

IMPERIAL INDUSTRIES INC
Form 8-K
October 02, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **September 30, 2009**

IMPERIAL INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction
of incorporation)*

1-7190
*(Commission
File No.)*
1259 NW 21st Street

65-0854631
*(IRS Employer
Identification No.)*

Pompano Beach, Florida 33069
(Address of principal executive offices and zip code)

(954) 917-4114

Registrant's telephone number, including area code:

Not Applicable

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Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

..

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

..

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

..

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

..

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01.

Entry into a Material Definitive Agreement

Effective September 30, 2009, Imperial Industries, Inc. (as guarantor) and its principal subsidiaries Premix-Marbletite Manufacturing Co., DFH, Inc., and Just-Rite Supply, Inc., (collectively the Company), Michael Phelan, as assignee for Assignment for the Benefit of the Creditors of Just-Rite (the Assignee) and Wachovia Bank, N.A. (the Lender), executed a Third Amendment to Forbearance Agreement (the Third Amendment), an amendment to the Company's Consolidating, Amended and Restated Financing Agreement dated as of January 28, 2000 (the Line of Credit). Under the Third Amendment, the Lender agreed to extend the Line of Credit from September 30, 2009 to November 30, 2009. The following summary is qualified in its entirety to the Third Amendment which is attached as Exhibit 10.1 hereto.

The Third Amendment to the Forbearance Agreement which extended the expiration date of the Line of Credit from September 30, 2009 to November 30, 2009 modified the Line of Credit principally as follows:

The Lender, in its sole and absolute discretion, may continue to make revolving loans under the Line of Credit without regard to the Company's or Assignee's compliance with the terms of the Line of Credit, or existence of any Event of Default.

Lender shall receive two forbearance fees equal to \$5,000 each on October 1, 2009 and November 1, 2009, respectively.

Lender shall reduce the existing maximum credit of \$300,000 by \$25,000 per week beginning on October 2, 2009.

The elimination of a restrictive loan covenant to establish a borrowing availability reserve in the amount of 50% of any funds received from the Mississippi Department of Transportation.

As of the close of business on September 30, 2009, the Company and the Assignee had a combined outstanding balance of approximately \$287,000 under the Line of Credit. Excess availability for borrowings under the Line of Credit at September 30, 2009 was \$13,000, after giving effect to the maximum credit of \$300,000 at that date.

Item 2.04

Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement.

On or about July 9, 2009, and thereafter, the Lender orally advised the Company and the Assignee that they were not in compliance with the borrowing formulas and certain reporting requirements under the Forbearance Agreement and continued funding the Line of Credit in accordance with the terms of the Forbearance Agreement. The Lender thereafter required the Company to enter into the First Amendment to the Forbearance Amendment as of August 7, 2009, which was subsequently amended by a Second Amendment as of August 28, 2009 and further amended by the Third Amendment as described in Item 1.01 above.

Item 9.01

Financial Statements and Exhibits.

(d)

Exhibits

| Exhibit Number | Description |
|---------------------------|---|
| <u>10.1</u> | Third Amendment to Forbearance Agreement dated September 30, 2009 by and between Imperial Industries, Inc., Premix-Marbletite Manufacturing Co., DFH, Inc., Just-Rite Supply, Inc., Michael Phelan, as assignee for the benefit of the creditors of Just-Rite and Wachovia Bank, N.A. |
| <u>99.1</u> | Imperial Industries, Inc. press release dated October 2, 2009 |

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

IMPERIAL INDUSTRIES, INC.

By: /s/ HOWARD L. EHLER, JR.
Howard L. Ehler, Jr.
Principal Executive Officer/
Chief Operating Officer

Dated: October 2, 2009

INDEX TO EXHIBITS

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