CLEAN HARBORS INC
Form S-3
November 01, 2005

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As filed with the Securities and Exchange Commission on November 1, 2005

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CLEAN HARBORS, INC.

(Exact name of Registrant as specified in its charter)

Massachusetts	**4953**	**04-2997780**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

1501 Washington Street
Braintree, Massachusetts 02184-7535
(781) 849-1800
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

C. Michael Malm, Esq.
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Copies to:

John A. Tripodoro, Esq.
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
(212) 701-3000
Approximate date of commencement of proposed sale to the public:
As soon as practicable after this Registration Statement becomes effective.

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

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 interest reinvestment plans, check the following box. o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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. o

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. o

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, $.01 par value per share	2,300,000	$34.49	$79,327,000	$9,336.79

(1) Includes 300,000 shares of common stock that the underwriters have the option to purchase solely to cover over-allotments.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) under the Securities Act of 1933, as amended. The proposed maximum offering price per share and the amount of the registration fee have been computed on the basis of the average high and low sale prices of the common stock on the Nasdaq National Market on October 26, 2005.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED NOVEMBER 1, 2005

2,000,000 Shares

Common Stock

Clean Harbors, Inc. is selling 2,000,000 shares of common stock.

Our common stock is listed on the NASDAQ National Market under the symbol "CLHB." The last reported sale price on the NASDAQ National Market on October 31, 2005 was $33.90 per share.

The underwriters have an option to purchase a maximum of 300,000 additional shares to cover over-allotments of shares.

Investing in our common stock involves risks. See "Risk Factors" on page 10.

	Price to Public	Underwriting Discounts and Commissions	Proceeds to us
Per Share	$	$	$
Total	$	$	$

Delivery of the shares of common stock will be made on or about , 2005.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Credit Suisse First Boston

Needham & Company, LLC

Wedbush Morgan Securities Inc.

CJS Securities, Inc.

The date of this prospectus is , 2005.

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PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus or in the documents incorporated by reference into this prospectus, is not complete and may not contain all of the information that may be important to you. You should read this entire prospectus carefully, including the "Risk Factors" section before investing in our common stock. In this prospectus, unless the context requires otherwise, "we," "our," "us," "Clean Harbors" or "the Company" refers to Clean Harbors, Inc. and its subsidiaries.

Our Company

We are one of the largest providers of environmental services and the largest operator of non-nuclear hazardous waste treatment facilities in North America based on 2003 industry reports. We service approximately 55% of North America's commercial hazardous incineration volume, 17% of North America's hazardous landfill volume, and are the industry leader in total hazardous waste disposal facilities. We perform environmental services through a network of more than 100 service locations, and we operate five incineration facilities, nine commercial landfills, seven wastewater treatment operations, and 20 transportation, storage and disposal facilities, or TSDFs, as well as five PCB management facilities and two oil and used oil products recycling facilities.

The wastes that we handle include materials that are classified as "hazardous" because of their unique properties, as well as other materials subject to federal and state environmental regulation. We provide final treatment and disposal services designed to manage hazardous and non-hazardous wastes, which cannot be economically recycled or reused.

Clean Harbors, Inc. was incorporated in Massachusetts in 1980 and has grown through a combination of strategic acquisitions and internal growth. The most significant of such acquisitions was our acquisition in September 2002 of substantially all of the assets of the Chemical Services Division, or CSD, of Safety-Kleen Corp. Our revenues increased from $350.1 million in 2002 to $611.0 million in 2003 primarily as a result of that acquisition.

Our Services

We provide a wide range of environmental services and manage our business as two major segments: Technical Services and Site Services.

Technical Services (69% of 2004 revenue). These services involve the transport, treatment and disposal of hazardous wastes, and include physical treatment, resource recovery, fuels blending, incineration, landfill disposal, wastewater treatment, lab chemical disposal, explosives management, and CleanPack® and Apollo Onsite Services. Our CleanPack® services include the collection, logistics management, specialized packaging, transportation and disposal of laboratory chemicals and household hazardous wastes. Our Apollo Onsite Services provide outsourced environmental programs management at customer sites.

Site Services (31% of 2004 revenue). These services provide customers with highly skilled experts who utilize specialty equipment and resources to perform services at any chosen location. Under the Site Services umbrella, our Field Service crews and equipment are dispatched on a planned or emergency basis, and perform services such as confined space entry for tank cleaning, site decontamination, large remediation projects, selective demolition, spill cleanup, railcar cleaning, product recovery and transfer, scarifying and media-blasting and vacuum services. Additional services include used oil and oil products recycling, as well as PCB management and disposal. Also, as part of Site Services, Industrial Services crews focus on industrial cleaning and maintenance projects.

Our Industry

According to industry reports, the hazardous waste disposal market in North America is in excess of $2.0 billion. We also service the much larger industrial maintenance market. The $2.0 billion estimate does not include the industrial maintenance market, except to the extent that the costs of disposal of hazardous wastes generated as a result of industrial maintenance are included. The largest generators of hazardous waste materials are companies in the chemical, petrochemical, primary metals, paper, furniture, aerospace and pharmaceutical industries.

The hazardous waste management industry was "created" in 1976 with the passage of the Resource Conservation and Recovery Act, or RCRA. RCRA requires waste generators to distinguish between "hazardous" and "non-hazardous" wastes, and to treat, store and dispose of hazardous waste in accordance with specific regulations. This new regulatory environment, combined with strong economic growth, increased corporate concern surrounding environmental liabilities, and early-stage industry dynamics contributed to growth in the industry.

In the mid to late 1990s, the hazardous waste management industry was characterized by overcapacity, minimal regulatory advances and pricing pressure. However, since 2001, over one-third of all North American commercial incineration capacity has been eliminated, and we believe that competition has been reduced through consolidation and that new regulations have increased the overall barriers to entry.

The collection and disposal of solid and hazardous wastes are subject to local, state, provincial and federal requirements and regulations, which regulate health, safety, the environment, zoning and land-use. Included in these regulations is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or CERCLA, of the United States. CERCLA holds generators and transporters of hazardous substances, as well as past and present owners and operators of sites where there has been a hazardous release, strictly, jointly and severally liable for environmental cleanup costs resulting from the release or threatened release. Canadian companies are regulated under similar regulations, but the responsibility and liability associated with the waste passes from the generator to the transporter or receiver of the waste, in contrast to provisions of CERCLA.

Corporate Information

We are a publicly traded company listed on The Nasdaq National Market under the symbol "CLHB." Our corporate offices are located at 1501 Washington Street, Braintree, MA 02184-7535, Attention: Executive Offices (telephone (781) 849-1800 ext. 4454). Our website address is www.cleanharbors.com. The information contained or incorporated in our website is not part of this prospectus.

The Offering

Common stock offered by us	2,000,000 shares
Common stock to be outstanding after the offering	19,048,838 shares
Use of Proceeds	We estimate that the net proceeds to us from the offering after underwriting discounts and expenses will be approximately $ million. We intend to use these proceeds, together with a portion of the $12.5 million of net proceeds we received in October 2005 from exercise of our previously outstanding common stock purchase warrants, to redeem $52.5 million principal amount of our outstanding $11^{1}/_{4}$% senior secured notes due 2012 and pay prepayment penalties and accrued interest of approximately $8.6 million in connection with such redemption. To the extent, if any, that the net proceeds of this offering exceed the approximately $61.1 million required to be paid in connection with such redemption, we will use such excess for general corporate purposes. See "Use of Proceeds."
Risk Factors	You should carefully read and consider the information under "Risk Factors" and all other information set forth or incorporated by reference in this prospectus before investing in our common stock.
Nasdaq National Market symbol	CLHB

The number of shares of our common stock to be outstanding after this offering is based on the number of shares outstanding as of October 27, 2005, and does not include:

- 498,690 shares of common stock issuable upon exercise of outstanding common stock purchase warrants expiring September 10, 2009 with an exercise price of $8.00 per share;
- 212,821 shares of common stock issuable upon conversion of our outstanding Series B convertible preferred stock with a conversion price of $16.45 per common share;
- 290,637 shares of common stock issuable upon the exercise of options outstanding under our employee stock benefit plans which were either then vested or will vest within 60 days thereafter having a weighted average exercise price of $6.87 per share as of that date;
- 591,410 shares of common stock issuable from time to time in the future under our Employee Stock Purchase Plan; and
- up to 300,000 additional shares of common stock we have agreed to sell if the underwriters exercise in full their over-allotment option.

Unless otherwise stated, all information contained in this prospectus assumes that the underwriters will not exercise their over-allotment option.

Summary Historical Consolidated Financial Data

The following summary consolidated financial information should be reviewed in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Selected Historical Consolidated Financial Data" and our financial statements and the notes thereto included elsewhere in this prospectus.

The summary historical income statement data set forth below for the years ended December 31, 2002, 2003 and 2004 and the summary historical balance sheet data at December 31, 2003 and 2004 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary historical balance sheet data set forth below as of December 31, 2002 have been derived from the audited consolidated financial statements not included in this prospectus. The summary historical income statement data set forth below for the six months ended June 30, 2004 and 2005 and the summary historical balance sheet data as of June 30, 2005 have been derived from our unaudited consolidated financial statements included elsewhere in this prospectus. The summary historical balance sheet data as of June 30, 2004 has been derived from unaudited consolidated financial statements not included in this prospectus. The unaudited financial statements include, in the opinion of our management, all adjustments, consisting only of normal recurring adjustments, necessary to present fairly the data for such periods. The results of operations for the interim periods are not necessarily indicative of operating results for the full year.

	For the Six Months Ended June 30,		For the Year Ended December 31,		
	2005	2004	2004	2003(1)	2002(1)(2)
	(in thousands except per share amounts)				
Income Statement Data:					
Revenues	$ 338,876	$ 304,388	$ 643,219	$ 610,969	$ 350,133
Cost of revenues	244,981	223,302	464,838	453,461	252,469
Selling, general and administrative expenses	49,669	50,998	104,509	108,430	61,518
Accretion of environmental liabilities(3)	5,250	5,207	10,394	11,114	1,199
Depreciation and amortization	14,354	11,661	24,094	26,482	15,508
Restructuring				(124)	750
Other acquisition costs					5,406
Income from operations	24,622	13,220	39,384	11,606	13,283
Other income (expense)(4)	510	(1,104)	(1,345)	(94)	129
(Loss) on refinancings(5)		(7,099)	(7,099)		(24,658)
Interest (expense), net	(11,907)	(10,801)	(22,297)	(23,724)	(13,414)
Income (loss) before provision for income taxes and cumulative effect of change in accounting principle	13,225	(5,784)	8,643	(12,212)	(24,660)
Provision for income taxes(6)	1,013	3,526	6,043	5,322	3,787
Income (loss) before cumulative effect of change in accounting principle	12,212	(9,310)	2,600	(17,534)	(28,447)
Cumulative effect of change in accounting principle				66	
Net income (loss)	12,212	(9,310)	2,600	(17,600)	(28,447)
Redemption of Series C preferred stock, dividends on Series B and C preferred stocks and accretion on Series C preferred stock(7)	140	11,616	11,798	3,287	1,291
Net income (loss) attributable to common shareholders	$ 12,072	$ (20,926)	$ (9,198)	$ (20,887)	$ (29,738)
Basic earnings (loss) per share attributable to common shareholders	$ .81	$ (1.49)	$ (.65)	$ (1.54)	$ (2.44)

	For the Six Months Ended June 30,		For the Year Ended December 31,		
Diluted earnings (loss) per share attributable to common shareholders	$ .71	$ (1.49)	$ (.65)	$ (1.54)	$ (2.44)

Weighted average common shares outstanding	14,913	14,002	14,099	13,553	12,189
Weighted average common shares outstanding plus potentially dilutive common shares	17,142	14,002	14,099	13,553	12,189
Other Financial Data:					
Adjusted EBITDA(8)	$ 44,226	$ 31,230	$ 74,744	$ 50,744	$ 36,170
Ratio of Adjusted EBITDA to interest expense	3.7x	2.9x	3.4x	2.1x	2.7x
Capital expenditures(9)	$ 7,872	$ 12,887	$ 26,570	$ 34,832	$ 12,460

	At June 30,		At December 31,		
	2005	**2004**	**2004**	**2003(1)**	**2002(1)(2)**
			(in thousands)		
Balance Sheet Data:					
Working capital	$ 64,972	$ 30,820	$ 50,696	$ (19,575)	$ 23,537
Goodwill	19,032	19,032	19,032	19,032	19,032
Total assets	503,770	471,041	504,702	540,159	559,690
Long-term obligations (including current portion)(10)	153,414	153,384	153,129	187,119	174,350
Redeemable preferred stock				15,631	13,543
Stockholders' equity (deficit)	26,362	(3,030)	11,038	7,696	20,420

(1)

We restated our financial statements for the years ended December 31, 2003 and 2002, in order to correct errors related to estimated self-insured workers' compensation and motor vehicle liability claims. We concluded that our previous methodology for estimating our self-insured workers' compensation and motor vehicle insurance claims resulted in an understatement of our self-insured liabilities because negative trends inherent in these types of liabilities were not considered in calculating the self-insured liability. The new methodology involves using an actuarial-based method versus the specific reserve method previously used. For the years ended December 31, 2003 and 2002, the impact of the restatements resulting from correcting our self-insured liabilities on net loss was as follows (in thousands):

	2003	**2002**
Net loss as previously reported	$ (17,345)	$ (28,191)
Restatement adjustment to cost of revenues	(255)	(256)
Net loss as restated	$ (17,600)	$ (28,447)

The adjustments for the years ended December 31, 2003 and 2002 did not change the amount of income tax expense previously recorded for those periods. For the years ended December 31, 2003 and 2002, the impact on other accrued expenses resulting from the correction of our self-insured liabilities was as follows (in thousands):

	2003	**2002**
Other accrued expenses as previously reported	$ 32,240	$ 33,863
Restatement adjustment	1,617	1,362
Other accrued expenses as restated	$ 33,857	$ 35,225

At December 31, 2003 and 2002, the impact of this restatement on accumulated deficit was as follows (in thousands):

	2003	2002
Accumulated deficit as previously reported	$ (60,921)	$ (43,576)
Restatement adjustment	(1,617)	(1,362)
Accumulated deficit as restated	$ (62,538)	$ (44,938)

The adjustments had no effect on net cash provided by operating activities.

(2)

Effective as of September 7, 2002, we acquired the assets of the Chemical Services Division of Safety-Kleen Corp. Amounts recorded for the year ended December 31, 2002, for revenues, cost of revenues, selling general and administrative expenses, accretion of environmental liabilities, depreciation and amortization, restructuring, other acquisition costs, other income, loss on refinancings, interest expense, provision for income taxes, working capital, total assets, long-term obligations, redeemable preferred stock and stockholders' equity were either significantly impacted by or resulted from the acquisition. See "Management's Discussion and Analysis of Financial Condition and Results of Operations Acquisition" and " Results of Operations."

(3)

Effective January 1, 2003, we adopted Statement of Financial Accounting Standards ("SFAS") No. 143. Accretion of environmental liabilities for the six months ended June 30, 2005 and 2004, and the years ended December 31, 2004 and 2003, were due primarily to the implementation as of January 1, 2003 of SFAS No. 143 and accretion of the discount for the remedial liabilities assumed as part of the CSD assets acquired. Accretion of environmental liabilities for the year ended December 31, 2002, related to the accretion of the discount for the remedial liabilities assumed in the acquisition of the CSD assets. See "Management's Discussion and Analysis of Financial Condition and Results of Operations Environmental Liabilities."

(4)

As further discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations Redemption of Series C Preferred Stock," we had outstanding prior to June 30, 2004, 25,000 shares of Series C Convertible Preferred Stock which consisted of two components, namely, the Host Contract and an Embedded Derivative which reflected the right of the holders of the Series C Preferred Stock to convert into our common stock on the terms set forth in the Series C Preferred Stock. The value of the Embedded Derivative was periodically marked to market which resulted in the inclusion of gains (losses) as a component of other income (expense) of $(1.6) million for the six months ended June 30, 2004, and $(1.6) million, $(0.4) million and $0.1 million for the years ended December 31, 2004, 2003 and 2002, respectively.

(5)

As further discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations The 2004 Refinancing" and " Redemption of Series C Preferred Stock," we repaid on June 30, 2004 our then outstanding debt, redeemed our then outstanding Series C Preferred Stock and settled the Embedded Derivative liability associated with our Series C Preferred Stock. For the year ended December 31, 2004, we recorded refinancing expenses, net of $7.1 million relating to these activities.

(6)

The fiscal year 2002 provision for income taxes included a $1.1 million charge to provide a valuation allowance for all net deferred tax assets.

(7)

As further discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations The 2004 Refinancing" and " Redemption of Series C Preferred Stock," we had outstanding prior to June 30, 2004, 25,000 shares of Series C Convertible Preferred Stock. The amount of $11.8 million for the year ended December 31, 2004 includes $9.9 million related to the redemption of the Series C Preferred Stock.

(8)

For all periods presented, "Adjusted EBITDA" consists of net income (loss) plus accretion of environmental liabilities, depreciation and amortization, net interest expense, provision for (benefit from) income taxes, non-recurring severance charges, other non-recurring refinancing-related expenses, change in value of embedded derivative associated with our previously outstanding Series C Preferred Stock (which we redeemed June 30, 2004), and gain (loss) on sale of fixed assets. Such definition of "Adjusted EBITDA" is the same as the definition of "EBITDA" used in our current credit agreement and indenture for covenant compliance purposes. See below for a reconciliation of Adjusted EBITDA to both net income (loss) and net cash provided by operating activities for the specified periods. Our management considers Adjusted EBITDA to be a measurement of performance which provides useful information to both management and investors. Adjusted EBITDA should not be considered an alternative to net income or loss or other measurements under GAAP. Because Adjusted EBITDA is not calculated identically by all companies, our measurements of Adjusted EBITDA may not be comparable to similarly titled measures reported by other companies.

The following is a reconciliation of net income (loss) to Adjusted EBITDA for the following periods (in thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2005	2004	2004	2003(1)	2002(*)
Net income (loss)	$ 12,212	$ (9,310)	$ 2,600	$ (17,600)	$ (28,447)
Accretion of environmental liabilities	5,250	5,207	10,394	11,114	1,199
Depreciation and amortization	14,354	11,661	24,094	26,482	15,508
Restructuring costs				(124)	750
Other acquisition costs					5,406
Loss on refinancings		7,099	7,099		24,658
Interest expense, net	11,907	10,801	22,297	23,724	13,414
Provision for income taxes	1,013	3,526	6,043	5,322	3,787
Non-recurring severance charges		16	25	1,089	
Other non-recurring refinancing-related expenses		1,126	1,326		
Change in value of embedded derivative		1,590	1,590	379	(129)
Other income	(564)				
Loss (gain) on sale of fixed assets	54	(486)	(724)	292	24
Cumulative effect of change in accounting principle				66	
Adjusted EBITDA	$ 44,226	$ 31,230	$ 74,744	$ 50,744	$ 36,170

(*)

See footnote (1) above describing the restatement of our financial statements for the year-ended December 31, 2003 and 2002.

The following reconciles Adjusted EBITDA to net cash provided by operating activities for the following periods (in thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2005	2004	2004	2003(*)	2002(*)
Adjusted EBITDA	$ 44,226	$ 31,230	$ 74,744	$ 50,744	$ 36,170
Interest expense	(11,907)	(10,801)	(22,297)	(23,724)	(13,414)
Provision for income taxes	(1,013)	(3,526)	(6,043)	(5,322)	(3,787)
Allowance for doubtful accounts	(372)	479	1,232	2,439	842
Amortization of deferred financing costs	739	1,558	2,294	2,467	899
Amortization of debt discount	83		77		388
Deferred income taxes			381	(620)	1,676
(Gain) loss on sale of fixed assets	54	(486)	(724)	292	24
Other income	510				
Other non-recurring refinancing-related expenses and other		(1,142)	(1,351)		
Stock options expensed	47		35	29	166
Foreign currency loss (gain) on intercompany transactions	(404)	(600)	(88)	996	
Changes in assets and liabilities, net of acquisition					
Accounts receivable	(1,465)	259	(6,058)	20,265	(9,679)
Unbilled accounts receivable	(1,567)	1,159	4,429	4,539	(9,695)
Deferred costs	952	(54)	538	(838)	(4,433)
Prepaid expenses	2,928	(1,477)	(4,781)	14	(5,277)
Accounts payable	(5,399)	(945)	9,249	2,923	12,201
Closure, post-closure and remedial liabilities	(11,311)	(5,715)			