Nalco Holding CO
Form 10-Q
November 03, 2011
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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, 2011

or

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to .

Commission File No. 001-32342

NALCO HOLDING COMPANY

(Exact name of registrant as specified in its charter)

Delaware	**16-1701300**

(State or other jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)

1601 West Diehl Road

Naperville, IL 60563-1198

(630) 305-1000

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant s Principal Executive Offices)

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 x	Accelerated filer ¨	Non-accelerated filer ¨ (Do not check if a smaller reporting company)	Smaller reporting company ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

As of October 17, 2011, the number of shares of the registrant s common stock, par value $0.01 per share, outstanding was 138,818,498 shares.

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QUARTERLY REPORT ON FORM 10-Q

NALCO HOLDING COMPANY

Quarter Ended September 30, 2011

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Nalco Holding Company and Subsidiaries

Condensed Consolidated Balance Sheets

(dollars in millions)

	(Unaudited) September 30, 2011	December 31, 2010
Assets		
Current assets:		
Cash and cash equivalents	$ 120.8	$ 128.1
Accounts receivable, less allowances of $15.6 in 2011 and $13.2 in 2010	900.8	765.5
Inventories:		
Finished products	310.3	246.0
Materials and work in process	114.8	84.0
	425.1	330.0
Prepaid expenses, taxes and other current assets	215.5	211.1
Total current assets	1,662.2	1,434.7
Property, plant, and equipment, net	752.1	729.1
Intangible assets:		
Goodwill	1,771.5	1,844.1
Other intangibles, net	993.2	1,023.3
Other assets	200.5	192.5
Total assets	$ 5,379.5	$ 5,223.7
Liabilities and equity		
Current liabilities:		
Accounts payable	$ 378.8	$ 356.5
Short-term debt	115.2	90.0
Other current liabilities	425.5	411.7
Total current liabilities	919.5	858.2
Other liabilities:		
Long-term debt	2,644.5	2,782.0
Deferred income taxes	283.4	260.3
Accrued pension benefits	387.1	405.6
Other liabilities	205.0	190.1
Total liabilities	4,439.5	4,496.2
Equity:		

Nalco Holding Company shareholders equity	910.5	696.8
Noncontrolling interests	29.5	30.7
Total equity	940.0	727.5
Total liabilities and equity	$ 5,379.5	$ 5,223.7

See accompanying notes to condensed consolidated financial statements.

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Nalco Holding Company and Subsidiaries

Condensed Consolidated Statements of Operations

(Unaudited)

(dollars in millions, except per share amounts)

	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Net sales	$ 1,251.0	$ 1,088.3	$ 3,488.0	$ 3,131.5
Operating costs and expenses:				
Cost of product sold	730.6	610.6	2,041.2	1,735.0
Selling, administrative, and research expenses	343.3	307.7	1,006.9	924.8
Amortization of intangible assets	9.9	10.8	29.5	32.2
Restructuring expenses	(7.1)	(0.3)	4.9	1.9
Impairment of goodwill		5.4		5.4
Gain on divestitures			(136.0)	
Total operating costs and expenses	1,076.7	934.2	2,946.5	2,699.3
Operating earnings	174.3	154.1	541.5	432.2
Other income (expense), net	(6.0)	(2.8)	(11.8)	(20.3)
Interest income	0.1	0.8	1.1	3.7
Interest expense	(47.4)	(59.1)	(142.9)	(176.2)
Earnings before income taxes	121.0	93.0	387.9	239.4
Income tax provision	42.3	32.1	129.5	95.5
Net earnings	78.7	60.9	258.4	143.9
Less: Net earnings attributable to noncontrolling interests	2.0	2.0	5.9	3.1
Net earnings attributable to Nalco Holding Company	$ 76.7	$ 58.9	$ 252.5	$ 140.8
Net earnings per share attributable to Nalco Holding Company common shareholders:				
Basic	$ 0.55	$ 0.43	$ 1.82	$ 1.02
Diluted	$ 0.55	$ 0.42	$ 1.80	$ 1.01
Weighted-average shares outstanding (millions):				
Basic	138.8	138.3	138.8	138.3
Diluted	140.4	139.4	140.1	139.3

Cash dividends declared per share	$ 0.035	$ 0.035	$ 0.105	$ 0.105

See accompanying notes to condensed consolidated financial statements.

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Nalco Holding Company and Subsidiaries

Condensed Consolidated Statements of Cash Flows

(Unaudited)

(dollars in millions)

	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Operating activities		
Net earnings	$ 258.4	$ 143.9
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation	100.2	92.0
Amortization	29.5	32.2
Gain on divestitures	(136.0)	
Impairment of goodwill		5.4
Amortization of deferred financing costs	8.8	9.1
Loss on early extinguishment of debt	2.8	
Other, net	25.4	48.6
Changes in operating assets and liabilities	(221.4)	(115.5)
Net cash provided by operating activities	67.7	215.7
Investing activities		
Additions to property, plant, and equipment, net	(125.6)	(101.4)
Business purchases	(7.3)	(33.6)
Net proceeds from business divestitures	198.4	
Other, net	6.9	1.6
Net cash provided by (used for) investing activities	72.4	(133.4)
Financing activities		
Cash dividends	(14.6)	(14.5)
Changes in short-term debt, net		(128.9)
Proceeds from long-term debt	90.0	125.9
Repayments of long-term debt	(208.7)	(0.1)
Redemption premium on early extinguishment of debt	(3.0)	
Deferred financing costs	(1.2)	(1.2)
Other, net	(10.2)	(4.1)
Net cash used for financing activities	(147.7)	(22.9)
Effect of exchange rate changes on cash and cash equivalents	0.3	(12.0)
(Decrease) increase in cash and cash equivalents	(7.3)	47.4
Cash and cash equivalents at beginning of period	128.1	127.6
Cash and cash equivalents at end of period	$ 120.8	$ 175.0

See accompanying notes to condensed consolidated financial statements.

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Nalco Holding Company and Subsidiaries

Notes to Condensed Consolidated Financial Statements

(Unaudited)

September 30, 2011

1. Description of Business and Basis of Presentation

Description of Business

We provide essential expertise for water, energy and air through the worldwide manufacture and sale of highly specialized service chemical programs. This includes production and service related to the sale and application of chemicals and technology used in water treatment, pollution control, energy conservation, oil production and refining, steelmaking, papermaking, mining, and other industrial processes.

Basis of Presentation

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Annual Report for Nalco Holding Company and subsidiaries for the fiscal year ended December 31, 2010.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. Management believes these financial statements include all normal recurring adjustments considered necessary for a fair presentation of our financial position and results of operations. Operating results for the nine months ended September 30, 2011 are not necessarily indicative of results that may be expected for the year ended December 31, 2011. The condensed consolidated balance sheet as of December 31, 2010 was derived from audited financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States.

Certain minor reclassifications have been made to the prior year data to conform to the current year presentation, which had no effect on net earnings or equity reported for any period.

In addition, during the first quarter 2011, we identified certain costs that were previously classified as selling, administrative and research expenses that we believe are more appropriately classified in cost of product sold. These expenses consisted of depreciation on certain manufacturing assets, incentive compensation for production employees, and compensation for certain engineers who provide product application services to customers. These reclassifications increased cost of product sold and reduced selling, administrative, and research expenses approximately $9.3 million and $27.8 million for the three months and nine months ended September 30, 2010, respectively. The total amount to be reclassified to cost of product sold from selling, administrative, and research expenses for fiscal year 2010 is approximately $37.0 million. There is no impact to earnings before income taxes or net earnings as a result of these adjustments.

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2. Merger with Ecolab

On July 19, 2011, we entered into an Agreement and Plan of Merger (the Merger Agreement) with Ecolab Inc., a Delaware corporation (Ecolab), and Sustainability Partners Corporation, a Delaware corporation and a wholly-owned subsidiary of Ecolab (Merger Sub). The Merger Agreement, which has been unanimously approved by our Board of Directors, provides for the merger of Nalco with and into Merger Sub (the Merger), with Merger Sub continuing as the surviving corporation in the Merger. The Merger is intended to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger, each share of common stock of Nalco issued and outstanding immediately prior to the effective time (other than shares that are owned by Ecolab or Nalco or any of their respective wholly-owned subsidiaries and shares with respect to which appraisal rights are properly exercised and not withdrawn) will be converted into the right to receive, at the election of the stockholder (subject to a reallocation mechanism which will result in a mix of approximately 30% cash and 70% stock): (i) 0.7005 shares of common stock, par value $1.00 per share, of Ecolab, or (ii) $38.80 in cash, without interest. No fractional shares of Ecolab common stock will be issued in the Merger, and holders of Nalco common stock will receive cash in lieu of any fractional shares of Ecolab common stock.

The consummation of the Merger is subject to the satisfaction or waiver of closing conditions applicable to both Nalco and Ecolab, including, among others, (i) the receipt of required regulatory approvals, (ii) the adoption of the Merger Agreement by the Nalco stockholders and (iii) the approval of the issuance of Ecolab common stock to Nalco s stockholders by the stockholders of Ecolab. The Merger is not subject to a financing condition. The transaction is expected to close in the fourth quarter 2011.

The Merger Agreement provides for termination rights on behalf of both parties, such that under specified circumstances Ecolab may be required to pay Nalco a termination fee of $275 million and that under specified circumstances Nalco may be required to pay Ecolab a termination fee of $135 million.

During the three months and nine months ended September 30, 2011, we recorded approximately $4.6 million of merger-related costs, primarily related to investment banking, legal, and other fees incurred as part of the Merger Agreement. Contingent upon the successful completion of the merger, additional investment banking fees of $22.5 million will become payable by Nalco.

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3. Recent Accounting Pronouncements

In October 2009, the Financial Accounting Standards Board (FASB) issued authoritative guidance that amends earlier guidance addressing the accounting for contractual arrangements in which an entity provides multiple products or services (deliverables or elements) to a customer. The amendments address the unit of accounting for arrangements involving multiple deliverables and how arrangement consideration should be allocated to the separate units of accounting, when applicable, by establishing a selling price hierarchy for determining the selling price of a deliverable. The selling price used for each deliverable is based on vendor-specific objective evidence (VSOE) if available, third-party evidence (TPE) if vendor-specific objective evidence is not available, or estimated selling price (ESP) if neither vendor-specific nor third-party evidence is available.

This guidance changes the units of accounting for certain of our service-related offerings. Specifically, on-site technical expertise that is included in bundled customer solutions will now be a separate unit of accounting since ESP must now be used to determine selling price. Generally, most products and services now qualify as separate units of accounting. Products are typically considered delivered upon shipment.

In certain arrangements, which are usually reserved for our largest customers, we provide some combination or all of the following deliverables: (1) chemicals, (2) equipment and (3) on-site technical expertise. Differences in customer equipment and processes drive substantial variation in the application of our chemicals and the individual programs we create. In these multiple element arrangements, we usually remain the owner of any equipment at the customer site. Additionally, our representatives may have a regular presence at a customer s facility, which is usually provided under a contract. The regular presence of the representative permits us to closely track the results of the program and to make modifications to the program as necessary for the highest efficiency. This on-site presence is now allocated a portion of revenue.

For fiscal 2011 and future periods, pursuant to the new guidance, when a new or materially-modified sales arrangement contains multiple elements, we allocate revenue to each deliverable based on a selling price hierarchy. VSOE of fair value is based on the price charged when the element is sold separately. TPE of selling price is established by evaluating similar competitor services in stand-alone sales. However, as our on-site technical expertise and solutions are based on specific Nalco chemicals and each solution is generally highly customized, the comparable pricing of similar services typically cannot be obtained. Additionally, as we are unable to reliably determine what competitors selling prices for services are on a stand-alone basis, we are not typically able to determine TPE. The best estimate of selling price is established considering multiple factors including, but not limited to, pricing practices in different geographies, market conditions, gross margin objectives and internal costs.

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3. Recent Accounting Pronouncements (continued)

The following types of commercial arrangements are the most commonly used for the sale of multiple deliverables:

Ship and Bill. Following the receipt of a purchase order from the customer, we invoice when the products are shipped, based on agreed pricing. At the end of each period, for those shipments where title to the product and the risks of loss and rewards of ownership do not transfer until the product has been received by the customer, or the service has not been performed, adjustments to revenues and cost of product sold are made to account for the delay. We recognize the service element of the ship and bill arrangements, in which we bundle the chemicals with on-site technical expertise, ratably over the term of the contract as we provide the services.

Production-based arrangements. Our billing is based on a customer s production-based formula (e.g., dollars per ton of paper produced) within certain technical parameters. We use a combination of our service chemicals, on-site technical expertise and equipment to satisfy the customer requirement. Because the chemicals and equipment used and on-site technical expertise required are highly correlated with the customer s production, revenue for each element is recognized monthly based on the production-based formula.

Usage-based arrangements. For these arrangements, we invoice according to the consumption of chemicals by the customer. The agreed price by kilogram or pound of chemical consumed also includes the availability of on-site expertise and the use of equipment to satisfy the customer requirement. Revenue is recognized monthly based on the usage-based formula which approximates when transfer of title occurs for chemical sales and a ratable recognition of service revenue.

The implementation of this amended accounting guidance did not have a material impact on our consolidated financial position and results of operations in the period of adoption. In terms of the timing and pattern of revenue recognition, the new accounting guidance for revenue recognition is not expected to have a significant effect on total net revenues in periods after the initial adoption.

Our arrangements generally do not include any provisions for cancellation, termination, or refunds that would significantly impact recognized revenue.

We currently do not expect a material impact in the near term from changes in VSOE, TPE or ESP.

In October 2009, the FASB issued authoritative guidance that amends earlier guidance for revenue arrangements that include both tangible products and software elements. Tangible products containing software components and nonsoftware components that function together to deliver the tangible product s essential functionality are no longer within the scope of guidance for recognizing revenue from the sale of software, but would be accounted for in accordance with other authoritative guidance. The adoption of the guidance in the first quarter 2011 did not have any impact on our consolidated financial statements.

In December 2010, the FASB issued authoritative guidance that amends the criteria for performing Step 2 of the goodwill impairment test for reporting units with zero or negative carrying amounts and requires performing Step 2 if qualitative factors indicate that it is more likely than not that a goodwill impairment exists. Any impairment to be

3. Recent Accounting Pronouncements (continued)

recorded upon adoption is to be recognized as an adjustment to beginning retained earnings. We adopted the guidance in the first quarter 2011, which did not have any impact on our consolidated financial statements.

In December 2010, the FASB issued authoritative guidance that addresses diversity in practice about the interpretation of the pro forma revenue and earnings disclosure requirements for business combinations. The guidance clarifies that when presenting comparative financial statements, an entity should disclose revenue and earnings of the combined entity as though the business combination(s) that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. The guidance also requires a description of the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the reported pro forma revenue and earnings. The guidance is effective prospectively for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010. This guidance impacts disclosure requirements only, and upon its adoption in the first quarter 2011, did not have any impact on our financial statements.

In May 2011, the FASB issued authoritative guidance amending fair value measurement and disclosure requirements in order to align U.S. GAAP and International Financial Reporting Standards. Consequently, the amendments change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. Some of the amendments clarify the intent about the application of existing fair value measurement requirements, while other amendments change a particular principle or requirement for measuring fair value or for disclosing information about fair value measurements. We do not expect the adoption of this guidance on January 1, 2012 to have a material impact on our financial statements.

In June 2011, the FASB issued authoritative guidance amending the presentation requirements of other comprehensive income. All nonowner changes in stockholders equity will be required to be presented in either a single continuous statement of comprehensive income or in two separate but consecutive statements. In the two-statement approach, the first statement should present total net income and its components followed consecutively by a second statement that should present total other comprehensive income, the components of other comprehensive income, and the total of comprehensive income. Full retrospective application is required and early adoption is permitted. We do not expect the adoption of this guidance on January 1, 2012 to have any impact on our financial statements, other than presentation.

In September 2011, the FASB issued new accounting guidance intended to simplify how entities test goodwill for impairment. The new guidance gives entities the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. 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 under existing accounting guidance is required to be performed. Otherwise, no further testing is required. These new provisions are effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. However, early adoption is permitted in certain circumstances. We do not expect this new guidance to have a material effect on our consolidated financial statements.

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4. Acquisitions and Dispositions

In the first nine months of 2011 we acquired the business assets of two companies for $6.6 million. On a preliminary basis, the purchase price, including the estimated fair value of contingent consideration, exceeded the fair value of the net tangible assets acquired by approximately $6.0 million, of which $3.3 million was allocated to goodwill and $2.7 million was allocated to other intangible assets. The goodwill of these acquisitions is expected to be deductible for tax purposes.

In January 2011, we completed the sale of our personal care products business to Lubrizol Corporation. Proceeds from the sale were $157.8 million, net of selling and other expenses of $6.3 million, and resulted in a gain of $111.9 million before income taxes. The sale included goodwill, customer relationships, dedicated personal care products employees and other related assets. The sale did not include any supply chain-related assets. We will continue to supply certain products to Lubrizol relating to the personal care products business.

In February 2011, we completed the sale of our marine chemicals business to Norway s Wilhelmsen Ships Service. Proceeds from the sale were $40.6 million, net of selling and other expenses of $0.4 million, and resulted in a gain of $24.1 million before income taxes. The sale included goodwill, customer relationships, products and dedicated marine chemicals employees. The sale did not include any supply chain-related assets.

The marine chemicals and personal care products businesses were not presented as discontinued operations because their operations and cash flows were not clearly distinguished from the rest of the entity. The assets sold in these two transactions, consisting mostly of goodwill and customer relationships, were not separately classified as held for sale, because the amounts were not material relative to the total balances of the respective assets at December 31, 2010. For the year ended December 31, 2010, the marine chemicals and personal care products businesses contributed approximately $70 million and $25 million to net sales and earnings before income taxes, respectively.

In January 2010, we acquired a 50.1% controlling financial interest in Nalco Africa, a new entity formed with Protea Chemicals, one of Africa s largest suppliers of industrial chemicals and services. Protea Chemicals is a division of the Omnia Group, a diversified and specialist chemical services company located in Johannesburg, South Africa. The new entity enables us to re-enter the water and process treatment markets of southern Africa. The business combination did not involve the transfer of consideration, but under the terms of a technical assistance and license agreement executed at the time of the combination, we have licensed to Nalco Africa rights to certain of our patents, know-how and trademarks. The fair value of the business acquired was $20.1 million, of which $16.0 million was allocated to goodwill, $5.7 million was allocated to other intangible assets, and $1.6 million was allocated to a deferred tax liability. The goodwill consists primarily of our expectation of future sales growth in this geographic market and intangible assets that do not qualify for separate recognition. The goodwill was allocated to the Water

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4. Acquisitions and Dispositions (continued)

Services segment and is not expected to be deductible for tax purposes. The fair value of the business acquired was measured using internal cash flow estimates (i.e., Level 3 in the fair value hierarchy established by authoritative guidance issued by the FASB for fair value measurements).

The pro forma impact as if the aforementioned acquisitions had occurred at the beginning of the respective years is not significant.

5. Goodwill

Changes in the carrying value of goodwill for the nine months ended September 30, 2011 are summarized below:

(dollars in millions)	Water Services	Paper Services	Energy Services	Total
Balance as of January 1, 2011:				
Goodwill	$ 1,279.5	$ 549.1	$ 564.6	$ 2,393.2
Accumulated impairment losses		(549.1)		(549.1)
	1,279.5		564.6	1,844.1
Acquisitions	1.5		1.8	3.3
Divestitures	(56.6)			(56.6)
Effect of foreign currency translation	(15.7)		(3.6)	(19.3)
Balance as of September 30, 2011:				
Goodwill	1,208.7	549.1	562.8	2,320.6
Accumulated impairment losses		(549.1)		(549.1)
	$ 1,208.7	$	$ 562.8	$ 1,771.5

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6. Debt

Debt consists of the following:

(dollars in millions)	September 30, 2011	December 31, 2010
Short-term		
Checks outstanding and bank overdrafts	$ 26.6	$ 24.0
Notes payable to banks	57.6	55.5
Current maturities of long-term debt	31.0	10.5
	$ 115.2	$ 90.0
Long-term		
Securitized trade accounts receivable facility	$ 145.5	$ 67.8
Term loan B, due October 5, 2017 (including discount of $2.8 in 2011 and $3.1 in 2010)	640.7	645.3
Term loan C, due May 13, 2016 (including discount of $19.4 in 2011 and $22.5 in 2010)	275.3	274.5
Term loan C-1, due May 13, 2016 (including discount of $3.7 in 2011 and $4.3 in 2010)	95.3	95.4
Senior notes, due January 15, 2019	750.0	750.0
Senior notes (euro), due January 15, 2019	269.7	267.4
Senior discount notes, due February 1, 2014 (including premium of $0.4 in 2010)		200.4
Senior notes, due May 15, 2017 (including discount of $7.5 in 2011 and $8.5 in 2010)	492.5	491.5
Other	6.5	0.2
	2,675.5	2,792.5
Less: Current portion	31.0	10.5
	$ 2,644.5	$ 2,782.0

Using the proceeds from the sale of our marine chemicals business and personal care products business, we repaid the remaining $200.4 million of senior discount notes in March 2011. In connection with this transaction, we incurred a $2.8 million loss on early extinguishment of debt during the quarter ended March 31, 2011.

We had $17.3 million of letters of credit outstanding at September 30, 2011 under our senior secured credit facilities.

7. Equity

Equity consists of the following:

(dollars in millions, except per share amounts)	September 30, 2011	December 31, 2010
Nalco Holding Company shareholders equity:		
Preferred stock, par value $0.01 per share; authorized 100,000,000 shares; none issued	$	$
Common stock, par value $0.01 per share; authorized 500,000,000 shares; 148,335,441 and 147,925,072 shares issued at September 30, 2011 and December 31, 2010, respectively	1.4	1.4
Additional paid-in capital	813.1	800.7
Treasury stock, at cost; 9,535,943 shares at September 30, 2011 and December 31, 2010	(211.3)	(211.3)
Retained earnings (accumulated deficit)	192.3	(45.6)
Accumulated other comprehensive income:		
Net prior service credit	29.7	32.4
Net actuarial loss	(89.6)	(95.6)
Currency translation adjustments	174.9	214.8
Nalco Holding Company shareholders equity	910.5	696.8
Noncontrolling interests	29.5	30.7
Total equity	$ 940.0	$ 727.5

In July 2007, our Board of Directors authorized a $300 million share repurchase program and gave our management discretion in determining the conditions under which shares may be purchased from time to time. The program has no stated expiration date. As of December 31, 2010, we had repurchased 9,535,943 shares at a cost of $211.3 million. No additional shares were repurchased during the nine months ended September 30, 2011.

8. Pension and Other Postretirement Benefit Plans

We have several noncontributory, defined benefit pension plans covering some employees in the U.S. and those with certain foreign subsidiaries. We also provide a supplementary, nonqualified, unfunded plan for U.S. employees whose pension benefits exceed ERISA limitations. The components of net periodic pension cost for the three months and nine months ended September 30, 2011 and 2010 were as follows:

	U.S.		Non-U.S.	
(dollars in millions)	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Three Months ended September 30, 2011	Three Months ended September 30, 2010
Service cost	$	$	$ 2.3	$ 2.5
Interest cost	6.0	6.3	5.0	4.7
Expected return on plan assets	(5.9)	(5.3)	(3.8)	(3.7)
Prior service credit	(0.6)	(0.5)	(0.2)	(0.3)
Net actuarial loss	3.3	1.5	0.1	0.1
Net periodic pension cost	$ 2.8	$ 2.0	$ 3.4	$ 3.3

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8. Pension and Other Postretirement Benefit Plans (continued)

(dollars in millions)	U.S. Nine Months ended September 30, 2011	U.S. Nine Months ended September 30, 2010	Non-U.S. Nine Months ended September 30, 2011	Non-U.S. Nine Months ended September 30, 2010
Service cost	$	$	$ 7.0	$ 7.1
Interest cost	18.0	18.9	16.3	13.9
Expected return on plan assets	(17.6)	(15.9)	(12.4)	(10.7)
Prior service credit	(1.8)	(1.7)	(0.9)	(0.8)
Net actuarial loss	10.0	4.6	0.3	0.2
Settlements			0.7	
Net periodic pension cost	$ 8.6	$ 5.9	$ 11.0	$ 9.7

We also have defined benefit postretirement plans that provide medical and life insurance benefits for substantially all U.S. retirees and eligible dependents. The components of net periodic (benefit) cost of postretirement benefits other than pensions for the three months and nine months ended September 30, 2011 and 2010 were as follows:

(dollars in millions)	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Service cost	$ 0.8	$ 1.1	$ 2.3	$ 3.1
Interest cost	1.5	2.1	4.5	6.3
Prior service credit	(0.5)	(0.4)	(1.6)	(1.4)
Net actuarial gain	(1.9)	(0.6)	(5.6)	(1.8)
Net periodic (benefit) cost	$ (0.1)	$ 2.2	$ (0.4)	$ 6.2

We now expect to contribute approximately $39.8 million to our pension plans in 2011 compared to the $66.2 million we had expected to contribute as of December 31, 2010. The decrease is mostly attributable to a $28.5 million reduction in expected contributions to the principal U.S. pension plan.

9. Restructuring Expenses

We continuously redesign and optimize our business and work processes, and restructure our organization accordingly. Restructuring expenses were a net credit of $7.1 million and a net charge of $4.9 million for the three months and nine months ended September 30, 2011, respectively.

A restructuring accrual of $12.3 million as of September 30, 2011 was included in other current liabilities on the condensed consolidated balance sheet. Restructuring expenses in 2011 reflected the planned reduction in force of approximately 100 positions, primarily in the Europe, Africa and Middle East region as part of an organizational realignment. Partially offsetting this was a gain on the sale of two manufacturing facilities of $8.1 million during the third quarter 2011. All restructuring-related payments in the first nine months of 2011 were funded with cash from operations. We expect that future payments also will be funded with cash from operations.

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9. Restructuring Expenses (continued)

Activity in the restructuring accrual for the nine months ended September 30, 2011 is summarized as follows:

(dollars in millions)		Severance, Termination Benefits and Other
Balance as of January 1, 2011	$	11.5
Charges to restructuring expense		13.0
Cash payments		(12.0)
Currency translation adjustments		(0.2)
Balance as of September 30, 2011	$	12.3

Charges to restructuring expense are offset by the $8.1 million gain on sale of two manufacturing facilities.

10. Summary of Other Income (Expense), Net

The components of other income (expense), net for the three months and nine months ended September 30, 2011 and 2010, include the following:

(dollars in millions)		Three Months ended September 30, 2011		Three Months ended September 30, 2010		Nine Months ended September 30, 2011		Nine Months ended September 30, 2010
Loss on early extinguishment of debt	$		$		$	(2.8)	$	
Franchise taxes		(0.4)		(0.4)		(1.4)		(1.2)
Equity in earnings of unconsolidated subsidiaries		(0.3)		0.6				1.2
Foreign currency exchange adjustments		(5.2)		(1.4)		(5.0)		(17.3)
Other		(0.1)		(1.6)		(2.6)		(3.0)
Other income (expense), net	$	(6.0)	$	(2.8)	$	(11.8)	$	(20.3)

Foreign currency exchange adjustments

The $17.3 million of foreign currency exchange adjustments for nine months ended September 30, 2010 was mostly attributable to our subsidiary in Venezuela.

Effective January 1, 2010, Venezuela s economy was designated as highly inflationary under U.S. generally accepted accounting principles, since it had experienced a rate of general inflation in excess of 100% over the last three-year period. Accordingly, the functional currency of our subsidiary company in Venezuela was changed to the U.S. dollar, and all gains and losses resulting from the remeasurement of its financial statements since January 1, 2010 were recorded in the statement of operations. Our Venezuelan subsidiary accounted for approximately 2% of our consolidated net sales for the year ended December 31, 2010.

On January 8, 2010, the Venezuelan government announced the devaluation of the bolivar fuerte and the establishment of a two-tier exchange structure. As a result, the official exchange rate changed from 2.15 to 2.60 for essential items and 4.30 for non-essential

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10. Summary of Other Income (Expense), Net (continued)

items. We remeasured our Venezuelan subsidiary s balance sheet accounts to reflect the devaluation by using the exchange rate for non-essential items, which resulted in a foreign exchange loss of $23.2 million. Because about half of the products imported by our Venezuelan subsidiary were classified as essential, this loss was subsequently reduced by approximately $7.8 million of foreign exchange gains that were recognized during the nine months ended September 30, 2010, when payments were made using the exchange rate for essential products. We remeasure the financial statements of our Venezuelan subsidiary at the 4.30 exchange rate, the rate at which we expect to remit dividends.

In December 2010, the Venezuelan government announced the elimination of the two-tier exchange rate structure, effective January 1, 2011, and the official exchange rate of 4.30 was established for substantially all items. As a result, the exchange rate for essential items cannot be used for our unsettled amounts. The elimination of the two-tier rate structure did not have a significant impact on our financial position or results of operations.

We do not expect any significant ongoing impact of the currency devaluation on our results of operations.

11. Income Taxes

The income tax provision of $42.3 million for the three months ended September 30, 2011 reflects an actual effective tax rate of 35.0%. This includes net discrete tax benefits for the period of $0.4 million.

The income tax provision was $32.1 million for the three months ended September 30, 2010. The effective tax rate of 34.5% was favorably impacted by a $7.8 million net reduction to the income tax provision related to immaterial corrections of prior period items, consisting of adjustments with offsetting impacts to current and deferred income tax accounts.

For both the quarters ended September 30, 2011 and September 30, 2010, the income tax provision also varied from the U.S. federal statutory income tax rate due to foreign taxes provided at other than the 35% U.S. statutory rate, U.S. state income taxes, foreign tax credits, nondeductible expenses and other permanent differences.

Based upon the status of examinations in multiple tax jurisdictions and expanded audit and controversy activity in multiple non-U.S. jurisdictions, it is reasonably possible the total amount of unrecognized tax benefits could change during the next 12 months within a range of zero to $8 million.

We will continue to monitor our prior 36-month earnings history together with all other available evidence, both positive and negative, in determining whether it is more likely than not we will realize some or all of our net deferred tax assets. Based on current expectations, we do not anticipate releasing any valuation allowances during the next 12 months.

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11. Income Taxes (continued)

The income tax provision of $129.5 million for the nine months ended September 30, 2011 reflects an actual effective tax rate of 33.4%. This includes year-to-date net discrete tax benefits of $12.2 million, $11.8 million of which occurred in the second quarter, and an incremental tax charge, beyond 35.0%, of $4.2 million related to the gains on our first quarter divestitures. Those first quarter gains included the negative impact of nondeductible goodwill, partly offset by a favorable impact associated with their geographic mix, including, but not limited to, utilizing deferred tax assets against which a valuation allowance had been previously placed. The net discrete tax benefits of the second quarter consisted primarily of releasing $29.5 million of the valuation allowances previously placed against some of our deferred tax assets, partly offset by a net charge of $17.3 million related to unrecognized tax benefits, the latter of which was caused, in large part, by expanded audit and expected controversy activity in multiple non-U.S. income tax jurisdictions.

The income tax provision of $95.5 million for the nine months ended September 30, 2010 was unfavorably impacted by the tax consequences of U.S. healthcare reform legislation enacted in the first quarter 2010. The resulting one-time write-off of previously accrued tax benefits associated with the subsidy for postretirement prescription drug benefits increased our tax provision by $2.6 million. Also in the first quarter 2010, the Venezuelan government devalued its currency, resulting in a foreign exchange loss from remeasurement of the balance sheet accounts of our Venezuelan subsidiary. The loss produced relatively small tax benefits, which, when compared to the 35% U.S. federal statutory income tax rate, resulted in a $2.1 million increase to the income tax provision. The effective tax rate of 39.9% was also unfavorably impacted by increased earnings subjected to a relatively high U.S. tax rate. Foreign tax disputes and law changes enacted in 2010 also increased the effective tax rate. Partly offsetting these unfavorable impacts to the effective tax rate was the $7.8 million net reduction to the income tax provision recorded in the third quarter related to immaterial corrections of prior period items.

For the nine months ended September 30, 2011 and September 30, 2010, the income tax provision also varied from the U.S. federal statutory income tax rate due to foreign taxes provided at other than the 35% U.S. statutory rate, U.S. state income taxes, foreign tax credits, nondeductible expenses and other permanent differences.

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12. Comprehensive Income

Total comprehensive income and its components, net of related tax, for the three months and nine months ended September 30, 2011 and 2010, were as follows:

(dollars in millions)	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Net earnings	$ 78.7	$ 60.9	$ 258.4	$ 143.9
Other comprehensive income (loss), net of income taxes:				
Amortization of net prior service credit	(0.9)	(0.9)	(2.7)	(2.7)
Amortization of net actuarial loss	1.1	0.8	6.0	(6.9)
Foreign currency translation adjustments	(115.1)	105.2	(41.5)	17.8
Comprehensive income (loss)	(36.2)	166.0	220.2	152.1
Less: Comprehensive income attributable to noncontrolling interests	0.1	4.1	4.3	4.6
Comprehensive income (loss) attributable to Nalco Holding Company	$ (36.3)	$ 161.9	$ 215.9	$ 147.5

13. Segment Information

We operate three reportable segments:

Water Services This segment serves the global water treatment and process chemical needs of the industrial, institutional, and municipal markets.

Paper Services This segment serves the process chemicals and water treatment needs of the global pulp and paper industry.

Energy Services This segment serves the process chemicals and water treatment needs of the global petroleum and petrochemical industries in both upstream and downstream applications.

We evaluate the performance of our segments based on direct contribution , which is defined as net sales, less cost of product sold, selling and service expenses, marketing expenses and research expenses directly attributable to each segment. There are no intersegment revenues.

Net sales by reportable segment were as follows:

(dollars in millions)	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Water Services	$ 521.4	$ 465.3	$ 1,452.8	$ 1,308.6
Paper Services	219.4	194.4	628.0	554.0
Energy Services	510.2	428.6	1,407.2	1,268.9
Net sales	$ 1,251.0	$ 1,088.3	$ 3,488.0	$ 3,131.5

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13. Segment Information (continued)

The following table presents direct contribution by reportable segment and reconciles the total segment direct contribution to earnings before income taxes:

(dollars in millions)	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Segment direct contribution:				
Water Services	$ 101.8	$ 88.8	$ 251.6	$ 244.1
Paper Services	35.7	33.3	96.5	91.7
Energy Services	102.8	98.6	275.8	301.4
Total segment direct contribution	240.3	220.7	623.9	637.2
Expenses not allocated to segments:				
Administrative expenses	63.2	50.7	184.0	165.5
Amortization of intangible assets	9.9	10.8	29.5	32.2
Restructuring expenses	(7.1)	(0.3)	4.9	1.9
Impairment of goodwill		5.4		5.4
Gain on divestitures			(136.0)	
Operating earnings	174.3	154.1	541.5	432.2
Other income (expense), net	(6.0)	(2.8)	(11.8)	(20.3)
Interest income	0.1	0.8	1.1	3.7
Interest expense	(47.4)	(59.1)	(142.9)	(176.2)
Earnings before income taxes	$ 121.0	$ 93.0	$ 387.9	$ 239.4

Administrative expenses primarily represent the cost of support functions, including information technology, finance, human resources and legal, as well as expenses for support facilities, executive management and management incentive plans.

14. Earnings Per Share

Basic earnings per share is computed by dividing net earnings attributable to Nalco Holding Company common shareholders by the weighted-average number of common shares outstanding during the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock.

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14. Earnings Per Share (continued)

Basic and diluted earnings per share were calculated as follows:

(in millions)	Three Months ended September 30, 2011	Three Months ended September 30, 2010	Nine Months ended September 30, 2011	Nine Months ended September 30, 2010
Numerator for basic and diluted earnings per share attributable to Nalco Holding Company common shareholders:				
Net earnings attributable to Nalco Holding Company	$ 76.7	$ 58.9	$ 252.5	$ 140.8
Denominator for basic earnings per share attributable to Nalco Holding Company common shareholders weighted average common shares outstanding	138.8	138.3	138.8	138.3
Effect of dilutive securities:				
Share-based compensation plans [1]	1.6	1.1	1.3	1.0
Denominator for diluted earnings per share attributable to Nalco Holding Company common shareholders	140.4	139.4	140.1	139.3

[1] Share-based compensation plans excludes 0.3 million and 0.2 million shares at September 30, 2011 and 2010, respectively, due to their anti-dilutive effect.

15. Contingencies and Litigation

Various claims, lawsuits and administrative proceedings are pending or threatened against us, arising from the ordinary course of business with respect to commercial, contract, intellectual property, product liability, employee, environmental and other matters. Historically, these matters have not had a material impact on our consolidated financial position. However, we cannot predict the outcome of any litigation or the potential for future litigation.

We have been notified of potential involvement or named as a potentially responsible party (PRP) by the Environmental Protection Agency, state enforcement agencies or private parties at nine pending waste sites where some financial contribution is or may be required. These agencies have also identified many other parties who may be responsible for clean-up costs at these waste disposal sites. Our financial contribution to remediate these sites is not expected to be material. There has been no significant financial impact on us up to the present, nor is it anticipated that there will be in the future, as a result of these matters. We have made and will continue to make provisions for these costs if our liability becomes probable and when costs can be reasonably estimated.

Our undiscounted reserves for known environmental clean-up costs were $2.2 million at September 30, 2011. These environmental reserves represent our current estimate of our proportional clean-up costs and are based upon negotiation and agreement with enforcement agencies, our previous experience with respect to clean-up activities, a detailed review by us of known conditions, and information about other PRPs. They are not reduced by any possible recoveries from insurance companies or other PRPs not specifically identified. Although we cannot determine whether or not a material effect on future operations is reasonably likely to occur, given the evolving nature of environmental

15. Contingencies and Litigation (continued)

regulations, we believe that the recorded reserve levels are appropriate estimates of the potential liability. Although settlement will require future cash outlays, it is not expected that such outlays will materially impact our liquidity position.

Expenditures for the three months and nine months ended September 30, 2011, relating to environmental compliance and clean-up activities, were not significant.

We have been named as a defendant in lawsuits based on claimed involvement in the supply of allegedly defective or hazardous materials or products and the claimed presence of hazardous substances at our plants. We have also in the past been named as a defendant in lawsuits where our products have not caused injuries, but the claimants seek amounts so they might be monitored in the future for potential injuries arising from our products. The plaintiffs in these cases seek damages for alleged personal injury or potential injury resulting from exposure to our products or other chemicals. These matters have had a *de minimis* impact on our business historically, and we do not anticipate these matters will present any material risk to our business in the future. Notwithstanding, we cannot predict the outcome of any such lawsuits or the involvement we might have in these matters in the future.

In the ordinary course of our business, we are also a party to a number of lawsuits and are subject to various claims relating to patents, trademarks, intellectual property, employee matters, contracts, transactions, chemicals, services and other matters, the outcome of which, in our opinion, should not have a material effect on our consolidated financial position. However, we cannot predict the outcome of any litigation or the potential for future litigation. Were an unfavorable ruling to occur, there exists the possibility of a material adverse impact on the results of operations for the period in which the ruling occurs. We maintain accruals where the outcome of the matter is probable and can be reasonably estimated. We do not believe there is a risk of material loss in excess of these accruals.

Matters Related to Deepwater Horizon Incident Response

On April 22, 2010, the deepwater drilling platform, the Deepwater Horizon, operated by a subsidiary of BP plc, sank in the Gulf of Mexico after a catastrophic explosion and fire that began on April 20, 2010. A massive oil spill resulted. Approximately one week following the incident, subsidiaries of BP plc, under the authorization of the responding federal agencies, formally requested Nalco Company, an indirect subsidiary of Nalco Holding Company, to supply large quantities of COREXIT® 9500, a Nalco oil dispersant product listed on the U.S. EPA National Contingency Plan Product Schedule. Nalco Company responded immediately by providing available COREXIT and increasing production to supply the product to BP s subsidiaries for use, as authorized and directed by agencies of the federal government throughout the incident. Prior to the incident, Nalco Holding Company and its subsidiaries had not provided products or services or otherwise had any involvement with the Deepwater Horizon platform. On July 15, 2010, BP announced that it had capped the leaking well, and the application of dispersants by the responding parties ceased shortly thereafter.

On May 1, 2010, the President appointed retired U.S. Coast Guard Commandant Admiral Thad Allen to serve as the National Incident Commander in charge of the coordination of the response to the incident at the national level. The EPA directed numerous tests of all

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15. Contingencies and Litigation (continued)

the dispersants on the National Contingency Plan Product Schedule, including those provided by Nalco Company, to ensure decisions about ongoing dispersant use in the Gulf of Mexico are grounded in the best available science. We cooperated with this testing process and continued to supply COREXIT 9500, as requested by BP and government authorities. After review and testing of a number of dispersants, on June 30, 2010, and on August 2, 2010, the EPA released toxicity data for eight oil dispersants.

The use of dispersants by the responding parties was one tool used by the government and BP to avoid and reduce damage to the Gulf area from the spill. Since the spill occurred, the EPA and other federal agencies have closely monitored conditions in areas where dispersant has been applied. We have encouraged ongoing monitoring and review of COREXIT and other dispersants and have cooperated fully with the governmental review and approval process. However, in connection with its provision of COREXIT, Nalco Company has been named in several lawsuits as described below.

Putative Class Action Litigation

In June, July and August 2010, and in April 2011, Nalco Company was named, along with other unaffiliated defendants, in eight putative class action complaints filed in either the United States District Court for the Eastern District of Louisiana (*Parker, et al. v. Nalco Company, et al.*, Civil Action No. 2:10-cv-01749-CJB-SS; *Harris, et al. v. BP, plc, et al.*, Civil Action No. 2:10-cv-02078-CJB-SS; *Irelan v. BP Products, Inc., et al.,* Civil Action No. 11-cv-00881; *Adams v. Louisiana, et al*., Civil Action No. 11-cv-01051), the United States District Court for the Southern District of Alabama, Southern Division (*Lavigne, et al. v. BP PLC, et al.*, Civil Action No. 1:10-cv-00222-KD-C; *Wright, et al. v. BP, plc, et al.*, Civil Action No. 1:10-cv-00397-B) or the United States District Court for the Northern District of Florida, Pensacola Division (*Walsh, et al. v. BP, PLC, et al.*, Civil Action No. 3:10-cv-00143-RV-MD; *Petitjean, et al. v. BP, plc, et al.*, Case No. 3:10-cv-00316-RS-EMT) on behalf of various potential classes of persons who live and work in or derive income from the Coastal Zone. The *Parker, Lavigne* and *Walsh* cases have since been voluntarily dismissed. Each of the remaining actions contains substantially similar allegations, generally alleging, among other things, negligence relating to the use of our COREXIT dispersant in connection with the Deepwater Horizon oil spill. The plaintiffs in each of these putative class action lawsuits are generally seeking awards of unspecified compensatory and punitive damages, and attorneys fees and costs.

Other Related Federal Claims

In July, August, September, October and December 2010, Nalco Company was also named, along with other unaffiliated defendants, in eight complaints filed by individuals in either the United States District Court for the Eastern District of Louisiana (*Ezell v. BP*, *plc, et al.*, Case No. 2:10-cv-01920-KDE-JCW), the United States District Court for the Southern District of Alabama, Southern Division (*Monroe v. BP, plc, et al.*, Case No. 1:10-cv-00472-M; *Hill v. BP, plc*, *et al.*, Civil Action No. 1:10-cv-00471-CG-N; *Hudley v. BP, plc, et al.*, Civil Action No. 10-cv-00532-N), the United States District Court for the Northern District of Florida, Tallahassee Division (*Capt Ander, Inc. v. BP, plc, et al.*, Case No. 4:10-cv-00364-RH-WCS), the United States District Court for the Southern District of Mississippi, Southern Division (*Trehern v. BP, plc, et al.*, Case No. 1:10-cv-00432-HSO-

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15. Contingencies and Litigation (continued)

JMR) or the United States District Court for the Southern District of Texas (*Chatman v. BP Exploration & Production*, Civil Action No. 10-cv-04329; *Brooks v. Tidewater Marine LLC, et al.*, Civil Action No. 11-cv-00049).

In April 2011, Nalco Company was also named in *Best v. British Petroleum plc, et al.,* Civil Action No. 11-cv-00772 (E.D. La.); *Black v. BP Exploration & Production, Inc., et al.* Civil Action No. 2:11-cv-867, (E.D. La.); *Pearson v. BP Exploration & Production, Inc.,* Civil Action No. 2:11-cv-863, (E.D. La.); *Alexander, et al. v. BP Exploration & Production, et al*., Civil Action No. 11-cv-00951 (E.D. La.); and *Coco v. BP Products North America, Inc., et al.* (E.D. La.). The complaints generally allege, among other things, negligence and injury resulting from the use of our COREXIT dispersant in connection with the Deepwater Horizon oil spill. The complaints seek unspecified compensatory and punitive damages, and attorneys fees and costs. The *Chatman* case was voluntarily dismissed.

All of the above-referenced cases pending against Nalco Company have been administratively transferred for pre-trial purposes to a judge in the United States District Court for the Eastern District of Louisiana with other related cases under *In Re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, Civil Action No. 10-md-02179 (E.D. La.) (MDL 2179). Pursuant to orders issued by Judge Barbier in MDL 2179, the claims have been consolidated in several master complaints, including one naming Nalco Company and others who responded to the Gulf Oil Spill (known as the B3 Bundle). Plaintiffs are required by Judge Barbier to prepare a list designating previously-filed lawsuits that assert claims within the B3 Bundle regardless of whether the lawsuit named each defendant named in the B3 Bundle master complaint. We have received a draft list from the plaintiffs steering committee. The draft list identifies fifteen cases in the B3 Bundle, some of which are putative class actions. Six cases previously filed against Nalco Company are not included in the B3 Bundle.

Pursuant to orders issued by Judge Barbier in MDL 2179, claimants wishing to assert causes of action subject to one or more of the master complaints may do so by filing a short-form joinder. A short-form joinder is deemed to be an intervention into one or more of the master complaints in MDL 2179. The deadline for filing short form joinders was April 20, 2011. Of the individuals who have filed short form joinders that intervene in the B3 Bundle, Nalco Company has no reason to believe that these individuals are different from those covered by the putative class actions described above. These plaintiffs who have intervened in the B3 Bundle seek to recover damages for alleged personal injuries, medical monitoring and/or property damage related to the oil spill clean-up efforts.

Nalco Company, the incident defendants and the other responder defendants have been named as third party defendants by Transocean Deepwater Drilling, Inc. and its affiliates (the Transocean Entities) (*In re the Complaint and Petition of Triton Asset Leasing GmbH, et al,* MDL No. 2179, Civil Action 10-2771). In April and May 2011, the Transocean Entities, Cameron International Corporation, Halliburton Energy Services, Inc., M-I L.L.C., Weatherford U.S., L.P. and Weatherford International, Inc. (collectively, the Cross Claimants) filed cross claims in MDL 2179 against Nalco Company and other unaffiliated cross defendants. The Cross Claimants generally allege, among other things, that if they are found liable for damages resulting from the Deepwater Horizon explosion, oil spill and/or spill response, they are entitled to indemnity or contribution from the cross defendants.

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15. Contingencies and Litigation (continued)

In April and June 2011, in support of its defense of the claims against it, Nalco Company filed counterclaims against the Cross Claimants. In its counterclaims, Nalco Company generally alleges that if it is found liable for damages resulting from the Deepwater Horizon explosion, oil spill and/or spill response, it is entitled to contribution or indemnity from the Cross Claimants.

Other Related State Court Actions

In March 2011, Nalco Company was named, along with other unaffiliated defendants, in an amended complaint filed by an individual in the Circuit Court of Harrison County, Mississippi, Second Judicial District (*Franks v. Sea Tow of South Miss, Inc., et al*., Cause No. A2402-10-228 (Circuit Court of Harrison County, Mississippi)). The amended complaint generally asserts, among other things, negligence and strict products liability claims relating to the plaintiff s alleged exposure to chemical dispersants manufactured by Nalco Company. The plaintiff seeks unspecified compensatory damages, medical expenses, and attorneys fees and costs.

In October 2011, Nalco Company was named along with other unaffiliated defendants, in a complaint filed in Louisiana State Court, *Toups, et al. v Nalco Company, et al.*, No. 59-121 (25th Judicial District Court, Parish of Plaquemines, Louisiana). The complaint alleges that 26 boat operators and clean-up technicians suffered health-related problems as a result of using chemicals during the oil spill response efforts.

We believe the claims asserted against Nalco Company are without merit and intend to defend these lawsuits vigorously. We also believe that we have rights to contribution and/or indemnification (including legal expenses) from third parties. However, we cannot predict the outcome of these lawsuits, the involvement we might have in these matters in the future or the potential for future litigation.

Matters Related To The Merger Transaction With Ecolab Inc.

Following Ecolab Inc. (Ecolab) and Nalco Holding Company s announcement of a planned merger transaction on July 20, 2011, a purported class action lawsuit was filed against Nalco, members of Nalco s board of directors and Ecolab in the Circuit Court of the Eighteenth Judicial Circuit (DuPage County, State of Illinois): *Jack Mozenter v. Nalco Holding Co., Ecolab, Inc., et al.*, No. 2011MR001043. Three additional purported class action lawsuits were also filed in the Circuit Court of the Eighteenth Judicial Circuit: *Ziegler v. Nalco Holding Company, et al.*, No. 2011 L 861, *Stasik v. Fyrwald, et al.*, No. 2011 CH 3745 and *Construction Workers Pension Trust Fund Lake County v. Nalco Holding Co., et al.*, No. 2011 L951. The four actions were consolidated by the Circuit Court on September 7, 2011. The lawsuits allege that the planned merger transaction is the result of an unfair and inadequate process, the consideration to be received by Nalco s stockholders in the merger is inadequate and that the members of Nalco s board of directors breached their fiduciary duties. The lawsuits were later amended to allege that the disclosures regarding the proposed merger as submitted by Nalco in a draft proxy statement for its shareholders were inadequate. (The lawsuits also allege that Ecolab aided and abetted the Nalco board of directors in the breach of their fiduciary duties to Nalco s stockholders.) The lawsuits seek, among other things, injunctive relief enjoining Ecolab and Nalco from proceeding with the merger unless Nalco implements procedures to obtain the highest possible price for its stockholders, directing the Nalco board of directors to exercise its fiduciary duties to obtain a transaction in the best interests of Nalco s stockholders and seeking additional disclosures in the proposed proxy statement. Nalco believes the allegations are meritless.

On October 24, 2011, th