of shares reserved for issuance under the 2006 Consolidated Incentive Plan. A total of 4,200,000 shares has previously been registered under a registration statement on Form S-8 (File No. 333-145153) with respect to the 2006 Consolidated Incentive Plan.

(2) Based on the closing price of Registrant's Common Stock on the OTC Bulletin Board on October 15, 2009, of \$2.65.

STATEMENT UNDER GENERAL INSTRUCTION E
REGISTRATION OF ADDITIONAL SECURITIES

The registrant, Bion Environmental Technologies, Inc., previously filed a registration statement on Form S-8 with the Securities and Exchange Commission (Sec File No. 333-145153) in connection with the registration of an aggregate of 3,200,000 shares of common stock to be issued under the 2006 Consolidated Incentive Plan, and on June 18, 2008, an amendment was filed increasing the number of shares being registered to 4,200,000.

Pursuant to General Instruction E of Form S-8, this registration statement is filed solely to register an additional 1,800,000 shares of the Company's common stock for issuance under the 2006 Consolidated Incentive Plan. This increase was approved by the registrant's Board of Directors on November 14, 2008. Pursuant to Instruction E, the contents of the previously filed registration statement on Form S-8 (File No. 333-145153) are hereby incorporated by reference into this registration statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

| Exhibit Number | Description | Location |
|----------------|---|-------------------------------|
| 5.1 | Opinion of Jin, Schauer & Saad LLC regarding legality | Filed herewith electronically |
| 23.1 | Consent of GHP Horwath, P.C. | Filed herewith electronically |
| 23.2 | Consent of Jin, Schauer & Saad LLC | (Contained in Exhibit 5.1) |

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

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Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Crestone and State of Colorado on the 16th day of October 2009.

BION ENVIRONMENTAL TECHNOLOGIES, INC.

By:/s/ Mark A. Smith
Mark A. Smith, President (Chief Executive Officer) and Interim Chief Financial Officer (Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Act of 1933, this Form S-8 Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature ----- | Title ----- | Date ---- |
|------------------------------------|--|------------------|
| SIGNATURE | TITLE | DATE |
| /s/ Mark A. Smith Mark A. Smith | President, General Counsel, Interim Chief Financial Officer and Director | October 16, 2009 |
| /s/ Jon Northrop Jon Northrop | Secretary and Director | October 16, 2009 |